



# **Draft Code of Practice for Clearing and Settlement of Cash Equities in Australia**

Consultation Paper

April 2013

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## Invitation to comment

ASX is seeking feedback on the draft Code of Practice for Clearing and Settlement of Cash Equities in Australia by **8 May 2013**.

Written submissions should be sent to:

[regulatorypolicy@asx.com.au](mailto:regulatorypolicy@asx.com.au)

or

ASX Limited  
20 Bridge Street  
Sydney NSW 2000

Attention: Ms Diane Lewis, Senior Policy Analyst

While submissions may be lodged electronically or by post, ASX prefers to receive submissions in electronic form.

Submissions not marked as 'confidential' will be made publicly available on ASX's website.

If you would like your submission, or any part of it, to be treated as 'confidential', please indicate this clearly in your submission.

## Contacts

Enquiries relating to the draft Code of Practice for Clearing and Settlement of Cash Equities in Australia and the associated consultation process, should be directed to:

Ms Diane Lewis  
Senior Policy Analyst, Regulatory & Public Policy Unit  
+61 2 9227 0154  
[diane.lewis@asx.com.au](mailto:diane.lewis@asx.com.au)

Media enquiries should be directed to:

Ms Kristen Kaus  
Media and Communications Executive  
+61 2 9227 0410  
+61 421 380 773  
[kristen.kaus@asx.com.au](mailto:kristen.kaus@asx.com.au)

Mr Matthew Gibbs  
General Manager, Media and Communications  
+61 9227 0218  
+61 411 121 219  
[matthew.gibbs@asx.com.au](mailto:matthew.gibbs@asx.com.au)

## Executive summary

1. The purpose of this paper is to seek comment on a draft Code of Practice for Clearing and Settlement of Cash Equities in Australia (draft Code) by 8 May 2013. ASX is developing the Code of Practice for Clearing and Settlement of Cash Equities in Australia (the Code) in consultation with users of ASX's clearing and settlement services. The Code will provide a framework for an ongoing process of formal engagement with a broad set of users of clearing and settlement services for cash equities.
2. ASX is developing the Code following a decision by the Deputy Prime Minister and Treasurer on 11 February 2013 to defer a decision on any licence application from a central counterparty (CCP) seeking to compete in the Australian cash equity market, thereby retaining the current market structure for the clearing and settlement of cash equities for the next two years. In accordance with the Government's request for the implementation of the Code, ASX has committed to commencing the operation of the Code by 9 August 2013.
3. Developing the Code over the next three months is the beginning of a new process of engagement with customers and other industry stakeholders in relation to the provision of clearing and settlement services for cash equities. As well as developing the Code, ASX is establishing a dedicated section of its website to provide information on its clearing and settlement services for the cash equity market. This section of the website will provide the information that ASX has committed to publish under the Code, together with information on the operational performance of ASX Clear and ASX Settlement.
4. The draft Code articulates ASX's commitment to meaningful engagement with customers and other industry stakeholders on the ongoing development of the clearing and settlement infrastructure for the Australian cash equity market. ASX recognises the importance of engagement with its customers and other industry stakeholders to ensure that the design and functionality of ASX's clearing and settlement infrastructure continues to be world-class, efficient, well-capitalised and well-regulated, and continues to meet users' needs.
5. The draft Code sets out ASX's commitment to:
  - establish an ongoing advisory forum (the Forum) to allow customers and other industry stakeholders to provide user input to the Boards of ASX Clear and ASX Settlement on the core clearing and settlement infrastructure, including CHESSE, for the Australian cash equity market;
  - transparent and non-discriminatory pricing of clearing and settlement services for the Australian cash equity market; and
  - transparent and non-discriminatory terms of access to clearing and settlement services for the Australian cash equity market.
6. These commitments address the principles set out by the Council of Financial Regulators (the Council) in its December 2012 [Report](#) to the Deputy Prime Minister and Treasurer.
7. ASX will work in consultation with its customers and other industry stakeholders to finalise the Code over the next few months, prior to submitting the Code to the Council for review in late June 2013.
8. In addition to providing interested parties with the opportunity to make written submissions on the draft Code, ASX will be engaging directly with its customers and other industry stakeholders during April and in the first half of May through a series of bilateral meetings, consultation roundtables and industry briefings. If you would like to arrange a bilateral meeting or participate in a roundtable discussion, you may register your interest [here](#).
9. Industry briefings are scheduled for 17 April 2013 in Sydney and 22 April 2013 in Melbourne. If you are interested in attending one of these industry briefings, you may register your interest [here](#).

