



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC CS Services Rules 2025

This is the Explanatory Statement for ASIC CS Services Rules 2025 (the **CS Services Rules**, or the *instrument*).

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. The CS Services Rules made under section 828A of the *Corporations Act 2001* (the *Act*) impose requirements dealing with the activities, conduct and governance arrangements of providers of cash equity clearing and settlement (**CS**) services. The CS Services Rules are intended to establish formalised and clear obligations to promote competitive outcomes in the provision of cash equity CS services, where the ASX group is the monopoly provider of cash equity CS services. The CS Services Rules are made in relation to cash equity CS services as determined by the Minister under the *Corporations and Competition (CS Services) Instrument 2024 (Ministerial Determination)*.
2. The CS Services Rules address the following key areas:
 - (a) governance frameworks with mechanisms for users to provide input into strategy setting, operational arrangements, and system design;
 - (b) transparent, non-discriminatory, fair and reasonable pricing arrangements;
 - (c) access to services on commercial, transparent and non-discriminatory terms;
 - (d) core information technology systems used to provide cash equity CS services to facilitate foundational technical interoperability with users' systems that do not raise barriers to entry;
 - (e) publication of an international pricing comparison report and a cost allocation model report;
 - (f) publication of audited management accounts for cash equity CS services;
 - (g) arrangements for management of intragroup conflicts of interest; and

(h) independent assurance that changes to core systems do not result in barriers to access for unaffiliated entities, including in relation to interoperability.

3. Unless otherwise indicated, capitalised terms in this Explanatory Statement have the same meaning as in the CS Services Rules.

Purpose of the instrument

Background

4. The Act does not prohibit more than one licensed CS facility to handle the clearing and settlement of transactions executed on the one financial market or different financial markets. However, the current market structure is a monopoly where ASX (through its subsidiaries ASX Clear Pty Ltd and ASX Settlement Pty Ltd) is the sole provider of cash equity CS services.
5. In June 2012, the Council of Financial Regulators (**CFR**) published a discussion paper examining competition in the clearing and settlement of Australian cash equities.¹ In the resulting conclusions report,² the CFR recommended that a decision on any licence application from a competing cash equity central counterparty (**CCP**) be deferred for two years, due to potential costs and complexities associated with the introduction of a competing CCP and ongoing market conditions. It was concluded that the CFR would need to undertake further consideration and analysis to ensure a smooth transition to a potential multi-CCP environment. In the meantime, ASX was encouraged to develop the Code of Practice for the Clearing and Settlement of Cash Equities in Australia (the **Code**). The government endorsed the recommendations in February 2013³ and ASX published the Code in August 2013.
6. At the request of the government, the CFR undertook the 2015 review of competition in clearing Australian cash equities (**2015 review**).⁴ The CFR found that the legislative settings for CS facilities in the Australian cash equity market, while reflecting an openness to competition, lacked mechanisms to facilitate competitive outcomes. The 2015 review also noted that the regulators lacked sufficient powers to effectively deal with industry concerns about ASX's interaction with, and provision of services to, users of its CS services. To address this regulatory gap, the CFR recommended legislative reforms to give the relevant regulators rule-making and arbitration powers to facilitate safe and effective competition in clearing and/or settlement, and to deal with the

¹ CFR, Competition in the clearing and settlement of the Australian cash equity market, discussion paper, June 2012 <<https://treasury.gov.au/consultation/competition-in-the-clearing-and-settlement-of-the-australian-cash-equity-market>>.

² CFR, Competition in Clearing Australian Cash Equities: Conclusions, report, December 2012 <<https://treasury.gov.au/sites/default/files/2019-03/Competition-in-clearing-and-settlement-of-the-australian-cash-equity-market.pdf>>.

³ CFR, Advice on Competition in Clearing of the Cash Equity Market, advice, February 2013 <<https://treasury.gov.au/publication/council-of-financial-regulators-advice-on-competition-in-clearing-of-the-cash-equity-market>>.

⁴ CFR, Review of Competition in Clearing Australian Cash Equities, report, February 2015 <<https://www.cfr.gov.au/publications/consultations/2015/review-of-competition-in-clearing-australian-cash-equities/>>.

continued monopoly provision of cash equity CS services until competition emerged.

