

# ASX Trade Acceptance Service

REVIEW OF LEGAL TERMS

FEBRUARY 2016



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## Introduction

The Trade Acceptance Service provides an Approved Market Operator (AMO) with non-discriminatory access to clearing and settlement arrangements provided by ASX Clear and ASX Settlement. It supports transactions in any CHESSE-eligible financial product executed on the market of an AMO being cleared and settled on an equivalent basis to transactions effected through ASX's cash market.

The Trade Acceptance Service is provided by ASX Clear and ASX Settlement directly to AMOs on the basis of a set of published contractual Legal Terms. The Legal Terms include contractual commitments from ASX Clear and ASX Settlement to:

- provide an AMO with services of comparable quality to those provided to ASX;
- not discriminate on clearing and settlement fees and charges or the requirements for participants on the basis of where a trade is executed, or the market on which the CHESSE-eligible financial product is quoted; and
- protect any competitively sensitive information obtained from an AMO in the course of providing the Trade Acceptance Service.

Under the Legal Terms, ASX has made Operational and Technical Standards and an Information Handling Standard. The Operational and Technical Standards set out the key parameters of trade acceptability and specify other operational and technical requirements for AMOs using the Trade Acceptance Service to support market stability. The Information Handling Standard sets out the arrangements for the protection of AMO confidential information, including competitively sensitive information.

The Legal Terms came into effect with the establishment of the service on 31 October 2011, with a term of five years. The Legal Terms are due to expire on 31 October 2016.

In response to a customer request, the Trade Acceptance Service was expanded in 2015 to provide AMOs with non-discriminatory access to clearing and settlement arrangements for trades in CHESSE-eligible financial products that are admitted to quotation on an AMO's market but are not quoted on ASX's market. The Legal Terms were amended to effect this expansion in service. Significant changes were also made to the Legal Terms, Operational and Technical Standards and Information Handling Standard in mid-2014.

The Legal Terms provide that a review be commenced twelve months prior to the expiry of the Legal Terms and the review published within four months of its commencement<sup>1</sup>.

The objective of the review has been to confirm that the Legal Terms remain appropriate for the service. The expansion in the product scope of the Trade Acceptance Service in 2015 and the 2014 changes to the Legal Terms and associated standards indicate that the Legal Terms have operated well and provide a good basis for responding to customer needs.

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<sup>1</sup> Clause 58 of the Trade Acceptance Service Legal terms sets out the requirement for a review of the Legal Terms.

The review has not identified a need for significant changes to the Legal Terms. Accordingly, the Trade Acceptance Service will continue to be made available on substantially the same terms for another five year term. Some relatively minor changes to the Legal Terms will be implemented to update and simplify the drafting, and to remove a quarterly reporting requirement to reduce the compliance burden for AMOs.

ASX has announced its intention to invest in new post-trade technology and infrastructure for the cash market, either through CHES replacement or distributed ledger technology. ASX Clear and ASX Settlement will commit in the updated Legal Terms to the provision of 'trade acceptance services' to AMOs on a non-discriminatory basis through any new technology.

## Overview of the Legal Terms

### Structure of the contract with ASX Clear and ASX Settlement

The Legal Terms consist of:

- an order form, specifying the applicant's details and whether the requested service is for clearing and settlement of CHES-eligible financial products admitted to quotation on ASX's market and/or on the AMO's market;
- Part A, setting out the general legal terms applicable to the service, including a service description, service levels and reporting requirements, and an application form; and
- Part B, setting out the special conditions which apply to the Trade Acceptance Service for CHES-eligible financial products that are admitted to quotation on the AMO's market but not quoted on ASX's market, including a service description, service levels and reporting requirements. Part B also includes commitments to provide certain product-related services for products quoted on an AMO's market.

## Terms of the contract with ASX Clear and ASX Settlement

The Legal Terms include the following:

Clause	Term
<b>Part A</b>	
Clause 11 and Schedule 1	Description of the clearing and settlement services
Clause 57	Service provided for up to five years
Clauses 13 to 17 and 26 Clauses 31 to 36	<p>Agreement not to change the description of the services, or the Operational and Technical Standards, other than in limited circumstances:</p> <ul style="list-style-type: none"> <li>• where reasonably necessary to effect a change in the services proposed by ASX Clear and ASX Settlement and following a consultation process</li> <li>• where reasonably necessary to effect an expansion or enhancement of the services requested by an AMO and agreed to by ASX Clear and ASX Settlement following a consultation process</li> <li>• where directed by a regulatory authority</li> <li>• by consent</li> </ul>
Clauses 20 to 21	Application and service fees, and agreement by ASX Clear and ASX Settlement to waive the service fee
Clauses 22 to 25	<p>Commitments to provide clearing and settlement services:</p> <ul style="list-style-type: none"> <li>• of comparable quality to the services provided to ASX</li> <li>• in accordance with applicable laws, rules and procedures</li> <li>• without discriminating in relation to clearing and settlement participants on the basis of where the trade was effected or reported</li> </ul>
Clause 27 to 28	Agreement to comply with the service levels and to safeguard competitively sensitive information
Clauses 38 to 39	Reporting and quarterly certification requirements for AMOs regarding compliance with the Operational and Technical Standards
Clauses 40 to 43	ASX Clear and ASX Settlement right to suspend or terminate the service for material non-compliance with the Legal Terms or Operational and Technical Standards where there is a failure to remedy and following the applicable notice period
Clauses 44 to 52	Dispute resolution process