## Background to the development of the Code

10. On 11 February 2013, ASX publicly committed to developing and implementing a Code within six months. This was in response to the decision by the Deputy Prime Minister and Treasurer to accept in full the recommendations of the Council in relation to competition in clearing Australian cash equities.
11. In the Council's advice to the Deputy Prime Minister and Treasurer and its December 2012 Report '*Competition in Clearing Australian Cash Equities: Conclusions*', the Council made the following recommendations:
  - a decision on any licence application from a CCP seeking to compete in the Australian cash equity market should be deferred for two years;
  - ASX should work with industry stakeholders to develop a Code based on a set of principles relating to user input to governance, transparent and non-discriminatory pricing, and access to clearing and settlement services; and
  - at the end of the two years, the Council should carry out a public review of the implementation and effectiveness of the Code, and the ASX's adherence to it. At the same time, the Council would review the prospect of granting a licence to another CCP, or of pursuing other regulatory outcomes<sup>1</sup>.
12. The Council's recommendations were based on consultation with a wide group of stakeholders following the release of a Council discussion paper on '*Competition in the Clearing and Settlement of the Australian Cash Equity Market*' in June 2012.
13. The feedback the Council received through that consultation process was that while there were a number of stakeholders in favour of competition in clearing in-principle, there was a general concern that the benefits that might be expected from the introduction of competition may not outweigh the associated costs.
14. Many stakeholders were also resistant to further changes to the operating environment given current market conditions, the degree of regulatory change that the industry has recently been subject to and that is currently underway, and the existing pressures on participants to cut costs.
15. The recommendations of the Council, and the arrangements to be put in place under the Code, only apply to the Australian cash equity market and do not apply to clearing and settlement services supporting either exchange-traded or OTC derivative markets or OTC debt markets.

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<sup>1</sup> Letter from the Council of Financial Regulators to the Deputy Prime Minister and Treasurer dated 18 December 2012, page 2. A report by the Council of Financial Regulators '*Competition in Clearing Australian Cash Equities: Conclusions*', December 2012, pages 4-6.

## Key elements of the draft Code

16. The draft Code sets out ASX's commitments to:
  - establish the Forum to allow customers and other industry stakeholders to provide user input to the Boards of ASX Clear and ASX Settlement;
  - transparent and non-discriminatory pricing of clearing and settlement services for the Australian cash equity market; and
  - transparent and non-discriminatory terms of access to clearing and settlement services for the Australian cash equity market.
17. With these commitments, ASX is seeking to enhance engagement with users of clearing and settlement services, together with increasing transparency of pricing and access arrangements, and delivering non-discriminatory pricing and access arrangements for the clearing and settlement of Australian cash equities.

## Establishment of the Forum

18. The Forum is the key mechanism to be established under the Code to provide user input to the Boards of ASX Clear and ASX Settlement in relation to the ongoing investment in the design, operation and development of core cash equity clearing and settlement infrastructure, including CHES. The Forum will also provide a formal mechanism for the Boards of ASX Clear and ASX Settlement to report to users on their strategic plans and investment decisions on the core clearing and settlement infrastructure for cash equities.
19. ASX will establish the Forum within three months of the commencement of the Code on 9 August 2013.
20. Membership from a wide range of customers and other industry stakeholders will provide the opportunity for the interests of different user groups to be represented in the Forum and will lead to more informed assessments of the implications of any potential changes to the clearing and settlement infrastructure for the cash equity market. The Council's December 2012 Report also sets out an expectation that a broad group of stakeholders (including both ASX's direct customers and end-users) be represented in the Forum.
21. The Forum will comprise around 20 senior representatives drawn from a wide range of users and industry stakeholders, including clearing participants, settlement participants, alternative market operators, custodial services providers, system vendors, share registries, payment system providers, the funds management industry and listed companies. It is proposed that up to 10 members in the Forum will be clearing participants and settlement participants, and that there will be a member each from the Australian Financial Markets Association and the Stockbrokers Association of Australia. The proposed clearing participants and settlement participants initially represented in the Forum are ASX's largest clearing clients, ASX's largest settlement clients, and a mid-tier Australian broker.
22. It is also proposed that there will be a member representing each of the other industry stakeholder groups, and that a non-executive director of the ASX Limited Board and a non-executive director of the Boards of ASX Clear and ASX Settlement will be represented in the Forum. The Council suggested that a non-executive director of the Boards of ASX Clear and ASX Settlement be the Forum Chair. ASX has adopted this suggestion which will enable the input from the Forum to be directly communicated to the Boards of ASX Clear and ASX Settlement.
23. ASX is inviting users to nominate representatives for the Forum. ASX has consulted with the proposed members of the Forum, who have all expressed a willingness to participate. The proposed initial members of the Forum are available [here](#). ASX will appoint members to the Forum based on their skills and level of experience. Members will be appointed for an initial two-year term. It is proposed that a member of the Forum will not be able to appoint a delegate or alternate to attend Forum meetings on their behalf. This is to ensure that the Forum is effective and maintains senior representation.