7. In March 2016, the Treasurer released the CFR's advice to Government, accepted the CFR's recommendations and endorsed a policy stance of openness to competition in clearing and settlement for cash equities. This included proposals to implement legislative changes to:
 - (a) allow ASIC to impose requirements on ASX's cash equity CS facilities, including rule-making powers for ASIC in respect of CS facilities; and
 - (b) grant the Australian Competition and Consumer Commission (*ACCC*) an arbitration power to provide for recourse in disputes about the terms of access to ASX's cash equity CS services.
8. Following further stakeholder consultation in 2017, the CFR produced several policy statements including:
 - (a) the Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia⁵ (*Regulatory Expectations*) – intended to operate until such time as a committed competitor emerged; and
 - (b) the Minimum Conditions (for cash equity clearing⁶ and settlement⁷) (together, the *Minimum Conditions*) – intended to provide an environment for safe and effective competition should a committed competitor emerge.
9. ASIC was granted rule-making powers under Part 7.3A of the Act by Part 1 of Schedule 3 of the *Treasury Laws Amendment (2023 Measures No. 3) Bill 2023*. These rule-making powers enable ASIC to make rules that deal with the activities, conduct or governance of CS facility licensees, and associated entities, in relation to CS services. ASIC can only impose requirements for CS services that are of a type covered by a determination made by the Minister under section 828B of the Act. The Ministerial Determination which was made under section 828B, determines cash equities as the class of CS services in relation to which ASIC may impose CS services rules.
10. The CS Services Rules impose obligations in line with the principles-based requirements set out in the Regulatory Expectations and in some limited instances expands on these statements.

Alignment with ACCC's arbitration arrangements

⁵ CFR, Regulatory Expectations for Conduct of Cash Equity Clearing and Settlement Services in Australia, policy paper, October 2016, amended September 2017 <<https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2016/regulatory-expectations-policy-statement/>>.

⁶ CFR, Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia, policy paper, October 2016, amended September 2017 <<https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2016/minimum-conditions-safe-effective-cash-equity/pdf/policy-statement.pdf>>.

⁷ CFR, Minimum Conditions for Safe and effective Competition in Cash Equity Settlement in Australia, policy paper, September 2017 <<https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2017/minimum-conditions-safe-effective-competition/pdf/policy-statement.pdf>>.

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11. The ACCC has the power to conduct binding arbitration of access disputes about the terms of access to CS services that have been declared by the Minister. The CS services that have been declared by the Minister for the purposes of the ACCC's arbitration power are currently aligned with the determined CS services for the purposes of ASIC's rulemaking power.
 12. We have worked closely with the ACCC on the CS Services Rules.

Alignment with the ASIC Act

13. The CS Services Rules are consistent with ASIC's regulatory responsibilities under the *Australian Securities and Investments Commission Act 2001* to:
 - (a) consider the effects that the performance of its functions and the exercise of its powers will have on competition in the financial system;
 - (b) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and
 - (c) promote the confident and informed participation of investors and consumers in the financial system.

Consultation

14. We have consulted publicly with industry in Consultation Paper 379 *ASIC CS Services Rules (CP 379)*. We sought feedback on proposed rules, as well as the financial, compliance competition and other impacts of the proposals.
15. We received 9 written submissions to CP 379 from stakeholders including a market participant, a share registry, a software provider, industry associations and operators of financial market infrastructures. We also received one supplementary submission following the consultation period, in response to a request for further detail from ASIC. The submissions were broadly supportive of the CS Services Rules and recognised the importance of promoting competitive outcomes for cash equity CS services in the absence of competition.
16. Following the formal consultation process, we engaged in further bilateral consultation with several stakeholders to seek further clarity on their submissions. We also consulted further with the Reserve Bank of Australia (**RBA**) and the ACCC on changes to the CS Services Rules arising from consultation feedback.
17. We amended the CS Services Rules, where appropriate, to reflect feedback received. These changes are outlined in *Response to submissions on CP 379 ASIC CS Services Rules (REP 808)* that sets out ASIC's response to consultation.

Other consultation

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18. ASIC has consulted with the RBA and ACCC in accordance with the requirements of section 828J of the Act.

