

## SECTION 1 INTRODUCTION AND GENERAL RULES

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## SECTION 1 INTRODUCTION AND GENERAL RULES

This section deals with:

- (a) the purpose of and services provided by the Settlement Facility including the fees and charges payable by Facility Users for the provision of those services and facilities;
- (b) the binding effect of these Rules on Issuers, Participants and ASX Settlement;
- (c) the power of ASX Settlement to make State of Emergency Rules and written Procedures relating to the operation of the Settlement Facility and the conduct of Facility Users;
- (d) the circumstances in which ASX Settlement will grant a licence to Facility Users to use and communicate with the Settlement Facility; and
- (e) a number of miscellaneous matters including the governing law of agreements, agreement to submit to jurisdiction, how defects and irregularities are to be dealt with and the notification and service of documents.

### 1.1 THE SETTLEMENT FACILITY

#### 1.1.1 Purpose of the Settlement Facility

ASX Settlement is the holder of an Australian CS facility licence granted under the Corporations Act and provides a facility (the “Settlement Facility”) for the following purposes:

- (a) to enable Participants to pay money or otherwise meet settlement obligations, arising out of transactions in Financial Products or Derivatives;
- (b) to enable Issuers and Participants to record holdings of Financial Products and to take permitted action in accordance with instructions, agreements or arrangements in relation to Financial Products; and
- (c) to provide other services in accordance with these Rules.

Introduced 11/03/04 Amended 01/08/10, 05/12/19

#### 1.1.2 Services provided by the Settlement Facility

ASX Settlement provides or makes available to Facility Users services and facilities under the Settlement Facility, including, without limitation:

- (a) for the electronic settlement of transactions in Approved Financial Products;

- (b) to establish and administer electronic CHES<sup>S</sup> Subregisters of Approved Financial Products and to provide facilities for effecting and registering Transfers of Approved Financial Products by electronic means;
- (c) to provide other services connected with settlement (including, without limitation, the reservation of Financial Products in Subpositions) for the benefit of Participants and other persons;
- (d) to provide information in relation to Approved Financial Products and CHES<sup>S</sup> Subregisters to Issuers, Participants and other persons in accordance with the Corporations Act and these Rules; and
- (e) other services and facilities as specified from time to time in accordance with these Rules.

Introduced 11/03/04

### **1.1.3 No limit on services or facilities to be provided**

The description of purpose in Rule 1.1.1 and the description of services in Rule 1.1.2 is not to be taken to limit in any way the services or facilities that are or may be provided or made available by ASX Settlement, whether under the Settlement Facility or otherwise.

Introduced 11/03/04

## **1.2 APPLICATION AND EFFECT OF THESE RULES**

### **1.2.1 Operating Rules of ASX Settlement**

These Rules are the operating rules of the Settlement Facility for the purposes of the Corporations Act. These Rules should be read in conjunction with:

- (a) the Procedures;
- (b) the ASX Enforcement and Appeals Rulebook; and
- (c) the Corporations Act.

To the extent of any inconsistency between these Rules and the Procedures, these Rules will prevail.

Introduced 11/03/04 Amended 31/03/08, 01/08/10

### **1.2.2 Binding effect of Rules**

These Rules are binding on Issuers, Participants and ASX Settlement in the manner set out in:

- (a) section 822B of the Corporations Act; and
- (b) Rules 1.2.3 and 1.2.4.

Introduced 11/03/04 Origin SCH 1.5.1

### **1.2.3 Covenants to observe Rules**

These Rules (other than a Warranty and Indemnity Provision) have the effect of a contract under seal between ASX Settlement and all Facility Users under which:

- (a) each Facility User covenants with ASX Settlement and each other Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on the Facility User, in the manner provided by the Rules; and
- (b) subject to Rules 3.6.11 to 3.6.18 inclusive, ASX Settlement covenants with each Facility User to observe the Rules and to perform the obligations which the Rules purport to impose on ASX Settlement, in the manner provided by the Rules.

These Rules have the effect of a contract under seal between all RTGS Payments Providers for the time being admitted to participate in that capacity, ASX Settlement and all Facility Users.

Introduced 11/03/04 Origin SCH 1.5.2, 1.5.7

### **1.2.4 Effect of warranty and indemnity provisions**

The Issuer Warranties and Indemnities have the effect of a contract under seal between the Issuer, ASX Settlement and every Participant.

The Participant Warranties and Indemnities have the effect of a contract under seal between the Participant, ASX Settlement, every Issuer and every other Participant.

The ASX Settlement Indemnity has the effect of a contract under seal between ASX Settlement and each Issuer.