24. The draft Code provides a mechanism for consultation with the relevant stakeholder group before the expiry of a member's term, or in the event that a member resigns, regarding the appointment of a new member or the reappointment of the member as the case may be. It is envisaged that some members of the Forum will rotate after the initial two-year term to help ensure that the Forum can function as an effective process for providing user input from a wide range of stakeholder groups.
25. It is proposed that the Forum will meet three times a year, with the first meeting scheduled for 2 October 2013. The Forum meetings for 2014 are scheduled to be held on: 2 April; 23 June; and 1 October. To provide input to the Forum, it is proposed that business committee meetings will be held four to six weeks prior to Forum meetings. Technical committees will also be set up on an as needed basis by the Forum. Members of the business and technical committees do not need to be members of the Forum. The business and technical committees will report to the Forum.
26. The Forum will be chaired by a non-executive director of the Boards of ASX Clear and ASX Settlement (Forum Chair). It is proposed that all agendas and meeting minutes will be prepared in consultation with Forum members, and that they will be publicly available on ASX's website.
27. It is proposed that following each meeting of the Forum, a written report setting out the key issues discussed and any recommendations made by the Forum will be prepared by the Forum Chair. The report will be provided to the Boards of ASX Clear and ASX Settlement for discussion at the next meetings of those Boards. The Forum Chair will report back at the next Forum meeting on the outcome of the discussions of the Boards of ASX Clear and ASX Settlement relevant to any recommendations of, and material matters raised by, the Forum. It is also proposed that ASX Clear and ASX Settlement will jointly provide a written response to each report received from the Forum.
28. Section 2 of the draft Code included in Appendix 1 sets out the proposed objectives, membership and operation of the Forum.

## Transparent and non-discriminatory pricing

29. The second key element of the draft Code addresses pricing. Section 3 of the draft Code included in Appendix 1 sets out ASX's commitments aimed at increasing the transparency of the pricing of clearing and settlement services for cash equities and demonstrating ASX Clear and ASX Settlement's commitment to non-discriminatory pricing. In addition, it is proposed that ASX will publish financial accounts for the clearing and settlement of cash equities in Australia, and undertake and publish international benchmarking in relation to the scope and pricing of clearing and settlement services offered by ASX Clear and ASX Settlement.
30. In relation to pricing transparency, ASX commits to publishing on the ASX website:
  - clear and accessible fee schedules with brief service descriptions for all clearing and settlement services for cash equities;
  - the terms, conditions and eligibility criteria of any rebates, revenue-sharing arrangements and discounts applicable to each service; and
  - worked examples and other tools to assist users of clearing and settlement services in being able to anticipate the fees that they will have to pay for the use of the services, and to assist users in assessing the cost impacts of any price changes.
31. In relation to non-discriminatory pricing, ASX commits to providing clearing and settlements services on a non-discriminatory basis to all customers and potential users. In relation to transfer pricing, ASX Clear and ASX Settlement commit to charging all users, including ASX-affiliated entities, non-discriminatory pricing for materially equivalent services.
32. In accordance with the expectation set out in the Council's December 2012 Report, ASX has committed in the draft Code to annually publish management accounts in respect of the clearing and settlement of cash equities in Australia by ASX Clear and ASX Settlement at the same time that it reports its full-year results. It is also proposed that the published management accounts will annually be subject to review by an external auditor.

33. The draft Code sets out the high level cost allocation principles which will be used to develop a cost allocation policy that sets out the basis on which revenues and costs will be allocated to the clearing and settlement of Australian cash equities. Furthermore, ASX commits to develop and publish a transfer pricing and cost allocation policy which describes the methodology used for allocating revenue, directly attributable cost, indirect and common shared costs and capital that relate to the clearing and settlement of cash equities in Australia.
34. The first set of management accounts will be published, together with ASX's full-year results, on 22 August 2013.

## **Transparent and non-discriminatory terms of access**

35. The third key element of the draft Code addresses access arrangements for clearing and settlement services. Section 4 of the draft Code sets out proposed commitments in relation to the provision of access to clearing and settlement services.
36. ASX provides standard services on a non-discriminatory basis and reasonable commercial terms to any alternative market operator seeking clearing and settlement arrangements. ASX Clear and ASX Settlement commit to providing these services on a non-discriminatory basis. ASX Clear and ASX Settlement also commit to publishing on the ASX website transparent terms and conditions for participants, alternative market operators facilitating trading of ASX-quoted securities and alternative market operators facilitating trading of securities not listed on ASX who are seeking access to clearing and settlement services.
37. Standard access to clearing and settlement services for trading in CHESSE-eligible ASX-quoted securities executed on an approved market operator is provided under the Trade Acceptance Service (TAS). Presently, access to clearing and settlement arrangements is provided to Chi-X Australia under TAS. Access to settlement services for trading in CHESSE-eligible financial products listed on approved listing market operators is provided under the Settlement Facilitation Service (SFS). Presently, the listing market operators that have been provided access to settlement services under the SFS are the National Stock Exchange of Australia (NSX) and the SIM Venture Securities Exchange (SIM). Asia Pacific Exchange (APX) has also been approved under the ASX Settlement Operating Rules to use settlement services.
38. ASX Clear and ASX Settlement will develop and publish on the ASX website protocols setting out the process and timeframes for responding to access requests for clearing and settlement services. ASX proposes to undertake targeted consultation directly with alternative market operators and approved listing market operators on the access protocols in late April.
39. ASX Clear and ASX Settlement commit to establishing and maintaining appropriate dispute resolution processes in relation to applications for standard access from alternative market operators to clearing and settlement services for cash equities. The draft Code commits ASX to a dispute resolution process for pre-access and post-access disputes.