Operation of the instrument

Chapter 1: Introduction

Part 1.1 Preliminary

19. Rule 1.1.1 provides that ASIC makes the instrument under subsection 828A(1) of the Act. Subsection 828A(1) empowers ASIC to make CS services rules that deal with the activities, conduct or governance of CS facility licensees, and associated entities of CS facility licensees, in relation to CS services and incidental matters.
20. Rule 1.1.2 provides that the instrument is the *ASIC CS Services Rules 2025*.
21. Rule 1.1.3 provides that the instrument commences three months after the day this instrument is registered on the Federal Register of Legislation.
22. Rule 1.1.4 provides that a CS Service Provider does not have to comply with Rules 2.1.3 and 2.4.4 until six months after the day the instrument is registered on the Federal Register of Legislation.
23. Rule 1.1.5 provides that the maximum pecuniary penalty payable for a contravention of a provision of a provision of the CS Services Rules is an amount determined by the Court under section 1317G of the Act.

Part 1.2 Interpretation

24. Rule 1.2.1 provides that words and expressions defined in the Act will, unless otherwise defined or specified in the CS Services Rules or the contrary intention appears, have the same meaning in the CS Services Rules. For convenience, some words and expressions defined in the Act are cross-referenced in Rule 1.2.2.
25. Rule 1.2.2 provides definitions for terms used in the CS Services Rules. This includes, but is not limited to the following terms:
- “Associated Entity”** which (per section 50AAA of the Act) means an entity (the associate) which is an associated entity of another entity (the principal) if:
- (a) the associate and the principal are related bodies corporate; or
 - (b) the principal controls the associate; or
 - (c) the associate controls the principal and the operations, resources or affairs of the principal are material to the associated; or
 - (d) the associate has a qualifying investment (as set out in subsection 50AAA(8) of the Act) in the principal and the associate has significant influence over the principal and the interest is material to the associated; or

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- (e) the principal has a qualifying investment (as set out in subsection 50AAA(8) of the Act) in the associate and the principal has significant influence over the associate and the interest is material to the principal; or
 - (f) an entity (the third entity) controls both the principal and the associate and the operations, resources or affairs of the principal and the associate are both material to the third entity.

“Core System” which means an information technology system that is used to provide a Covered Service. This definition does not extend to all information technology systems used by CS Service Providers, only those that are used to provide Covered Services. For example, the definition does not capture systems that are used to calculate fees for services that have been provided.

“Covered Service” which means a service that can only be provided if it has access to a CS facility, or to data used in the operation of a CS facility (per subsection 828(1) of the Act) that is covered by a determination under section 828B of the Act. As at the date of these rules, the Ministerial Determination specifies that CS services relating to cash equities (being a type of financial product defined in that instrument) are specified for subsection 828B(2) of the Act.

“Covered Licensee” which means each of ASX Clear Pty Limited and ASX Settlement Pty Limited, the ASX group companies which currently operate licensed CS facilities.

“CS Service Provider” which means each of the Covered Licensees, a holding company of a Covered Licensee that is involved in decisions related to Covered Services, and any Associated Entity of a Covered Licensee that provides a Covered Service. This definition ensures that the rules recognise the vertically integrated structure of the ASX group, in particular the involvement of ASX Limited in decisions that relate to Covered Services (for example, investments in Core Systems) and the potential for other entities within the group to leverage monopoly infrastructure.

“Data Accessing Entity” which means a person who accesses, or who is seeking to access, data that is stored in a Core System. This definition interacts with the obligation for CS Service Providers to negotiate regarding fees and other financial contributions charged for extensions requested by certain kinds of stakeholders, including Data Accessing Entities.

“International Communication Procedures and Standards” which means the following procedures and standards for messaging and reference data:

- (a) ISO 20022; and
- (b) FIX 5.0.

There are more than 700 ISO 20022 message definitions for a wide range of uses in financial services. Accordingly, a specific ISO 20022 message definition version is not specified in this definition. We will consider amendments to the

CS Services Rules to reflect future versions of procedures and standards for messaging and reference data as and when they are adopted by industry.

Chapter 2: Conduct Rules

Part 2.1 Governance requirements

26. Part 2.1 imposes requirements related to the board composition of Covered Licensees, User input into decisions related to Covered Services, arrangements for promoting access to Covered Services on commercial, transparent, and non-discriminatory terms to reflect the principles-based policy statements in the Regulatory Expectations. These requirements reflect the need to ensure that ASX remains responsive to the evolving needs of Users.