Clause	Term
Clauses 53 to 56	Exclusion of any liability of an AMO to ASX Clear or ASX Settlement Exclusion of any liability of ASX Clear or ASX Settlement to an AMO other than for breach of the service levels which is capped for any year at the service fee paid by the AMO
<b>Part B</b>	
Clauses 1-2, 4	The Legal Terms in Part A apply to the Trade Acceptance Service for financial products that are not quoted on ASX's market
Clauses 3, 9-12	ASX Clear and ASX Settlement provide certain product-related services in relation to financial products that are not quoted on ASX's market, with commitments to providing services of comparable quality and without discriminating in relation to fees and charges, relative to ASX-quoted products

### Obligations of the parties under the Legal Terms

The Legal Terms impose obligations on both ASX Clear and ASX Settlement, and on an AMO that is the recipient of the Trade Acceptance Service.

Importantly, ASX Clear and ASX Settlement are obliged under the Legal Terms to:

- make the Trade Acceptance Service available and provide the service to any AMO that meets the applicable requirements;
- provide an AMO with services of comparable quality to the equivalent services provided to ASX;
- provide clearing and settlement services to participants without discriminating on the basis of whether the relevant transaction has been executed on an AMO's market or on ASX's market. This includes not discriminating in relation to the fees and charges payable by participants; and
- provide product-related services without discriminating in relation to the fees and charges payable, on the basis of whether the relevant product is ASX-quoted or AMO-quoted.

Currently, ASX Clear and ASX Settlement waive the annual service fee applicable to AMOs for the Trade Acceptance Service. The Legal Terms also provide that clearing and settlement participants who are parties to the transactions submitted through the Trade Acceptance Service are subject to the same net fees and charges that would otherwise be applicable to the same transaction had it been executed by the same participants on the ASX Market.

The annual service fee for the Trade Acceptance Service has effectively been waived since the commencement of the Code of Practice for Clearing and Settlement of Cash Equities in Australia (Code of Practice) on 9 August 2013. The Legal Terms provide that the waiver will remain in place for so long as the Code of Practice and the Government's decision to defer consideration of a licence application from any other CS facility for clearing cash equities remain in force.



Under the Legal Terms, an AMO is required to:

- comply with the Operational and Technical Standards. The Operational and Technical Standards are important in managing counterparty and operational risk to maintain the integrity and proper functioning of the clearing and settlement systems, and to support market stability; and
- report to ASX Clear and ASX Settlement in relation to its compliance with the Operational and Technical Standards.

## Changes to the Legal Terms during the review period

During the period to 31 October 2015, the Legal Terms and the related Operational and Technical Standards and Information Handling Standard were updated in 2015 and 2014 to ensure that they remain contemporary and fit for purpose. The 2015 updates were made in response to a customer request and the 2014 updates were made on the initiative of ASX Clear and ASX Settlement in seeking to respond to customer feedback.

In 2015, changes to the Legal Terms and Operational and Technical Standards were made by ASX Clear and ASX Settlement at the request of Chi-X Australia. The changes:

- expanded the product scope of the Trade Acceptance Service to include CHESSE-eligible financial products quoted on an AMO's market; and
- put in place operational requirements for product set up and maintenance in the clearing and settlement systems.

In 2014, ASX Clear and ASX Settlement implemented changes to the Legal Terms to enhance service levels, update the Informational Handling Standard and streamline the Operational and Technical Standards for the Trade Acceptance Service following a public consultation process. Incorporating consultation feedback, these changes included:

- a waiver of the annual service fee for the Trade Acceptance Service effective from the introduction of the Code of Practice on 9 August 2013;
- enhanced service level commitments from ASX Clear and ASX Settlement to users by providing minimum notice periods for communicating the details of technical enhancements and operational changes to the Trade Acceptance Service and CHESSE (where there may be an impact to the Trade Acceptance Service);
- enhanced and streamlined Operational and Technical Standards by removing five unnecessary standards and amending a further two standards to maintain equivalence with corresponding requirements applicable to ASX and ASX participants; and
- enhanced the Information Handling Standard by strengthening the principle of confidential information only being disseminated on a 'needs to know' basis and by restricting the disclosure of AMO conflict sensitive information to any directors of ASX Clear, ASX Settlement or ASX Compliance who are not also ASX directors.