Introduced 11/03/04 Origin SCH 1.5.4, 1.5.5, 1.5.6

### **1.2.5 ASX Enforcement and Appeals Rulebook**

The ASX Enforcement and Appeals Rulebook form part of these Rules where relevant for the purposes of the Corporations Act.

Introduced 31/03/08 Amended 01/08/10

## **1.3 STATE OF EMERGENCY RULES**

### **1.3.1 Action if a State of Emergency exists**

If ASX Settlement determines that a State of Emergency exists ASX Settlement may take or authorise any action it considers necessary for the purpose of dealing with the State of Emergency, including:

- (a) making State of Emergency Rules (that may be inconsistent with these Rules) for the protection of the interests of ASX Settlement and Facility Users;
- (b) suspending provision of any ASX Settlement facilities and services to one or more persons;

- (c) taking, or refraining from taking, or directing a Participant to take or refrain from taking, any action which ASX Settlement considers is appropriate;
- (d) taking any action in the name of and at the expense of a Participant; or
- (e) other action that is inconsistent with these Rules (other than Rule 1.3).

In the event of conflict between the State of Emergency Rules and these Rules, the State of Emergency Rules will prevail.

Introduced 11/03/04 Origin SCH 1.6.1, 1.6.3

### **1.3.2 Effect of a State of Emergency**

No person bound by the Rules is liable for failure to comply with a Rule (other than a Warranty an Indemnity Provision or a State of Emergency Rule) if, and to the extent to which, compliance has been delayed, interfered with, curtailed or prevented by a State of Emergency.

Introduced 11/03/04 Origin SCH 1.5.3

### **1.3.3 Period for State of Emergency Rules**

ASX Settlement may specify the period during which any State of Emergency Rules remain in force, but the period must not exceed 30 Business Days. If ASX Settlement does not specify a period during which any State of Emergency Rules remain in force, the State of Emergency Rules remain in force for 30 Business Days.

Introduced 11/03/04 Origin SCH 1.6.2

### **1.3.4 Notice to Issuers and Participants**

ASX Settlement must promptly notify Issuers and Participants of the making of any State of Emergency Rules.

Introduced 11/03/04 Origin SCH 1.6.4

### **1.3.5 Facility User must inform ASX Settlement of potential State of Emergency**

A Facility User that becomes aware of any event or condition that may lead to a State of Emergency must immediately inform ASX Settlement.

Introduced 11/03/04 Origin SCH 1.6.5

### **1.3.6 No Liability of ASX Settlement**

Without limiting any other liability provisions in these Rules none of ASX Settlement, its officers, employees, agents or contractors are liable to a Facility User or any other person for:

- (a) any failure or delay in performance in whole or in part of the obligations of ASX Settlement under the Rules or any contract, if that failure or delay is caused directly or indirectly by a State of Emergency which entitles ASX Settlement to act under this Rule 1.3; or

- (b) any loss, liability, damage, cost or expense arising in any way (including, without limitation, by negligence) from the bona fide exercise of any power, right or discretion conferred upon ASX Settlement by this Rule 1.3.

Introduced 11/03/04

## **1.4 SETTLEMENT PROCEDURES**

### **1.4.1 ASX Settlement may approve Procedures**

ASX Settlement may from time to time approve written Procedures relating to the operations of ASX Settlement and the Settlement Facility, the conduct of Facility Users and the structure and operation of electronic communications between ASX Settlement and Facility Users.

Introduced 11/03/04 Origin SCH 1.8.1

### **1.4.2 Procedures are not part of the Rules**

The Procedures do not form part of these Rules. However, if a Rule requires a person to comply with any part of the Procedures, failure by the person to comply with that part of the Procedures is a contravention of the Rule.

Introduced 11/03/04 Origin SCH 1.8.2, 1.8.3

### **1.4.3 Changes to Procedures**

ASX Settlement may approve changes to the Procedures from time to time and must give such notice as is reasonable in the circumstances to Facility Users of any changes to the Procedures before those changes take effect.

Introduced 11/03/04 Origin SCH 1.8.7, 1.8.4

## **1.5 PAYMENT SYSTEMS AND NETTING ACT**

### **1.5.1 Approval of CHES as an “approved RTGS system”**

Each Facility User and each RTGS Payments Provider acknowledges that for the purposes of Real Time Gross Settlement in CHES, the Reserve Bank of Australia has approved CHES as an “approved RTGS system” under the Payment Systems and Netting Act 1998 and further acknowledges the application and effect of that Act as a result.