Rule 2.1.1 Board composition

27. Rule 2.1.1 requires at least half of the members of the board of a Covered Licensee to be non-executive directors that are independent from its ultimate holding company, currently ASX Limited. It also requires that these independent directors should be able to form a quorum and requires an Associated Entity that controls a Covered Licensee to ensure its compliance with these requirements.
28. Rule 2.1.1 recognises and responds to the conflicts that arise due to the vertically integrated structure of the ASX group. For example, licensed cash equity market operators that compete with ASX Limited must still use the monopoly cash equity CS Services provided by ASX Clear and ASX Settlement. Imposing these basic governance requirements, while not a complete answer to these concerns, is expected to bolster the independence of the Covered Licensees and provide a mechanism for a quorum of independent directors to consider conflict-sensitive matters.

Rule 2.1.2 User input

29. Rule 2.1.2 imposes requirements that are intended to ensure that CS Service Providers, and in particular the Covered Licensees, are responsive to Users' evolving needs. Consistently with section 1 of the Regulatory Expectations, the focus of these requirements is ensuring that transparent formal mechanisms are maintained within ASX's governance framework to give Users a strong voice in strategy setting, operational arrangements and system design, and to make ASX's monopoly cash equity CS Services directly accountable to Users.
30. The purpose of subrule 2.1.2(1) is to ensure that CS Service Providers have mechanisms in place for Users to play a strong role in decisions that relate to Covered Services, by specifying certain arrangements that must form part of the governance framework for such decisions, namely:
- (a) meeting with one or more representative bodies regularly, and at least quarterly; and

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- (b) ensuring that the representative body or bodies is or are representative of Users and technology services providers; and
 - (c) enabling the members of the representative body or bodies to contribute to the agenda and format of its meetings; and
 - (d) ensuring that the representative body or bodies have input into the CS Service Provider's strategy setting, priorities, operational arrangements, pricing of Covered Services and design of Core Systems; and
 - (e) enabling the representative body or bodies to review and provide feedback on:
 - (i) the proposed terms of reference for the Covered Services comparative report required under Rule 2.4.1; and
 - (ii) any external assurance report required under Rule 2.4.5; and
 - (f) considering all relevant issues raised and any recommendations made, by a representative body; and
 - (g) documenting and providing reasons for any decisions that do not accord with the recommendations of a representative body.
31. Subrule 2.1.2(1) does not prescribe the particular User input arrangements that a CS Service Provider must have in place. Rather, these baseline requirements are intended to ensure that effective mechanisms for Users and Technology Service Providers to provide input into decisions that impact them are maintained within ASX's governance framework. This includes important safeguards such as a requirement for a CS Service Provider to operate on a 'comply or explain' basis with respect to recommendations made by a representative body.
32. In particular, subrule 2.1.2(1) does not:
- (a) specify the number of representative bodies that should be in place;
 - (b) require direct participation by every User and Technology Service Provider;
 - (c) require a CS Service Provider to consider all issues raised by individual members of a representative body (as distinct from the representative body itself).
33. The representative body or bodies should be structured to ensure that the broad range of stakeholders are represented, and have procedures in place regarding how such a body raises issues and makes recommendations to the board of a CS Service Provider. Paragraph 2.1.2(1)(f) does not require the board to consider all issues or recommendations raised or made by an individual member of a representative body.
34. Subrule 2.1.2(2) ensures that feedback given by a representative body under paragraph 2.1.2(1)(e) is taken into account by a CS Service Provider before it finalises relevant decisions (i.e. the terms of reference for the comparative

report required under Rule 2.4.1 or implementing a material change to its Core Systems). This safeguard operates in addition to, and not in derogation of, the ‘comply or explain’ requirement in paragraph 2.1.2(1)(g).

35. Subrule 2.1.2(3) requires a CS Service Provider to publicly report on its interactions with Users and its service developments and investment projects related to Covered Services on an annual basis. These reports must include an explanation of the feedback received, and how the feedback has contributed to the CS Service Provider’s decision making.
36. Subrule 2.1.2(3) does not require public reporting on each individual interaction with Users and Technology Service Providers, for example through the publication of a register of such interactions. A summary of feedback received and an explanation of how that feedback has contributed to the CS Service Provider’s decision-making processes would satisfy this requirement.

