

## **Register of ASTC Settlement Rule Waivers**

**16 to 31 August 2007**

**The purpose of this register is to record when ASX has exercised its discretion and granted a waiver from the ASTC Settlement rules. Waivers are published bi-monthly and include information such as:**

- Organisation**
- Rule Number**
- Decision Details**
- Basis for Decision**

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<b>Rule Number</b>	4.5.1
<b>Date</b>	2/08/2007
<b>Participant</b>	Custody Execution and Clearing Services Limited
<b>Waiver Number</b>	WPA060006-002
<b>Decision</b>	<p>Custody Execution Clearing Services Pty Ltd ("CECS") was granted a waiver of ASTC Settlement Rule 4.5.1(a) subject to the original terms, conditions and undertakings associated with the original waiver (WPA060006-001) as follows:</p> <ul style="list-style-type: none"> <li>* On 10 March 2006 an extension for a period of 3 months was granted until 20 August 2006;</li> <li>* On 17 August 2006 an extension for a period of 3 months was granted until 20 November 2006;</li> <li>* On 17 November 2006 an extension for a period of 3 months was granted until 20 February 2007;</li> <li>* On 13 February 2007 an extension for period of 3 months was granted until 20 May 2007; and</li> <li>* On 18 May 2007 an extension for period of 3 months was granted until 20 August 2007.</li> <li>* On 2 August a final extension was granted until 7 September 2007 to permit CECS to process a bulk HIN transfer on or about 31 August 2007.</li> </ul>
<b>Basis For Decision</b>	<p><b>Underlying Policy</b>  A waiver of this Rule 4.5.1(a) will only be considered in very limited circumstances. Specifically, where the waiver is only required for a short period and is to enable the Participant to obtain the requisite licence and where the Participant is an Authorised Representative of a licensee that is also a Participant during the waiver period. The authorising licensee will also be required to sign an additional undertaking.</p> <p><b>Present Application</b>  Support for waiver request:  *CECS is a wholly owned subsidiary of ETrade.  *ETrade Australia Securities Limited ("ETrade") is a current AFSL holder.  *ETrade is a current ASX Market participant, ACH Clearing Participant and ASTC General Settlement Participant.  *CECS has applied to become an ASTC Account Participant.  CECS will sponsor clients and in the proposed structure ETrade will clear and settle trades for CECS.  *ASX understands that CECS is scheduled to commence operations on 23rd January 2006 and that it will not be possible to obtain an AFSL by this date.  *ETrade has agreed to sign an undertaking, in which ETrade acknowledges that until CECS has obtained an AFSL (over the waiver period), CECS will act under the ETrade AFSL.  *ETrade has agreed that if any issues or potential breaches arise from practices by CECS that it will be deemed action under the ETrade AFSL.  *CECS has also acknowledged the potential risk involved, in that if, after the waiver period, an AFSL has not been granted that ASX has the right to terminate CECS as an ASTC Account Participant</p>

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ASTC made representations to ASIC with respect to amending the ASTC Settlement Rules to remove the requirement for Participants to obtain an AFSL, ASIC however indicated that it would not support such an amendment, especially to permit the recognition of Authorised Representatives of an AFSL holder. As a result, ASX determined that it would no longer admit Authorised Representatives as Participants.

In this context ASX also determined that it would not extend the period of the waiver granted to CECS from the requirement to hold an AFSL under ASTC Settlement Rule 4.5.1(a). Consequently CECS was advised to obtain an AFSL or resign its participation by 20 August 2007 (subsequently extended until 7 September 2007) or else be in non-compliance with ASTC Settlement Rule 4.5.1(a). CECS had believed that they did not require an AFSL as CECS was to be an authorised representative of ETrade. Under ASTC Settlement Rules, the participant requires a licence in their own right. CECS has applied for a temporary waiver and one has been granted for a period of 7 months to allow CECS to apply for and obtain an AFSL.