Introduced 11/03/04 Origin SCH 1.17

### **1.5.2 Approval of CHES as an “approved netting arrangement”**

Each Settlement Participant acknowledges that for the purposes of Batch Settlement in CHES, the Reserve Bank of Australia has approved CHES as an “approved netting arrangement” under the Payment Systems and Netting Act and further acknowledges the application and effect of that Act as a result.

Introduced 01/05/07

## **1.6 ASX SETTLEMENT FEES AND CHARGES**

### **1.6.1 ASX Settlement must specify fees and charges**

ASX Settlement must make a Fees and Charges Schedule specifying fees and charges payable in connection with the admission of Facility Users, including access and use of the Settlement Facility, ASX Settlement's regulatory functions, its facilities or any other services provided by ASX Settlement or a Related Body Corporate of ASX Settlement in connection with these Rules, and the time by which, or period during which, the fees and charges must be paid.

The Fees and Charges Schedule may include fees and charges imposed to recover costs incurred by ASX Settlement in the event of a failure by a Facility User to comply with these Rules or the Procedures.

Introduced 11/03/04 Origin SCH 1.9.1, 1.9.3

### **1.6.2 Facility Users to pay fees and charges**

In consideration for the facilities and services provided to it by ASX Settlement, each Facility User must pay fees and charges to ASX Settlement in accordance with the Fees and Charges Schedule.

Introduced 11/03/04 Origin SCH 1.9.2

### **1.6.3 Changes to Fees and Charges Schedule**

ASX Settlement must promptly notify Facility Users of any changes to the Fees and Charges Schedule prior to implementing those changes.

Introduced 11/03/04 Origin SCH 1.9.4

## **1.7 GOVERNING LAW**

### **1.7.1 Governing law of contracts and agreements**

All contracts or agreements between:

- (a) ASX Settlement and an Issuer;
- (b) ASX Settlement and a Participant;
- (c) an Issuer and a Participant;
- (d) a Participant and any other Participant; and
- (e) any of an Approved Market Operator, an Approved Clearing Facility, CCP, ASX Settlement, a Holder, a Payments Provider, an Issuer, a Participant and SEGC (each a "party" for the purposes of these Rules 1.7 and 1.8 only) and any other party or parties,

which are constituted by the Rules or entered into under the Rules or as contemplated by the Rules, are governed by the laws of New South Wales or as applicable the laws of Australia.

Introduced 11/03/04 Origin SCH 1.18



## **1.8 SUBMISSION TO JURISDICTION**

### **1.8.1 Submission to jurisdiction by parties**

ASX Settlement, its Related Parties and each party to a contract or agreement referred to in Rule 1.7 irrevocably and unconditionally:

- (a) submit to the exclusive jurisdiction of courts of New South Wales and courts of appeal from them;
- (b) waive any immunity from or any objection to any action in the courts exercising any jurisdiction in New South Wales; and
- (c) waive any right they have to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum, or that those courts do not have jurisdiction.

Introduced 11/03/04 Origin SCH 1.19 Amended 03/12/18

## **1.9 DEFECTS, IRREGULARITIES AND DEFICIENCIES**

### **1.9.1 Notices or Time**

A decision, resolution, proceeding or act of ASX Settlement under these Rules is not invalidated by any:

- (a) defect;
- (b) irregularity; or
- (c) deficiency,

of notice or time unless:

- (d) a Facility User concerned by the defect, irregularity or deficiency requests ASX Settlement to resolve that the decision, resolution, proceeding or act is invalid;
- (e) ASX Settlement reasonably believes that the defect, irregularity or deficiency has caused or may cause substantial injustice which cannot reasonably be avoided; and
- (f) ASX Settlement accordingly resolves that the decision, resolution, proceeding or act is invalid.

Introduced 11/03/04 Origin SCH 21.8.1

### **1.9.2 Validity of Actions**

An action or inaction by ASX Settlement under the Rules or the Procedures may not be challenged on the ground that a Rule, Procedure, direction, decision or requirement of ASX Settlement or any agreement made by ASX Settlement, is ultra vires or otherwise invalid.

Introduced 11/03/04

### **1.9.3 Partial invalidity of Rules**

If any of the provisions of the Rules or the Procedures becomes at any time illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of the remaining provisions of the Rules and the Procedures, and the legality, validity or enforceability of the provision under the law of any other jurisdiction is not affected or impaired in any way.

Introduced 11/03/04

## **1.10 NOTICE, NOTIFICATION AND SERVICE OF DOCUMENTS**

### **1.10.1 Interpretation**

In these Rules, a reference to notifying a person of any matters includes a reference to:

- (a) giving Notice of those matters to the person; or
- (b) Transmitting a Message containing those matters to the person.