Rule 2.1.3 Organisational requirements

37. Subrule 2.1.3(1) requires CS Service Provider to maintain and operate effective written organisational and administrative arrangements that promote access to its Covered Services on commercial, transparent, and non-discriminatory terms. At a minimum, these arrangements must include:
 - (a) well-defined, transparent and consistent reporting lines; and
 - (b) ensuring that staff with appropriate seniority and authority regularly review the effectiveness of those reporting lines; and
 - (c) ensuring that key performance indicators for relevant staff include accountability for compliance with these organisational requirements.
38. As an additional safeguard, a CS Service Provider is required under subrule 2.1.3(2) to maintain accurate records of these written arrangements, as well as the allocation of responsibilities in relation to Covered Services, and retain them for at least 5 years. This measure is expected to enhance compliance with the organisational requirements, for example by ensuring that the required written arrangements are kept up to date following staffing changes.

Rule 2.1.4 Core Systems

39. Rule 2.1.4 supplements the governance requirements outlined above through a general requirement for a CS Service Provider to take reasonable steps to ensure that its Core Systems meet the differing needs of Users and do not create or raise barriers to accessing Covered Services, and that any changes to its Core Systems accommodate relevant International Open Communication Procedures and Standards.
40. Examples of such steps include, but are not limited to:
 - (a) undertaking public consultation on the design, operation and development of Core Systems;

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- (b) engagement with the relevant User representative groups;
 - (c) consideration of feedback provided by potential users in response to public consultation on relevant matters; and
 - (d) supporting technical interoperability by accommodating relevant International Open Communication Procedures and Standards when updating Core Systems to include the relevant software interfaces and specifications.

Part 2.2 – Covered Services

Rule 2.2.1 Transparent, non-discriminatory, and fair and reasonable pricing

41. In order to regulate a CS Service Provider's pricing conduct, Rule 2.2.1 requires a CS Service Provider to take all reasonable steps to ensure that the pricing of its Covered Services (including data), is transparent, fair and reasonable. At a minimum, a CS Service Provider must:
- (a) not discriminate in favour of itself or any of its Associated Entities, except to the extent that the efficient costs of providing the same Covered Service to another party is higher;
 - (b) publish fee schedules for each Covered Service, in a clear, consistent and accessible form, that includes specified information;
 - (c) make available on its website, information and tools to assist Users and Unaffiliated Entities to anticipate the price they will have to pay for the use of Covered Services, which enables them to assess:
 - (i) the expected cost impact of any pricing changes; and
 - (ii) the expected cost impact associated with new products and initiatives; and
 - (iii) the impact of discounts, rebates and revenue-sharing arrangements for different User groups and different activity profiles; and
 - (d) maintain and publish policies and procedures for implementing changes to the pricing of its Covered Services which ensure, as far as practicable, that any such changes do not have the effect of shifting material revenue streams to entities other than Covered Licensees; and
 - (e) maintain and publish a model for the allocation of all costs between a CS Service Provider and Associated Entities that ensures, where possible, that costs are directly allocated to the services which give rise to the costs, and that shared costs are allocated based on appropriate, proportionate and transparent metrics; and
 - (f) maintain and publish a pricing methodology that demonstrates that the expected revenue from the provision of Covered Services reflects the efficient costs of providing those services; and

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- (g) ensure that any fee changes and any new fees are consistent with the overarching obligation to take all reasonable steps to ensure that its pricing is transparent, fair, and reasonable, and publish on its website a document explaining the basis of any such changed or new fees, including certain specified information;
 - (h) maintain records that demonstrate how it is complying with its obligation to take all reasonable steps to ensure that its pricing is transparent, fair, and reasonable, and retain those records for a period of at least 5 years; and
 - (i) negotiate commercially and in good faith with an Unaffiliated Market Operator, Unaffiliated CS Facility Operator or Data Accessing Entity regarding fees and other financial contributions charged for bespoke services; and
 - (j) maintain accurate records of such negotiations, and retain those records for a period of at least 5 years.
42. The steps outlined above are largely directed towards enhancing pricing transparency for the benefit of all User groups. The specific requirements set out in paragraphs 2.2.1(2)(d)-(g) are intended to ensure that costs are appropriately allocated within the ASX group.
43. A CS Service Provider must consult publicly about any proposed material changes to a policy, procedure, model or other document that is required under rule 2.2.1.

