

**ASX Clear Pty Limited
ASX Settlement Pty Limited**

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

Information Handling Standard

This document is provided in draft form for the information of interested parties. The ASX group reserves the right to make changes to the document prior to final publication and accepts no liability for any loss or damage incurred by any person who relies on the information presented in this draft document.

Preamble

ASX Limited (ASXL) is the holder of an Australian financial market licence and the operator of Australia's main cash market for equity securities.

ASX Clear Pty Limited (ASX Clear) is the central counterparty and clearing facility for ASXL's market and provides all clearing and counterparty risk management services.

ASX Settlement Pty Limited (ASX Settlement) is the securities settlement facility for ASXL's market and provides all settlement and asset registration services.

ASX Clear and ASX Settlement each hold an Australian CS facility licence under the Corporations Act. ASX Clear and ASX Settlement are regulated by the Australian Securities and Investments Commission and the Reserve Bank of Australia.

Each of ASX Clear and ASX Settlement has established arrangements with ASX Compliance Pty Limited (ASX Compliance) for supervising their respective clearing and settlement facilities.

ASXL is the ultimate holding company of ASX Clear, ASX Settlement and ASX Compliance.

The functions of the Boards of ASXL, ASX Clear, ASX Settlement and ASX Compliance are set out in ASXL's Board Charter, which is available at: http://www.asxgroup.com.au/media/PDFs/board_charter_august2010.pdf

Under the Operating Rules of ASX Clear and ASX Settlement an Australian market licence holder can apply to become an Approved Market Operator (AMO). ASXL is an AMO.

ASX Clear and ASX Settlement provide clearing and settlement arrangements which include services to AMOs and to parties to transactions in relation to CHESS-eligible ASX-quoted financial products. There are two categories of service relating to these clearing and settlement arrangements:

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); and
2. a clearing and settlement service provided to the participants of ASX Clear and ASX Settlement, being post-trade processing of transactions in CHESS-eligible ASX-quoted financial products effected in accordance with the Operating Rules of an AMO.

ASX Clear and ASX Settlement propose to provide a Trade Acceptance Service to AMOs under the *Legal terms for the provision of a trade acceptance service to Australian financial market licensees in respect of CHESS-eligible ASX-quoted financial products* (Legal Terms of Service). The Legal Terms of Service provide that if ASX Clear or ASX Settlement acquire actual knowledge of competitively sensitive information in the course of providing the Trade Acceptance Service, they will implement as an operational standard promulgated under the Legal Terms of Service, appropriate safeguards (to be determined in their absolute discretion) to protect that information from disclosure to ASXL.

This information handling standard is promulgated by ASX Clear and ASX Settlement under the Legal Terms of Service as an operational standard for the protection of confidential information (including competitively sensitive information) of AMOs which the ASX Group may acquire in connection with the provision of a Trade Acceptance Service.

This Preamble is provided for the assistance of the reader and does not form part of the information handling standard.

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Information Handling Standard

1. Interpretation

Capitalised terms used in this information handling standard have the meanings given to them in clause 7 (Glossary).

2. Purpose, scope and application

The ASX Group recognises that AMOs may disclose AMO Confidential Information to the ASX Group:

- for the purpose of determining whether to acquire a Trade Acceptance Service from ASX Clear and ASX Settlement;
- in the course of applying for approval as an AMO under the Operating Rules of ASX Clear and ASX Settlement;
- in the course of agreeing to be bound by the Legal Terms of Service;
- in the course of acquiring a Trade Acceptance Service; or
- in seeking to reach an agreement with ASX Clear and ASX Settlement to expand or enhance a Trade Acceptance Service.

The ASX Group does not require an AMO to disclose AMO Confidential Information to the ASX Group for any of the purposes or in any of the instances listed above.

The purpose of this information handling standard is to establish a transparent framework for handling confidential information disclosed to the ASX Group by AMOs in connection with the provision of a Trade Acceptance Service.

The ASX Group recognises that certain AMO Confidential Information may also be AMO Conflict Sensitive Information.

In relation to AMO Conflict Sensitive Information, this information handling standard seeks to balance:

- the need to ensure that the potential for conflicts on the part of ASX Group Directors or ASX Group Employees, resulting from the receipt of AMO Conflict Sensitive Information, is appropriately managed; and
- the need to ensure that ASX Clear and ASX Settlement continue to comply with their respective statutory obligations as CS facility licensees.

The statutory obligations referred to above include but are not limited to:

- the governance requirements applicable to ASX Clear under the Financial Stability Standard for Central Counterparties (extracted in Schedule 1).¹ In particular, this information handling standard seeks to ensure that restrictions on the flow of information do not adversely affect:

¹ While the Financial Stability Standard for Securities Settlement Facilities contains no equivalent governance provisions, the more detailed requirements of the Financial Stability Standard for Central Counterparties are treated for the purposes of this protocol as setting the applicable standard of governance for both ASX Clear and ASX Settlement.