## Appendix 1 – draft Code



10 April 2013

# Code of Practice for Clearing and Settlement of Cash Equities in Australia

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ASX Limited

ASX Clear Pty Limited

ASX Settlement Pty Limited

## 1 ASX's commitment

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*ASX is committed to ensuring Australia's clearing and settlement infrastructure is efficient, well-capitalised and well-regulated. ASX recognises the need to work with users to deliver world-class financial infrastructure for Australia and share the benefits of investment and growth with its customers.*

### 1.1 Purpose of this Code

- (a) ASX has put this Code in place to increase transparency and accessibility in the provision of clearing and settlement services for cash equities in Australia and to formalise avenues for regular and meaningful user engagement.
- (b) This Code builds on the principles contained in the Customer Charter of ASX in which ASX commits to:
  - (1) work with customers to deliver products and services that meet their needs and that provide them with choice;
  - (2) support Australia's aspiration to be globally competitive and become one of the leading financial centres in the Asia Pacific region;
  - (3) make its products and services available on a non-discriminatory basis and on reasonable commercial terms;
  - (4) manage its businesses and operations on a commercial basis to benefit its customers and provide appropriate returns to ASX shareholders;
  - (5) recognise its role as a provider of critical financial infrastructure to the Australian financial markets, and make the necessary investments to ensure it can fulfil this role and provide confidence to market participants, investors and regulators;
  - (6) run its operations in compliance with all legal and regulatory obligations; and
  - (7) maintain conflict handling arrangements that provide assurance and transparency about the way ASX conducts its business.

### 1.2 Clearing and settlement for Australian cash equity market

- (a) ASX Clear and ASX Settlement operate the sole licensed clearing and settlement facilities providing clearing and settlement systems and services for the Australian cash equity market. ASX Clear provides central counterparty clearing services for a range of financial products including cash equities and equity options. ASX Settlement provides services for the settlement of equities and other deliverable products. Clearing and settlement of cash equities is conducted through a shared operating system CHES.
- (b) ASX is committed to sharing with users of its services benefits and efficiencies arising out of the ASX group structure.

### 1.3 Scope of this Code

- (a) This Code deals with:
  - (1) the clearing and settlement services provided by ASX Clear and ASX Settlement for the Australian cash equity market; and
  - (2) the gateways and infrastructure supporting the provision of those services,
 as described and represented by the diagram in Appendix A.
- (b) Clearing and settlement services for cash equities are provided pursuant to the operating rules of ASX Clear and ASX Settlement, the TAS Legal Terms and settlement facilitation service agreements between ASX Settlement and ALMOs.
- (c) This Code does not deal with clearing and settlement services supporting either exchange-traded or OTC derivatives markets or OTC debt markets.

### 1.4 Development of this Code

- (a) This Code is being developed in consultation with users and in response to a report prepared by the Council of Financial Regulators and accepted by the Deputy Prime Minister and Treasurer on 11 February 2013.
- (b) The Council of Financial Regulators will carry out a public review of the Code's implementation and effectiveness, and ASX's adherence to it by early 2015.

## 2 The Forum

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*ASX is committed to meaningful engagement with users in respect of the ongoing development of the clearing and settlement infrastructure of the cash equity market in Australia. ASX recognises the importance of engagement with users to help ensure that the design and functionality of the clearing and settlement infrastructure of the cash equity market in Australia continues to meet users' needs and is consistent with relevant international best practice.*

### 2.1 Establishment

- (a) ASX will establish an advisory forum (**the Forum**) within 3 months of the commencement of this Code.
- (b) The first meeting of the Forum will be held no later than 30 November 2013.