For the purposes of these Rules, a Message which is Transmitted by ASX Settlement or a Facility User will be taken to be received when the Message is made available for collection in the Message collection facility provided in the Settlement Facility for Messages passing between ASX Settlement and Facility Users.

If any Rule requires or permits the giving of Notice of any matters to a person, the Rule requires or permits the giving to that person of a written document containing those matters. Without limiting any other provision of this Rule 1.10, any Notice to be given by a Facility User to ASX Settlement must be given to the person holding the position notified by ASX Settlement to Facility Users and may be given in the manner set out in the Procedures. Any Notice to be given by ASX Settlement to a person, firm or corporation may be given in the manner set out in the Procedures.

Introduced 11/03/04 Origin SCH 21.7.1, 21.7.2, 21.7.3 Amended 09/07/08

### **1.10.2 Delivery of notice**

For the purposes of any Rule that requires or permits a document to be given to a person, whether the expression 'serve', 'give' or 'send' or any other expression is used, the document may be given, and will be taken to have been received, in the manner set out in the Procedures.

Nothing in this Rule 1.10.2 or the Procedures prevents documents being sent or given to, or served on, a person in any other manner required or permitted by law.

Introduced 11/03/04 Origin SCH 21.7.4, 21.7.6 and OCH 18.6.3

### **1.10.3 Accidental omission by ASX Settlement**

If under these Rules ASX Settlement is to give any Notice to some or all:

- (a) Facility Users;
- (b) Participants; or

(c) Issuers,

accidental omission by ASX Settlement to give Notice to one or more Facility Users, Participants or Issuers does not affect the validity and enforceability of any resolution, decision, proceeding or act in connection with which the Notice was to have been given.

Introduced 11/03/04 Origin SCH 21.7.7 and OCH 18.6.6

#### **1.10.4 Notice by Participant to be given to the Prescribed Person**

Without limiting any other provision of this Rule 1.10 any Notice to be given by a Participant to ASX Settlement under any of Rules 12.18.1(e) or (f) must be given to the Prescribed Person.

Introduced 11/03/04 Origin SCH 21.7.8

#### **1.10.5 Participant to have e-mail**

A Participant must acquire and maintain an operating e-mail system for the purposes of receiving Notices under Rule 1.10.2.

Introduced 11/03/04 Origin OCH 18.6.5

### **1.11 INTELLECTUAL PROPERTY**

#### **1.11.1 Grant of licence**

Subject to payment of fees and charges in accordance with the Fees and Charges Schedule, and for the purpose of meeting settlement obligations, transferring and recording holdings of financial products and utilising services provided by the Settlement Facility, ASX Settlement grants (and is authorised to grant), either on its own behalf or on behalf of a Related Party who owns the intellectual property rights, to each Facility User a non-exclusive, non-transferable licence to use and communicate with CHES to the extent and in the manner required or permitted by these Rules and the Procedures.

Introduced 11/03/04 Origin SCH 1.14.1

#### **1.11.2 Reservation of rights by ASX Settlement**

Subject to the licence granted in Rule 1.11.1, ASX Settlement reserves (and it is authorised to reserve) either on its own behalf or on behalf of a Related Party who owns the intellectual property rights, all intellectual property rights it has or may have in relation to CHES, the CHES Software and the information passing into or out of, or held within CHES (including any rights ASX Settlement may have in relation to the confidentiality of that information).

Introduced 11/03/04 Origin SCH 1.14.2

#### **1.11.3 No unauthorised use of CHES**

To the fullest extent permitted under the law for the protection of the intellectual property rights referred to in Rule 1.11.2, ASX Settlement prohibits (and it is authorised to prohibit) either on its own behalf or on behalf of a Related Party who owns the intellectual property rights, each Facility User from:

- (a) attempting to copy, alter or modify all or part of the CHESSE Software;
- (b) attempting to recreate, reverse engineer or in any other way derive the source code or object code for all or part of the CHESSE Software;
- (c) using or communicating with CHESSE otherwise than as required or permitted by these Rules and the Procedures; or
- (d) allowing a person that is not an Authorised Person access to CHESSE.

Introduced 11/03/04 Origin SCH 1.14.3

## **1.12 TIME FOR PERFORMANCE OF OBLIGATIONS**

### **1.12.1 Request to extend operating hours**

A request by a Participant, RTGS Payment Provider or Issuer to extend operating hours, cut-off times, dead-lines or other closing times prescribed under these Rules or the ASX Settlement Procedures is to be made to ASX Settlement by such method as notified by ASX Settlement from time to time. Extensions may be granted by ASX Settlement in exceptional circumstances and will require individual justifications. Any extension will be granted for the duration specified by ASX Settlement.

Introduced 06/07/20

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