

Draft: 28 January 2010

Australian Clearing House Pty Limited
ASX Settlement and Transfer Corporation Pty Limited

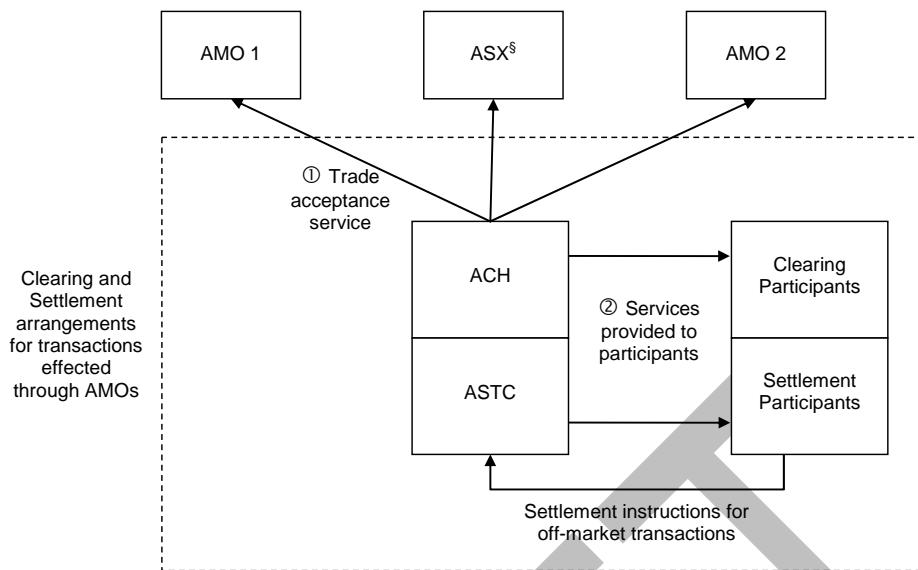
Legal terms for the provision of
a trade acceptance service to
Australian financial market licensees in respect of
CHESS-eligible ASX-quoted securities

January 2010

The object of these Legal Terms

- 1 Australian Clearing House Pty Limited (**ACH**) and ASX Settlement and Transfer Corporation Pty Limited (**ASTC**) operate licensed clearing and settlement facilities (**CS facility**).
- 2 Under section 795B of the Corporations Act, the relevant Minister may grant an applicant an Australian market licence if the Minister is satisfied of a number of things, including that the applicant has adequate clearing and settlement arrangements for transactions effected through the trade facility to be operated by it.
- 3 Under the operating rules of ACH and ASTC an Australian market licence holder can apply to become an Approved Market Operator (**AMO**).
- 4 ASX Limited is an AMO.
- 5 ACH and ASTC provide clearing and settlement arrangements which include services to AMOs and to parties to transactions in relation to CHESS-eligible ASX-quoted securities.
- 6 There are two categories of service relating to clearing and settlement of securities transactions, illustrated in the following diagram:
 - (a) Those labelled ①: a service to be provided by a CS facility licence holder to AMOs, being the acceptance of transactions effected through that AMO's trade facility for clearing and settlement in the CS facility (**trade acceptance service**).
 - (b) Those labelled ②: a service provided to participants of the CS facility, being post-trade processing of transactions effected in accordance with the rules of an AMO (**clearing and settlement service**).

Clearing and settlement arrangements for transactions in CHESS-eligible ASX listed securities



§ ASX Limited in its capacity as the operator under an Australian Financial Market Licence is an Approved Market Operator under ACH and ASTC Rules Procedure 2

- 7 These Legal Terms govern the provision of a trade acceptance service to AMOs. They do not govern the provision of a clearing and settlement service to the parties to a securities transaction effected through an AMO. The provision of a clearing and settlement service in respect of a securities transaction accepted by ACH and ASTC under the trade acceptance service is subject to the operating rules of ACH and ASTC. These Legal Terms do not govern the provision of a facility for the acceptance of settlement instructions from an Approved Clearing Facility (as defined in the operating rules of ASTC).
- 8 The object of these Legal Terms is to provide for the provision by ACH and ASTC of a trade acceptance service to an AMO to enable that AMO to meet its clearing and settlement obligations under its Australian market licence.

Binding nature of Legal Terms

- 9 Each of ACH and ASTC agree to be jointly bound by the obligations in these Legal Terms and to supply a trade acceptance service in accordance with these Legal Terms.
- 10 ACH and ASTC have no obligation to supply the trade acceptance service unless the AMO agrees to be bound by these Legal Terms.
- 11 Each AMO that acquires a trade acceptance service agrees with both ACH and ASTC to be bound by the obligations in these Legal Terms.