## Legal Terms applicable from 31 October 2016

The current Legal Terms operate until 31 October 2016. On the basis that the Legal Terms have operated well in accommodating changes to the scope of the service and in responding to customer feedback over the review period, a need for significant changes to the Legal Terms has not been identified. Subject to changes in the current regulatory environment for clearing and settlement of cash equities in Australia, ASX Clear and ASX Settlement are committed to continuing to offer the Trade Acceptance Service on substantially the same terms for another five year term.

While the Legal Terms have operated well during the review period, some changes will be implemented by ASX Clear and ASX Settlement to reduce the compliance burden on AMOs, and update and simplify the drafting. The changes that have been identified include:

- the removal of a quarterly reporting and certification requirement to reduce the compliance burden for AMOs;
- notwithstanding the continuation of the waiver of the annual service fee, a reduction in the annual service fee to take account of the costs recovered for the establishment of the Trade Acceptance Service prior to the effective date of the annual service fee waiver;
- a provision to terminate or change the Legal Terms in the event that there is a change in technology and infrastructure providing post-trade services for the cash market. This includes a commitment to the provision of 'trade acceptance services' to AMOs on a non-discriminatory basis through any new technology and infrastructure; and
- a simplification of the drafting to provide a single set of Legal Terms applicable to the Trade Acceptance Service for all CHESSE-eligible financial products (whether quoted on ASX's market or the AMO market) and a single, and separate, set of Legal Terms for product services connected with the Trade Acceptance Service for CHESSE-eligible financial products that are quoted on an AMO's market.

### Removal of AMO quarterly reporting requirement

ASX Clear and ASX Settlement propose to remove the current requirement for an AMO to report quarterly on its compliance with the Operational and Technical Standards during the previous quarter. This is provided for in clause 39 of the Legal Terms. The reporting requirement includes the provision of a certificate signed by two directors of the AMO stating:

- whether or not the AMO has complied with each of the operational and technical standards; and
- if the AMO has not complied, the substance of how it has not complied with each of the relevant standards, the date(s) on which it has been in non-compliance and what remedial action (if any) has been undertaken.

The AMO will continue to be subject to a requirement to report on any material non-compliance with the Operational and Technical Standards immediately upon becoming aware of the non-compliance.





The objective of this proposed change to the Legal Terms is to reduce the compliance burden for AMOs while ensuring that any material breaches in compliance with the Operational and Technical Standards are appropriately reported to ASX Clear and ASX Settlement.

### Waived annual service fee

ASX Clear and ASX Settlement remain committed to maintaining the waiver of the annual service fee for the Trade Acceptance Service, subject to the Code of Practice and the Government's decision to defer consideration of a licence application from any other clearing and settlement facility for clearing cash equities in Australia remaining in place. ASX Clear and ASX Settlement consider it appropriate for fees to be responsive to market structure changes that may result from a change in Government policy.

ASX Clear and ASX Settlement propose a change in the annual service fee provided for in the Legal Terms for the next five year term to take account of the costs already recovered for the initial development of the Trade Acceptance Service. It is also proposed that the annual service fee include a component contributing to the ongoing costs of providing the service. The full annual service fee, including both the component recovering costs for the initial development of the service and the component for the ongoing cost of providing the service, will continue to be waived while the Code of Practice and the Government's decision to defer consideration of a licence application from any other clearing and settlement facility for clearing cash equities in Australia remains in place.

The component of the annual service fee that is charged on the basis of recovering the remaining costs for the initial development of the Trade Acceptance Service will be reduced to \$175,000 per year. Of the \$1,375,000 initial development cost, there is \$888,288 remaining to be recovered. This is based on Chi-X having already paid \$486,712 in annual service fees, with the whole sum being directed to cost recovery, for the period from 31 October 2011 to 8 August 2013 (prior to the effective date of the fee waiver).

It is also proposed that the Legal Terms provide for the annual service fee to include a contribution of \$75,000 per year to the ongoing costs of providing the service. ASX Clear and ASX Settlement are not seeking to cover the full cost of providing the service, in view of the ongoing recovery of initial development costs for the service.

The total annual service fee will be \$250,000, compared with \$275,000 under the current Legal Terms.