Part 2.3 – Access to Covered Services

Rule 2.3.1 Non-discriminatory access

44. Subrule 2.3.1(1) requires a CS Service Provider to take all reasonable steps to provide access to its Covered Services (including data) on commercial, transparent and non-discriminatory terms. The primary focus of the obligation to provide access on non-discriminatory terms is whether such terms discriminate in favour of the CS Service Provider or any of its Associated Entities.
45. The note to subrule 2.3.1(1) refers to the precedence of various rules that might apply to Covered Licensees in their capacity as both CS Service Providers and CS facility licensees. Any CS facility rules made by ASIC under section 826H of the Act and any standards determined by the Reserve Bank under sections 827D and 827DA of the Act prevail over the CS Services Rules, but the CS Services Rules prevail over the operating rules of a licensed CS facility. This note has been included to help clarify the scope of the general obligation, which does not prevent a Covered Licensee from imposing risk-based access requirements in order to comply with its obligations as a CS facility licensee.
46. Subrule 2.3.1(2) supplements subrule (1) by specifying that a CS Service Provider must take all reasonable steps to ensure that:

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- (a) it deals with access requests in a fair and timely way; and
 - (b) the design of its Core Systems facilitates technical interoperability; and
 - (c) its Core Systems are designed and developed in a way that does not create or raise barriers to access by Unaffiliated Entities.
47. Without limiting the manner in which a CS Service Provider complies with subrules 2.3.1(1) and (2), a CS Service Provider must:
- (a) not discriminate in favour of itself or any of its Associated Entities, except to the extent that the efficient costs of providing the same Covered Service to another party is higher; and
 - (b) take all reasonable steps to ensure that the terms and conditions of its agreements with Users ensure the provision of:
 - (i) Covered Services; and
 - (ii) access to its Core Systems or data;is on commercial, transparent and non-discriminatory terms, consistent with the legitimate business interests of the CS Service Provider and its access seekers, including through the use of standardised terms and conditions; and
 - (c) maintain and publish policies and procedures, including governance arrangements that promote access to Covered Services by Unaffiliated Entities on operational and commercial terms and with service levels that are equivalent to those that apply to the CS Service Provider or any of its Associated Entities; and
 - (d) maintain and publish policies and procedures that:
 - (i) require access requests to be dealt with in a fair and timely way; and
 - (ii) specify reasonable timeframes for responding to and progressing enquiries, requests for access and complaints; and
 - (iii) specify reasonable timeframes and arrangements for resolving disputes; and
 - (e) ensure that the above policies and procedures do not affect either party's right to refer a dispute for arbitration by the ACCC in accordance with Part XICB of the *Competition and Consumer Act 2010*; and
 - (f) maintain and publish policies and procedures designed to ensure that investment, design or development of its Core Systems, including changes to its Core Systems, do not create or raise barriers to access from Unaffiliated Entities; and

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- (g) include in any public statements about material investments in Core Systems, a statement whether the policies and procedures referred to in paragraph 2.3.1(3)(f) have been complied with.

Part 2.4 – Reporting, policies and procedures

Rule 2.4.1 Covered Services comparative report

48. Rule 2.4.1 aims to enhance transparency about the pricing of Covered Services by requiring a CS Service Provider to obtain an independent expert report comparing the pricing of its Covered Services with the price of similar services in other comparable international markets. This report must be prepared and published within a year of the rules commencing and subsequently at least every five years. For guidance on the independence of experts, see ASIC Regulatory Guide 112 *Independence of experts* (RG 112).
49. In addition to providing an evidence set about the pricing for Covered Services relative to international markets, it is expected that this regular exercise will itself have a disciplining effect on the pricing conduct of CS Service Providers. To guard against the possibility that a CS Service Provider could frame the terms of reference for the comparative report in a way that is likely to produce a more favourable outcome, Rule 2.1.2 (discussed above) requires a CS Service Provider to enable the User representative body or bodies to review and provide feedback on the proposed terms of reference, and to have regard to such feedback before finalisation.

Rule 2.4.2 Cost Allocation Model report

50. Given the significant impact that the allocation of costs can have on an entity's cost base and on price levels, it is important that a CS Service Provider's model for the internal allocation of costs (required under paragraph 2.2.1(2)(e)) is subject to independent review and challenge. Rule 2.4.2 accordingly requires a CS Service Provider to engage an independent expert to conduct a review and prepare a written report (***Cost Allocation Model Report***) about the extent to which the model ensures that:
- (a) where possible, costs are directly allocated to the services which give rise to the costs; and
 - (b) shared costs are allocated based on appropriate, proportionate, and transparent metrics.
51. The Cost Allocation Model Report must be prepared before any change is made to the internal cost allocation model (and in any case within 13 months of the commencement of the Rules), provided to the board of the CS Service Provider, and made publicly available. This will ensure that the board has access to an independent expert view as to the degree to which the (proposed) internal cost allocation model achieves its intended outcomes and enhance transparency as to the pricing conduct of CS Service Providers.