### 2.2 Objectives

- (a) The objectives of the Forum are:
  - (1) to provide user input to the Boards of ASX Clear and ASX Settlement from a wide range of users in relation to ongoing investment in the design, operation and development of the core clearing and settlement infrastructure for the Australian cash equity market, including CHES;
  - (2) to consider any matters of common interest arising under the Code or in the principles set out in the report prepared by the Council of Financial Regulators; and

- (3) to provide a formal mechanism for the Boards of ASX Clear and ASX Settlement to report to users on their strategic plan and investment decisions in relation to the design, operating and development of the core clearing and settlement infrastructure for the Australian cash equity market, including CHES.
- (b) Members of the Forum will not consider or discuss any competitively sensitive information in contravention of the *Competition and Consumer Act 2010* (Cth).<sup>1</sup>

## 2.3 Membership

- (a) The Forum will consist of representatives of a wide range of user groups with a view to achieving a balance among the interests of the different user groups so that the Forum can function as an effective process for providing user input to the Boards of ASX Clear and ASX Settlement.
- (b) The Forum will consist of:
  - (1) up to ten members representing clearing participants and settlement participants;
  - (2) a member representing alternative market operators;
  - (3) a member representing the Australian Financial Markets Association;
  - (4) a member representing the Stockbrokers Association of Australia;
  - (5) a member representing system vendors;
  - (6) a member representing share registries;
  - (7) a member representing payment system service providers;
  - (8) a member representing custodial service providers;
  - (9) a member representing the funds management industry;
  - (10) a member representing listed companies;
  - (11) a non-executive member of the Boards of ASX Clear and ASX Settlement (Forum Chair); and
  - (12) a non-executive member of the Board of ASX Limited.
- (c) ASX will invite users to nominate representatives as part of the selection process for appointment to the Forum.
- (d) ASX will consult user groups on the nominees for the Forum to inform the selection process.
- (e) ASX will appoint members to the Forum for an initial 2 year term, subject to continued employment with the organisation by whom they were nominated.
- (f) Before the expiry of a member's term, or in the event a member resigns, ASX will consult the user group represented by that retiring member regarding the appointment of a new representative member. It is expected that some members of the Forum will rotate so that the Forum will function as set out in clause 2.3(a).

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<sup>1</sup> **Explanatory Note:** ASX Clear and ASX Settlement recognise that the Forum may comprise members who are competitors or potential competitors of each other and of ASX Clear and ASX Settlement. This provision is designed to remind members of the Forum of their obligations under the *Competition and Consumer Act 2010* (Cth).

- (g) ASX will appoint members to the Forum based on their skills and experience.
- (h) A member of the Forum cannot appoint a delegate or alternate without the prior approval of the Forum Chair.

## 2.4 Operation of the Forum

- (a) The Forum will be chaired by a member of the Boards of ASX Clear and ASX Settlement (**Forum Chair**).
- (b) The Forum will meet 3 times a year.
- (c) The Forum may appoint and convene business and technical committees to examine and provide advice in relation to particular issues as required. Members of the business and technical committees do not need to be members of the Forum. Business and technical committees will report to the Forum.
- (d) ASX will provide facilities and services for the effective administration and functioning of the Forum. The Forum Chair may invite ASX management to attend meetings of the Forum.
- (e) Agendas will be set by the Forum Chair in consultation with Forum members. The Forum Chair will circulate a draft agenda prior to the Forum meeting to provide Forum members with the opportunity to contribute to the agenda setting process.
- (f) Minutes of meetings of the Forum will be kept and approved by the Forum Chair. The Forum Chair will circulate draft meeting minutes following Forum meetings to provide Forum members with the opportunity to comment on the meeting minutes.
- (g) ASX will publish all agendas and minutes of the Forum on the ASX website.
- (h) The Forum Chair will prepare a written report on the key issues discussed and any recommendations made by the Forum for inclusion in the Board papers for the next meetings of the Boards of ASX Clear and ASX Settlement.
- (i) The Forum Chair will circulate a draft of the report to Forum members.
- (j) The Boards of ASX Clear and ASX Settlement will give due consideration to any material matters raised by, or recommendations of, the Forum and liaise with the Forum as appropriate.
- (k) The Forum Chair will report to the next Forum meeting on the outcome of discussions of the Boards of ASX Clear and ASX Settlement relevant to any recommendations made by the Forum. The Forum Chair may also report on other issues of interest to the Forum.
- (l) The Boards of ASX Clear and ASX Settlement will jointly provide a written response to the report prepared by the Forum Chair to be provided to the Forum which articulates:
  - (1) the response to any material matters raised by the Forum;
  - (2) the recommendations that are being followed;
  - (3) the recommendations that are not being followed; and
  - (4) the reasons for these decisions.

## 2.5 Commitment to broad user consultation

- (a) In addition to the Forum, ASX Clear and ASX Settlement will continue to provide other mechanisms for user engagement and consultation.
- (b) Any interested party may provide information to ASX Clear and ASX Settlement in respect of the development of clearing and settlement services and infrastructure at any time (on a collective or confidential basis). This information may be provided by sending a written submission to ASX Clear and ASX Settlement addressed to the attention of the Forum Chair. Relevant contact details will be placed on the ASX website.
- (c) The Forum Chair will consider submissions provided by interested parties when preparing reports to be provided to the Boards of ASX Clear and ASX Settlement.