The trade acceptance service

- 12 A trade acceptance service comprises the items set out in the schedule to these Legal Terms.
- 13 An updated schedule of items of the trade acceptance service will be published whenever there is any change to the items in that service.
- 14 An AMO may request that ACH and ASTC provide a trade acceptance service by lodging an application for that service with ACH and ASTC. The application must be in the form set out in the schedule.
- 15 The trade acceptance service will be provided to the AMO for the period specified in the application form (**contract period**). The period so specified may not exceed the termination date of these Legal Terms as determined under clause 46.

Pricing

- 16 As a condition of obtaining and continuing to receive a trade acceptance service, an AMO acquiring a trade acceptance service must pay the applicable fees as published from time to time.
- 17 The fees for a trade acceptance service and the due dates for payment are set out in the schedule to these Legal Terms and are determined by ACH and ASTC in their absolute discretion.
- 18 The schedule of fees for the trade acceptance service will be published whenever there is any change to those amounts.

No unreasonable discrimination

- 19 When acting under these Legal Terms, ACH and ASTC will not unreasonably discriminate as between ASX Limited and any other AMO.
- 20 ACH and ASTC will provide to AMOs acquiring a trade acceptance service a service of a comparable quality to that provided to ASX Limited, including the terms and conditions of supply.
- 21 In determining whether or not there is:
- (a) any unreasonable discrimination; or
 - (b) a comparable quality of service, including the terms and conditions of supply,

ACH and ASTC may have regard to any differences between ASX Limited and any other AMO acquiring the trade acceptance service, other than the fact that ASX Limited is a related body corporate of each of them.

No changes without consent

- 22 ACH and ASTC will not, during each contract period, change the terms and conditions on which they supply a trade acceptance service, except by consent.

Expansion or enhancement of the service

- 23 ACH and ASTC are not obliged for any reason to expand or enhance the trade acceptance service.
- 24 Should ACH and ASTC agree to expand or enhance the trade acceptance service, the AMO requesting such expansion or enhancement must make a monetary contribution towards the capital cost of such expansion or enhancement to ACH or ASTC (as specified by ACH and ASTC), in an amount to be agreed between that AMO and ACH and ASTC.
- 25 If no agreement as to the amount of the monetary contribution to ACH or ASTC can be reached, ACH and ASTC are not obliged to provide that expansion or enhancement.

Safeguards

- 26 If ACH or ASTC acquire actual knowledge of competitively sensitive information in the course of providing the trade acceptance service under these Legal Terms, they will implement, in accordance with the standards promulgated under these Legal Terms, appropriate safeguards (to be determined in their absolute discretion) to protect that information from disclosure to ASX Limited.

Standards

- 27 ACH and ASTC may, from time to time, promulgate:
- (a) technical standards; or
 - (b) operational standards

(standards).

- 28 ACH and ASTC will publish any applicable standards at the time of these Legal Terms coming into effect.
- 29 ACH and ASTC will give reasonable notice of any changes to the standards and of any new standard and will publish any amendment to the standards or new standard within a reasonable time.
- 30 As a condition of obtaining and continuing to receive the trade acceptance service, AMOs must comply with the standards as they are published from time to time.

Reporting obligations

- 31 AMOs acquiring the trade acceptance service must:
- (a) immediately report to ACH and ASTC any material non-compliance with any of the standards; and
 - (b) if ACH and ASTC have reasonable grounds to believe that the AMO may not have complied or may not be complying with the standards, provide promptly such information as ACH and ASTC may request for the purpose of ascertaining whether the AMO has complied or is complying with the standards.
- 32 AMOs acquiring the trade acceptance service must during the contract period, on the first business day of January, April, July and October, provide a certificate to ACH and ASTC, signed by two directors of the AMO, stating:
- (a) whether or not they have complied with each of the standards during the previous quarter;
 - (b) if not, the substance of how they have not complied with each of those standards, the date or dates on which they have been in non-compliance, and what remedial action (if any) has been undertaken.

Remedies for failure to comply

- 33 If an AMO that has acquired the trade acceptance service fails to comply with any provision of these Legal Terms ACH and ASTC may, in their absolute discretion, either:
- (a) suspend the provision of the trade acceptance service until such time as they are satisfied that the AMO will comply with all of the provisions of these Legal Terms; or
 - (b) terminate the right of the AMO to obtain the trade acceptance service.

34 Without limiting the previous clause of these Legal Terms, should an AMO that has acquired a trade acceptance service:

- (a) fail to provide a certificate in relation to the compliance with the standards; or
- (b) state in the certificate that it has failed to comply with the standards in any respect and have not stated that the failure has been remedied,

or, if ACH and ASTC reasonably believe that the AMO is failing to comply with a standard or any provision of these Legal Terms, ACH and ASTC may in their absolute discretion:

- (c) suspend the provision of the trade acceptance service until such time as they are satisfied that the AMO will comply with all of the standards and provisions of these Legal Terms; or
- (d) terminate the right of the AMO to obtain the trade acceptance service.