- the ability of the Boards of ASX Clear and ASX Settlement to continue to provide oversight of the operations of the clearing and settlement facilities; or
- the risk-control functions of ASX Clear and ASX Settlement's clearing and settlement facilities; and
- the obligation of a CS facility licensee under section 821A(c) of the Act to have adequate arrangements for supervising its clearing and settlement facility.

This information handling standard applies to the provision by AMOs of AMO Confidential Information (including AMO Conflict Sensitive Information) to the ASX Group in connection with the provision of a Trade Acceptance Service and the protection and use of that information by the ASX Group.

3. Commencement

This information handling standard takes effect on the date specified by ASX Clear and ASX Settlement.

4. Protection of AMO Confidential Information

The ASX Group will use the same degree of care (but no less than a reasonable degree of care) to prevent AMO Confidential Information being disclosed to third parties as the ASX Group uses to protect its own confidential information of a similar nature.

The ASX Group will not store, process, use or disclose AMO Confidential Information for any purpose other than to provide a Trade Acceptance Service to the AMO, to provide clearing and settlement services to participants of the CS Entities and to comply with the CS Entities' licenses ("Permitted Purposes").

However, the ASX Group may disclose AMO Confidential Information:

- for a Permitted Purpose;
- if required by law or by any order or notice of a court, tribunal, authority or regulatory body including in relation to the supervision of a financial market or clearing and settlement facility (as defined under the Act), provided that the ASX Group shall use reasonable endeavours to notify the AMO of the information to be disclosed (and of the circumstances in which the disclosure is alleged to be required) before such disclosure must be made; or
- with the written approval of the AMO.

5. Submission and screening of AMO Conflict Sensitive Information

An AMO which seeks to share AMO Conflict Sensitive Information with any member of the ASX Group in connection with the provision of a Trade Acceptance Service should provide the information in writing to the General Manager, Regulatory Assurance and not to any ASX Group Director or any ASX Group Employee or by any other means. This applies irrespective of:

- whether the document containing the AMO Conflict Sensitive Information also contains other information;
- whether an ASX Group Employee (other than the General Manager, Regulatory Assurance) has asked for the information, or the AMO considers that the ASX Group requires the information, in connection with the provision of a Trade Acceptance Service;
- the specific purpose for which the AMO seeks to share the information with the ASX Group.

Any AMO Conflict Sensitive Information which an AMO provides to the General Manager, Regulatory Assurance should be clearly marked as "AMO Conflict Sensitive Information" and accompanied by a statement of:

- the purpose for which the information is being provided to the ASX Group; and
- the ASX Group Employees to whom the AMO wishes the information to be provided.

The ASX Group takes no responsibility for the unauthorised use or distribution of AMO Conflict Sensitive Information which is submitted to the ASX Group otherwise than in accordance with this information handling standard.

The General Manager, Regulatory Assurance will screen all information submitted to him or her in accordance with this clause 5 to confirm that the information is AMO Conflict Sensitive Information. If the General Manager, Regulatory Assurance determines that the information is not AMO Conflict Sensitive Information, he or she will advise the AMO and take no further action in relation to the information other than to return the information to the AMO if the AMO so directs. If the General Manager, Regulatory Assurance determines that the information is AMO Conflict Sensitive Information, he or she will distribute it in accordance with clause 6 (Distribution and use of AMO Conflict Sensitive Information).

6. Distribution and use of AMO Conflict Sensitive Information

If the General Manager, Regulatory Assurance determines that information submitted to him or her in accordance with clause 5 (Submission and screening of AMO Conflict Sensitive Information) is AMO Conflict Sensitive Information, he or she will distribute it as follows:

ASX Group Employees

AMO Conflict Sensitive Information will be distributed only to those ASX Group Employees:

- to whom the AMO has requested the General Manager, Regulatory Assurance to provide the information;
- who require the information in connection with the provision or potential provision of a Trade Acceptance Service to the AMO, as determined by the General Manager, Regulatory Assurance in consultation with the ASX Office of General Counsel; or
- who require the information in the ordinary course of performing their role in connection with the discharge of regulatory obligations of the ASX Group (including, without limitation, ASX Group Employees who need access to AMO Conflict Sensitive Information for the purpose of preparing reports required to be given to the Australian Securities and Investments Commission or the Reserve Bank of Australia).

ASX Group Directors

Subject to two exceptions, AMO Conflict Sensitive Information shall not be distributed to ASX Group Directors.