## 3 Pricing

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*The structure of the ASX group allows for the efficient delivery of services to users. In pricing those services, ASX is committed to the principles of transparency and non-discrimination.*

### 3.1 Transparent pricing

- (a) ASX will publish fee schedules, in a clear and accessible form, for all clearing and settlement services covered by this Code. The published schedules will include a brief description of each service.
- (b) The published fee schedules will include details, including applicable terms, conditions and eligibility criteria, of any rebates, revenue-sharing arrangements and discounts applicable to each service.
- (c) ASX will make available worked examples, tools and other information as appropriate which will assist users to anticipate the price they will have to pay for use of the services. The worked examples, tools and other information will enable users to be able to assess:
  - (1) the expected cost impacts of any pricing changes;
  - (2) the expected cost impacts associated with new products and initiatives; and
  - (3) the impact of discounts, rebates and revenue-sharing arrangements for different user groups and different activity profiles.
- (d) ASX will publish all information on the ASX website.

### 3.2 Published management accounts for cash equities

- (a) ASX will publish management accounts in respect of the clearing and settlement of cash equities in Australia. ASX will publish these accounts on an annual basis, together with ASX's full year financial results, and make them available on the ASX website.

- (b) In the management accounts, ASX will allocate directly attributable and common shared costs for cash equity clearing and settlement as between ASX Clear and ASX Settlement. ASX will allocate costs for the clearing and settlement functions on the following basis:
  - (1) the directly attributable expenditure undertaken in respect of relevant clearing and settlement functions will be the increase in total expenditure which results from that function; and
  - (2) the expenditure on shared assets and indirect costs will be allocated on the basis of identified and appropriate drivers of the expenditure related to the respective clearing and settlement functions.
- (c) ASX will establish a policy which describes the methodology used for apportioning directly attributable and indirect or common shared costs. This policy will be reflected in the published management accounts.
- (d) The published management accounts will be subject to review by an external auditor.

### 3.3 Non-discriminatory and transfer pricing

- (a) Non-discriminatory pricing: ASX is committed to providing non-discriminatory pricing to all customers and potential users. The prices for clearing and settlement services provided by ASX Clear and ASX Settlement, including rebates, revenue-sharing arrangements and discounts applicable to the use of these services, will not discriminate between ASX-affiliated and other customers or potential users of clearing and settlement services.
- (b) Transfer pricing: ASX Clear and ASX Settlement will charge all users, including ASX-affiliated entities, non-discriminatory prices for materially equivalent services.

### 3.4 Pricing comparison

ASX Clear and ASX Settlement will annually benchmark the scope of the clearing and settlement services they provide and the pricing and fees for those services compared to the clearing and settlement services and the pricing and fees for those services provided by facilities in other cash equity markets. ASX Clear and ASX Settlement will provide a report containing the results of this comparison to the Forum and the Agencies and will publish the report on the ASX website.

## 4 Access to clearing and settlement services

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*ASX is committed to providing access to clearing and settlement services on transparent and non-discriminatory terms and to responding to user requests for access in a fair and timely manner.*

### 4.1 Standard access to clearing and settlement services

- (a) ASX Clear and ASX Settlement will continue to publish on the ASX website transparent standard terms and conditions:
  - (1) to become an ASX Clear or ASX Settlement participant pursuant to the ASX Clear and ASX Settlement operating rules;

- (2) for AMOs seeking access to TAS in order to facilitate the clearing and settlement for transactions effected through that AMO pursuant to the TAS Legal Terms; and
  - (3) for ALMOs to apply for the provision of settlement facilitation services, pursuant to the Settlement Facilitation Service Agreement.
- (b) Access to clearing and settlement services will be provided on a non-discriminatory basis. ASX Clear and ASX Settlement will not unreasonably prohibit, condition or limit, directly or indirectly, access by a person or company to clearing and settlement services.

## 4.2 Responsiveness to requests

- (a) ASX Clear and ASX Settlement will consider any request for clearing and settlement services in a timely manner.
- (b) ASX Clear and ASX Settlement will publish protocols on the ASX website which set out target timeframes for responding to requests for services and dispute resolution processes.

## 4.3 Dispute resolution

- (a) Any dispute in relation to an application to become an ASX Clear or ASX Settlement participant, or, in relation to services provided to an ASX Clear or ASX Settlement participant, is governed by the ASX Clear and ASX Settlement operating rules as appropriate.
- (b) Dispute resolution processes will apply to disputes:
  - (1) with AMOs and ALMOs which are seeking standard access to clearing and settlement services as governed by this Code (**pre-access disputes**); and
  - (2) with AMOs and ALMOs which are being provided with the clearing and settlement services governed by this Code (**post-access disputes**).
- (c) The dispute resolution processes applying to pre-access disputes will be incorporated into the protocols described in clause 4.2(b).
- (d) The dispute resolution processes applying to pre-access disputes which will be incorporated into the protocols described in clause 4.2(b) will contain the following features:
  - (1) a procedure for parties to provide a written notice to ASX Clear and ASX Settlement which identifies the nature of the dispute;
  - (2) an obligation on all parties to negotiate in good faith to resolve disputes within a specified timeframe; and
  - (3) a procedure to escalate any disputes which have not been resolved by negotiation to an independent arbitrator for a final binding decision.
- (e) The dispute resolution processes applying to post-access disputes will be incorporated into the TAS Legal Terms and the Settlement Facilitation Service Agreement as appropriate.