Dispute resolution

35 If a dispute arises between ACH or ASTC and an AMO that has acquired a trade acceptance service concerning any aspect of these Legal Terms or their operation, other than one that is the subject of an absolute discretion of ACH or ASTC, the parties must negotiate in good faith to resolve the dispute.

36 If commercial negotiation fails to resolve such a dispute, either party may refer the dispute to a person nominated by ACH and ASTC for binding arbitration.

37 Except where they are inconsistent with the provisions of these Legal Terms, the rules published in 2007 by the Institute of Arbitrators & Mediators Australia entitled *the IAMA Arbitration Rules* will govern the conduct of any arbitration conducted under these Legal Terms.

38 The arbitrator must have regard to and take into account as fundamental elements the following matters in resolving the dispute:

- (a) the object of these Legal Terms;
- (b) the legitimate business interests of ACH and ASTC, including the protection of any investment by them in the CS facility;
- (c) the statutory and licence obligations of ACH and ASTC under the Corporations Act; and
- (d) the interests of all other persons who have contractual rights to obtain a trade acceptance service.

39 An arbitration will be private and the result of the arbitration will not be published.

40 The parties must bear their own costs of the arbitration, including the costs of any representatives.

- 41 The cost of the arbitrator and the costs of any facilities used for the arbitration shall be borne equally by both parties.

Exclusions of liability

- 42 Neither ACH nor ASTC are liable for any direct or indirect loss however caused (including, but not limited to, by the negligence of ACH or ASTC), suffered or incurred by an AMO that has acquired a trade acceptance service or arising out of or in connection with the relationship established by these Legal Terms.
- 43 As a condition of obtaining and continuing to receive the trade acceptance service, an AMO that has acquired a trade acceptance service may make no claim against ACH or ASTC with respect to any liability arising out of the provision by ACH or ASTC of a clearing and settlement service to a party to a transaction effected through a trade facility operated by that AMO.

Indemnities

- 44 An AMO that has acquired a trade acceptance service must indemnify ACH and ASTC against any direct or indirect loss or damage suffered or incurred by ACH or ASTC in connection with any wrongful act or omission by that AMO, including any:
- (a) breach of contract, including these Legal Terms;
 - (b) tort, including negligence or breach of statutory duty; or
 - (c) breach of equitable duty.
- 45 An AMO that has acquired a trade acceptance service must indemnify ACH and ASTC against any direct or indirect loss suffered or incurred by ACH or ASTC (including legal costs) in connection with any claim (including any demand, action or proceeding of any nature, whether actual or threatened) against ACH or ASTC arising out of or in connection with a trade acceptance service provided to the AMO or the relationship established by these Legal Terms.

Term of Legal Terms

- 46 Unless terminated earlier under the review provisions in these Legal Terms, these Legal Terms will operate for the period of 3 years commencing on **[date]**.

Review

- 47 Six months prior to the expiry of these Legal Terms a review of the Legal Terms will be carried out and published by ACH and ASTC within a reasonable period of time thereafter.
- 48 A review will be carried out and published by ACH and ASTC if:
- (a) ASIC or the RBA take any regulatory action or there is a change of law which affects the provision of the trade acceptance service;
 - (b) ASIC or the RBA consent to a review being undertaken; or
 - (c) there is any material change to the risk profile of ACH or ASTC in the provision of a trade acceptance service.
- 49 The result of the review undertaken by ACH and ASTC may be, in their absolute discretion:
- (a) to maintain the current Legal Terms substantially in their current form;
 - (b) to change the current Legal Terms;
 - (c) to terminate the Legal Terms prior to the end of the term specified in clause 46; or
 - (d) to allow the Legal Terms to expire on their own terms without replacement.

Governing law

- 50 These Legal Terms are governed by the laws of New South Wales, Australia.
- 51 ACH, ASTC and any AMO that acquires a trade acceptance service irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

**Schedule to the Legal terms for
the provision of a trade acceptance service to
Australian financial market licensees in respect of
CHESS-eligible ASX-quoted securities**

1. Description of the items of the service (clause 12)

A trade acceptance service comprises the following items:

- Provision of an electronic trade acceptance/rejection service for transactions effected through an AMO's trade facility to enable and manage the acceptance of transactions and trade registration in CHESS;
- Extension of the current trade validation service performed by ACH to incorporate AMO transactions which, provided they pass the checks set out in the standards promulgated under these Legal Terms, will be eligible for clearing and settlement subject to and in accordance with the operating rules of ACH and ASTC; and
- Technical and operational support ("Helpdesk") and business relationship management services.

2. Application Form (clause 14)

[form to be supplied]

3. Fees for a trade acceptance service and the due dates for payment (clause 17)

[refer 18 December Market Operator Letter published on asx.com.au]