### Commitment to non-discrimination with new technology

ASX has announced its intention to invest in new post-trade technology and infrastructure for the cash market, either through CHES replacement or distributed ledger technology.

Implementation of new post-trade technology and infrastructure is expected to significantly change the way in which clearing and settlement services are delivered and may change the nature of the services themselves. Accordingly, the Legal Terms and associated Operational and Technical Standards for the Trade Acceptance Service may need to be replaced or significantly amended with the implementation of new post-trade technology and infrastructure. It is proposed that a new clause be included in the Legal Terms providing for this in the event that new post-trade technology and infrastructure is implemented. This clause will also confirm



ASX Clear and ASX Settlement's commitment to the provision of 'trade acceptance services' to AMOs on a non-discriminatory basis through any new technology and infrastructure.

### Single set of terms for all CHESSE-eligible financial products

As outlined earlier in the paper, the current contract structure consists of general terms for the Trade Acceptance Service for CHESSE-eligible financial products quoted on the ASX market set out in "Part A" and a "Part B" setting out special terms for the Trade Acceptance Service for CHESSE-eligible financial products that are quoted on the AMO's market (and not quoted on the ASX market). The special terms also include provisions for product services that support the Trade Acceptance Service for CHESSE-eligible financial products not quoted on the ASX market.

This two-part contract structure reflects the development of the Legal Terms to provide the expansion of the Trade Acceptance Service to CHESSE-eligible financial products quoted on AMO markets. This review and another five year term for the service provides the opportunity to simplify the drafting and provide a clearer delineation of the different services offered.

It is proposed that a single set of Legal Terms will apply for the Trade Acceptance Service for all CHESSE-eligible financial products, whether quoted on ASX's market or an AMO's market.

### Separate legal terms for financial product approval, set up and maintenance

As outlined above, Part B of the current contract structure includes a number of commitments from ASX Clear and ASX Settlement in relation to certain product-related services to support the Trade Acceptance Service for CHESSE-eligible financial products that are not quoted on ASX's market. These services are product-related rather than being trade acceptance services. The product-related services are services that are also provided by ASX Clear and ASX Settlement in relation to ASX-quoted financial products. The product-related services are:

- the conduct of a clearing assessment of a financial product by ASX Clear for purposes of the approval of that financial product for settlement by ASX Settlement; and
- functions described as issuer administration services, which are set out in Schedule 1 of Part B of the Legal Terms.

There is no requirement for an AMO which is a recipient of the Trade Acceptance Service to also be a recipient of these product-related services. This recognises that an AMO may only seek the Trade Acceptance Service for CHESSE-eligible financial products quoted on the ASX market.

It is proposed that the product-related services provisions set out in Part B of the Legal Terms be removed and form a separate set of Legal Terms on the basis that it would:

- support the simplification of the Legal Terms for the Trade Acceptance Service outlined in the previous section of this paper; and
- reflect the different nature of the services covered by the respective sets of terms - trade acceptance services provided to an AMO so that transactions executed on their market can be accepted for clearing



and settlement by ASX Clear and ASX Settlement; and the product-related services that can be provided to an AMO, on behalf of the relevant product issuer, for products quoted on an AMO's market.

This is a drafting change to provide two clear sets of Legal Terms for the two types of services. It does not involve substantive changes in the commitments made by ASX Clear and ASX Settlement as set out in Part B in the 2015 changes to the Legal Terms described above. The separate Product Services Legal Terms proposed include the same services, core commitments and the same service level commitments for product-related services as that included in Part B of the 2015 changes. There have been some drafting changes, which:

- relocate the commitments for trade acceptance services for financial products not quoted on ASX's market to the Legal Terms for the Trade Acceptance Service;
- relocate certain commitments from the schedules to the Product Services Legal Terms;
- include some of the general terms from the Trade Acceptance Service Legal Terms in the Product Services Legal Terms, including provisions for the protection of competitively sensitive information, the process for amending the terms, dispute resolution and the liability framework; and
- can be described as 'housekeeping' changes aimed at ensuring the drafting appropriately reflects the nature of the product-related services provided.

### Changes to contemporise the terms

It is also proposed that some minor changes will be made to the Legal Terms to:

- contemporise the fees terms in clauses 20 to 21;
- update the contract term;
- remove the reference to publication of product reference data in ReferencePoint® Master List and Corporate Action products in the description of product set up and maintenance services for non-ASX quoted financial products to reflect the removal of this data from those products; and
- provide additional time for the submission of product information for the set-up of new products for existing issuers in the case of the legal terms for product-related services.

### Publication of updated Legal Terms

ASX Clear and ASX Settlement will engage with AMOs ahead of the expiry of the Legal Terms on 31 October 2016 to finalise the updated and simplified terms discussed in this paper.