## 5 Review

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*ASX commits to undertake regular reviews in respect of the operation of the Code.*

- (a) ASX will conduct internal reviews regarding the operation of the Code, including with respect to:
- (1) the effectiveness of the Forum in meeting the objectives set out in clause 2.2;
  - (2) ASX's compliance with the cost allocation principles described in clause 3.2;
  - (3) ASX's compliance with the access request protocols described in clause 4.2(b) relating to requests for access to clearing and settlement services; and
  - (4) ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.

A written report based on the internal review will be prepared and provided to the Boards of ASX Clear and ASX Settlement and the Forum promptly after the report's completion. ASX will publish the report on the ASX website.

- (b) Additionally, ASX will engage an external auditor to conduct an annual review and prepare a written report regarding the operation of the Code, including with respect to:
- (1) ASX's compliance with the cost allocation principles described in clause 3.2;
  - (2) ASX's compliance with the access request protocols described in clause 4.2(b) relating to requests for access to clearing and settlement services; and
  - (3) ASX's pricing to verify that there is no discrimination between ASX-affiliated entities and other users of clearing and settlement services.

The external auditor's report will be provided to the Boards of ASX Clear and ASX Settlement and the Forum promptly after the report's completion. ASX will publish the report on the ASX website.

- (c) Users of clearing and settlement services will be consulted as part of the reviews.
- (d) ASX Clear and ASX Settlement will provide the Agencies with such information as is reasonably requested by the Agencies to monitor ASX Clear and ASX Settlement's ongoing compliance with the Code.
- (e) ASX will maintain procedures for users to provide any comments or complaints in respect of the operation of this Code. ASX will publish protocols on the ASX website for responding to any comments or complaints.
- (f) Comments or complaints should be addressed to the attention of the office of the Chief Executive Officer.
- (g) If a party is not satisfied with the response from the ASX Chief Executive Officer, the party may ask for the comment or complaint to be directed to the Forum Chair and the Boards of ASX Clear and ASX Settlement for their consideration.

## 6 Protection of confidential information

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*ASX Clear and ASX Settlement will not misuse any confidential information acquired in the course of providing clearing and settlement services.*

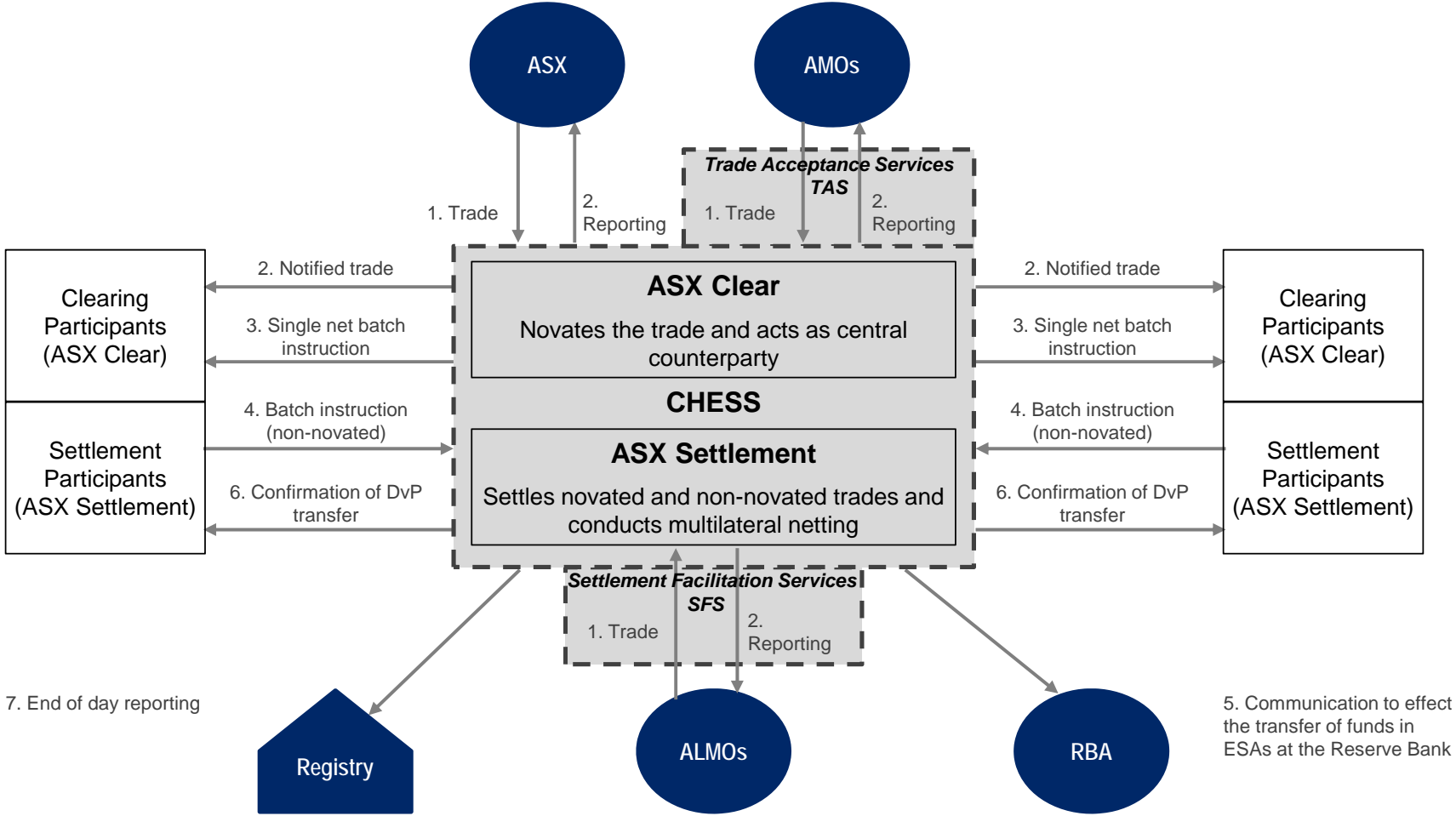
- (a) ASX Clear and ASX Settlement will comply with ASX's published Conflict Handling Arrangements policy. Any confidential or competitively sensitive information that is acquired in the course of providing clearing and settlement services will only be used for the purpose for which it was provided.
- (b) ASX Clear and ASX Settlement will not use any confidential or competitively sensitive information acquired in the course of providing clearing and settlement services to provide an advantage to an affiliated entity of ASX Clear or ASX Settlement.