Exception 1 – AMO Conflict Sensitive Information may be distributed to the directors of ASX Clear and ASX Settlement where:

- the information is reasonably required by the directors in order for them to provide oversight of the operations of the clearing and settlement facilities; or
- the information is relevant to the risk-control function of the clearing and settlement facilities.

Directors of ASX Clear and ASX Settlement may sit on other ASX Group Boards. Directors of ASX Clear and ASX Settlement may not use the AMO Conflict Sensitive Information of an AMO for the purposes of ASXL without the consent of that AMO.

No ASX Group Employee who is a member of ASX's Business Development function (other than the General Manager, Clearing & Settlement Services) shall be present during any Board consideration of AMO Conflict Sensitive Information pursuant to this exception.

Exception 2 – AMO Conflict Sensitive Information may be distributed to the directors of ASX Compliance (including those directors who also sit on other ASX Group Boards) where the information is relevant to the supervision of ASX Clear and ASX Settlement's clearing and settlement facilities.

Board Papers which are to be presented to the Board of ASX Clear, ASXCC, ASX Settlement, ASXSC or ASX Compliance in reliance on either of the foregoing exceptions shall:

- be submitted to the General Manager, Regulatory Assurance in draft for review prior to distribution to directors; and
- clearly state on the first page that they contain AMO Conflict Sensitive Information.

7. Glossary

The following definitions apply in this standard:

Act means the Corporations Act 2001 (Cth).

AMO means the holder of, or an applicant for, an Australian market licence (as defined in s. 761A of the Act) which has been approved, or which has submitted an application to be approved, as an "Approved Market Operator" for the purposes of the Operating Rules of ASX Clear and ASX Settlement.

AMO Confidential Information means information in any form (whether it is stored electronically or in hard copy) which is received by the ASX Group from an AMO and is confidential to the AMO, but does not include information which:

- (a) was in the possession of the ASX Group before receipt from the AMO;
- (b) is or becomes a matter of public knowledge through no fault of the ASX Group;
- (c) is received by the ASX Group from a third party without a duty of confidentiality; or
- (d) is independently developed by the ASX Group without the use of confidential information received from the AMO.

AMO Conflict Sensitive Information means AMO Confidential Information which:

- (a) relates to the current or future business plans or potential initiatives, in respect of market services in Australia, of an AMO; and
- (b) is marked by the AMO as "AMO Conflict Sensitive Information".

Information concerning a proposed change in the market operating hours of an AMO is AMO Conflict Sensitive Information.

AMO Trading Information means AMO Confidential Information which identifies the parties to any transaction submitted by an AMO to ASX Clear and ASX Settlement for acceptance under the Legal Terms of Service, and includes any compilation or summary of such information from which the identity of those parties can be determined. It excludes any such information, compilation or summary which is anonymised so that the parties to the transaction(s) cannot be identified.

ASX Clear means ASX Clear Pty Limited (ACN 001 314 503).

ASX Compliance means ASX Compliance Pty Limited (ACN 087 780 489).

ASX Group means ASX and all of its subsidiaries (as defined in the Act) from time to time.

ASX Group Director means any director of one or more of ASXL, ASX Compliance, ASX Clear, ASXCC, ASX Settlement and ASXSC.

ASX Group Employee means an employee of the ASX Group.

ASX Settlement means ASX Settlement Pty Limited (ACN 008 504 532).

ASXCC means ASX Clearing Corporation Limited (ACN 087 801 554), a wholly owned subsidiary of ASXL and the intermediate holding company of ASX Clear.

ASXL means ASX Limited (ACN 008 624 691).

ASXSC means ASX Settlement Corporation Limited (ACN 008 617 187), a wholly owned subsidiary of ASXL and the intermediate holding company of ASX Settlement.

CHESS stands for Clearing House Electronic Subregister System and has the meaning given to that term in ASX Settlement Operating Rule 2.13.1

CS Entities means ASX Clear and ASX Settlement.

General Manager, Regulatory Assurance means the ASX Group employee who from time to time holds the position of General Manager, Regulatory Assurance or any similarly designated position.

Legal Terms of Service means the *Legal terms for the provision of a trade acceptance service to Australian financial market licensees in respect of CHESS-eligible ASX-quoted financial products* dated [●], as amended from time to time.

Operating Rules has the meaning given to that term in s. 761A of the Act.

Trade Acceptance Service means the trade acceptance service as defined in the Legal Terms of Service.

Schedule 1

Financial Stability Standard for Central Counterparties (extract)

8. *Governance*

The central counterparty must have effective, accountable and transparent governance arrangements. This requires that:

- (a) the board of the CS facility licensee have appropriate expertise and independence;*
- (b) the board of the CS facility licensee be responsible for oversight of the operation of the central counterparty; and*
- (c) the risk-control function of the central counterparty must not be adversely influenced by its business, marketing or other operations.*