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52. The reporting triggers in rule 2.4.2 are designed to ensure that the internal cost allocation model maintained and published by a CS Service Provider in accordance with paragraph 2.2.1(2)(e) is accompanied by an independent expert report about the extent to which it ensures the matters identified in subparagraph 2.2.1(2)(e)(ii). Changes that do not impact the operation of the model itself (for example, correcting typographical errors in underlying documents) will not trigger the reporting requirement in paragraph 2.4.2(2)(a).

Rule 2.4.3 Management accounts

53. To further enhance pricing transparency, rule 2.4.3 requires a Covered Licensee to publish management accounts in respect of its Covered Services, together with an independent expert assurance, for each financial year during which it provides Covered Services. The management accounts must include a description of whether the internal allocation of costs for the financial year that is reflected in the management accounts is consistent with the model for the internal allocation of costs referred to in paragraph 2.2.1(2)(e) and, if not, the extent of any inconsistency.

Rule 2.4.4 Policies and procedures

54. Rule 2.4.4 imposes specific documentation requirements designed to promote compliance with the CS Services Rules and provide stakeholders with confidence that CS Service Providers have adequate arrangements in place to ensure that possible intragroup conflicts of interest are managed appropriately and that sensitive or confidential information provided by Unaffiliated Entities is not mishandled within the group.
55. Subrule 2.4.4(1) provides that an entity that is required to comply with the CS Services Rules must maintain documented policies and procedures that, as far as reasonably practicable, ensure compliance with the CS Services Rules.
56. Subrule 2.4.4(2) provides that, without limiting subrule 2.4.4(1), a CS Service Provider must ensure that it has appropriately documented policies and procedures in place to identify and mitigate any actual or perceived conflicts between the interests of:
- (a) the CS Service Provider, or an Associated Entity; and
 - (b) an Unaffiliated Entity.
57. Subrule 2.4.4(3) provides that, without limiting subrule 2.4.4(1), a CS Service Provider must maintain and review, at least on an annual basis, documented policies and procedures for handling of sensitive or confidential information that ensure, as far as reasonably practicable that commercial information provided to it by Unaffiliated Entities is:
- (a) handled as confidential information; and
 - (b) provided only to those with a need to know; and

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- (c) not used to advance the interests of the CS Service Provider or its Associated Entities.

Rule 2.4.5 External assurance report – Core Systems

58. Rule 2.4.5 provides that, before making material changes to its Core Systems, a Covered Licensee must engage an independent expert to conduct a review and prepare a written report (***External Assurance report***) about compliance with the requirements related to ensuring that Core Systems meet the differing needs of Users, do not raise or create barriers to access, and facilitating technical interoperability (including through the adoption of relevant International Open Communication Procedures and Standards). The External Assurance report must address likely impact of the proposed material changes on compliance.
59. To strike a balance between the currency of the External Assurance report and ensuring that both the report and the feedback of the representative body can serve as an input into the board’s decision about whether to implement the proposed material changes, subrule 2.4.5(2) specifies that the External Assurance report must be:
- (a) completed no more than 120 days, and no less than 90 days, before the board makes a final decision; and
 - (b) provided to the board within 5 days of being completed; and
 - (c) provided to the representative body for feedback within 5 days after being provided to the board; and
 - (d) made publicly available as soon as reasonably practicable after it has been provided to the board, and at least 30 days before the final decision of the board.
60. ASIC recognises that there may be cases in which an External Assurance report may not be warranted even though a proposed change could be described as ‘material’. In such a case, a Covered Licensee may apply to ASIC for an exemption from the requirements of this rule under section 828R of the Act.

Incorporation by reference

61. This instrument incorporates by reference:
- International Organization for Standardization (ISO) standard 20022 Financial services – Universal financial message scheme (***ISO standard***); and
 - Financial Information eXchange (FIX) protocol 5.0 (***FIX protocol***).
62. The ISO standard and FIX protocol are incorporated by reference as ‘International Open Communication Procedures and Standards’. A CS Service Provider must take reasonable steps to ensure that any changes to its Core

Systems accommodate relevant International Open Communication Procedures and Standards.