## 7 Operation of Code

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- (a) This Code commences operation on 9 August 2013.
- (b) Changes to the Code will not be made without prior consultation with the Forum, other users and the Agencies.
- (c) This Code will be interpreted consistently with:
  - (1) ASX Clear and ASX Settlement's license obligations under the Corporations Act;
  - (2) ASX's legal or regulatory obligations;
  - (3) the ASX Clear and ASX Settlement operating rules; or
  - (4) any agreements entered into between ASX, and customers and other stakeholders.

# Appendix A: Cash Market Trade to Settlement Flow



## Glossary

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The meanings of the terms used in this Code are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ACCC</b>	Australian Competition and Consumer Commission.
<b>Agencies</b>	ACCC, ASIC, RBA and Treasury.
<b>ALMO</b>	approved listing market operator.
<b>AMO</b>	approved market operator.
<b>ASIC</b>	Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited (ACN 008 624 691) and as the context requires the ASX group of companies including ASX Clear and ASX Settlement.
<b>ASX Clear</b>	ASX Clear Pty Limited (ACN 001 314 503).
<b>ASX Settlement</b>	ASX Settlement Pty Limited (ACN 008 504 532).
<b>CHESS</b>	the Clearing House Electronic Subregister System.
<b>Conflict Handling Arrangements policy</b>	the policies published on the ASX website for the management of potential conflicts of interest, as amended from time to time.
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>Customer Charter</b>	the customer charter published by ASX in 2012.
<b>Forum</b>	the advisory forum on clearing and settlement for the Australian cash equity market established by this Code.

<b>Term</b>	<b>Meaning</b>
<b>Forum Chair</b>	has the meaning given in clause 2.4(a).
<b>OTC</b>	over the counter.
<b>RBA</b>	Reserve Bank of Australia.
<b>Settlement facilitation service</b>	<p>settlement arrangements provided to approved listing venues other than ASX (ALMOSs) in respect of CHESS-eligible financial products listed on the markets of those ALMOs.</p> <p>These arrangements consist of a transfer facilitation service and a delivery versus payment facilitation service (see <a href="http://www.asx.com.au/settlement/settlement-arrangements-for-approved-market-operators.htm">http://www.asx.com.au/settlement/settlement-arrangements-for-approved-market-operators.htm</a>).</p>
<b>Settlement Facilitation Service Agreement</b>	the agreement entered into between ASX Settlement and a listing market operator in respect of the provision of settlement facilitation services as amended from time to time.
<b>TAS</b>	<p>trade acceptance service.</p> <p>This service was developed by ASX to enable trading venues that competed with ASX's trading business to have a standard access service for clearing and settlement (see <a href="http://www.asx.com.au/clearing/trade-acceptance-service.htm">http://www.asx.com.au/clearing/trade-acceptance-service.htm</a>).</p>
<b>TAS Legal Terms</b>	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 14 June 2011 as amended from time to time.