63. The ISO standard can be obtained through www.iso.org. The current edition of the standard includes eight parts, published in May 2013.
64. The FIX protocol can be obtained through www.fixtrading.org.

This incorporation by reference complies with subsection 14(1) of the Legislation Act as it incorporates the referenced ISO standard and FIX protocol as existing at the time the CS Services Rules commences. ASIC will consider future updates to the CS Services Rules in the event that there is any change to relevant standards for messaging and reference data.

Legislative instrument and primary legislation

66. The subject matter and policy implemented by this instrument is more appropriate for a legislative instrument rather than primary legislation because:
 - (a) The instrument is made under a power specifically delegated to ASIC which requires a detailed, technical assessment that is best suited for ASIC to undertake rather than Parliament. The instrument operates to fill in a more comprehensive regulatory framework that sits alongside the primary law; and
 - (b) The matters contained in the instrument only affect a relatively small subset of CS Service Providers and Covered Licensees. If the matters in the instrument were to be inserted into the primary legislation, they would insert, into an already complex statutory framework, a set of specific provisions that would apply only to a relatively small group of entities. This would result in additional cost and unnecessary complexity for other users of the primary legislation.

Duration of the instrument

67. This instrument will automatically sunset in accordance with section 50 of the *Legislation Act 2003 (Legislation Act)* on 1 April 2035.
68. This duration is appropriate because:
 - (a) The instrument is made under a specifically delegated power which is set out in the primary legislation and is intended to complement the requirements or objectives in the primary legislation – see Part 7.3A of the Act; and
 - (b) There would be appreciable business uncertainty about the treatment of, or framework for, business activities giving rise to significant commercial risks and/or costs if the sunset period was shorter.

Legislative authority

69. The instrument is made under section 828A of the Act.

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70. Section 828A of the Act provides that rules made under this section are by way of legislative instrument. This means that such rules are subject to disallowance in accordance with section 42 of the Legislation Act. Section 44 of the Legislation Act does not apply to this instrument. This instrument is subject to disallowance.
 71. Section 828K of the Act provides that ASIC must not make a CS services rule unless the Minister has consented, in writing, to the making of the rule. The Minister consented to the making of this instrument by written notice to ASIC dated 13 February 2025.

Limitations on rule making power – Ministerial determination

72. Subsection 828B(1) of the Act provides that the CS services rules cannot impose requirements in relation to CS services unless the CS services are covered by a determination under section 828B of the Act.
73. On 13 May 2024, the Assistant Treasurer made the Ministerial Determination under subsection 828B(5) of the Act, determining the classes of CS services in relation to which CS services rules may impose requirements. Under the Ministerial Determination, the class of CS services determined for subsection 828B(2) of the Act is a CS service relating to cash equities (being a type of financial product).
74. The CS Services Rules apply only to CS services relating to cash equities.

Statement of Compatibility with Human Rights

75. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC CS Services Rules 2025

Overview

1. The *ASIC CS Services Rules 2025* (the ***instrument***) impose requirements dealing with the activities, conduct and governance arrangements of providers of cash equity clearing and settlement (***CS***) services. The instrument is intended to establish formalised and clear baseline obligations to promote competitive outcomes in the provision of cash equity CS services, where the ASX group is the monopoly provider of cash equity CS services. The instrument is made in relation to cash equity CS services specified under the *Corporations and Competition (CS Services) Instrument 2024*.
2. The instrument imposes requirements for the following key areas:
 - (a) governance frameworks with mechanisms for users to provide input into strategy setting, operational arrangements, and system design;
 - (b) transparent, non-discriminatory, fair and reasonable pricing arrangements;
 - (c) access to services on commercial, transparent and non-discriminatory terms;
 - (d) core information technology systems used to provide cash equity CS services to facilitate foundational technical interoperability with users' systems that do not raise barriers to entry;
 - (e) publication of an international pricing comparison report and a cost allocation model report;
 - (f) publication of audited management accounts for CS services;
 - (g) arrangements for management of intragroup conflicts of interest; and
 - (h) independent assurance that changes to core systems do not result in barriers to access for unaffiliated entities, including in relation to interoperability.

Assessment of human rights implications

3. This instrument does not engage any of the applicable rights or freedoms.

Conclusion

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4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.