

# Attachment to CP 379: Draft rules



**ASIC**  
Australian Securities &  
Investments Commission

## **ASIC CS Services Rules 2024**

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# Chapter 1: Introduction

## Part 1.1: Preliminary

### 1.1.1 Enabling Legislation

ASIC makes this instrument under section 828A of the Act.

### 1.1.2 Title

This instrument is *ASIC CS Services Rules 2024*.

### 1.1.3 Commencement

This instrument commences three months after this instrument is registered on the Federal Register of Legislation.

Note: The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

### 1.1.4 Penalties for a contravention of these Rules

The maximum pecuniary penalty payable for a contravention of a provision of these Rules is an amount determined by the Court under section 1317G of the Corporations Act.

## Part 1.2: Interpretation

### 1.2.1 Words and expressions defined in the Act

Words and expressions defined in the Act will unless otherwise defined or specified in these Rules or the contrary intention appears, have the same meaning in these Rules.

### 1.2.2 Definitions

*Act* means the *Corporations Act 2001*.

*Associated Entity* has the meaning given by section 50AAA of the Act.

*Core System* means an information technology system that is used to provide a Covered Service.

*Covered Licensee* means each of ASX Clear Pty Limited (ACN 001314503) and ASX Settlement Pty Limited (ACN 008504532).

*Covered Service* means a CS service as defined in section 828 of the Act that is covered by a determination under section 828B of the Act.

Note: Determinations made under section 828B are available on the Federal Register of Legislation. The register may be accessed at [www.legislation.gov.au](http://www.legislation.gov.au).

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**CS Service Provider** means:

- (a) a Covered Licensee; or
- (b) a direct or ultimate holding company of a Covered Licensee and any intermediate holding company of a Covered Licensee that makes, or participates in making, decisions that relate to Covered Services; or
- (c) an Associated Entity of a Covered Licensee if the Associated Entity provides a Covered Service.

**FIX** means the Financial Information eXchange protocol overseen and managed by FIX Protocol Ltd, and any reference to FIX followed by a number means the standard of that number.

Note: For example, FIX 5.0 means the standard numbered 5.0 that is maintained and published by FIX Protocol Ltd.

**International Open Communication Procedures and Standards** means the following procedures and standards for messaging and reference data:

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

**ISO** means the International Organization for Standardization, and any reference to ISO followed by a number means the standard of that number.

Note: For example, ISO 20022 means the standard numbered 20022 that is maintained and published by ISO.

**Issuer** has the meaning given by section 761E of the Act.

**Rules** means these *ASIC CS Service Rules 2024*.

**Share Registry** means an entity appointed by an Issuer to maintain a register required under section 168 or section 672DA of the Act.

**Technology Service Provider** means a person engaged by a User to facilitate the User's access to a Core System.

**User** means a person that uses or proposes to use, either directly or indirectly, a Covered Service provided by a CS Service Provider, including but not limited to:

- (a) a participant in a licensed CS facility operated by a Covered Licensee;
- (b) a participant in a licensed market for which a Covered Licensee provides clearing and settlement arrangements;
- (c) the operator of a financial market;
- (d) the operator of a clearing and settlement facility;
- (e) an Issuer; and
- (f) a Share Registry.

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***Unaffiliated Entity*** means a User that is not:

- (a) a Covered Licensee; or
- (b) an Associated Entity of a Covered Licensee.

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## Chapter 2: Conduct Rules

### Part 2.1: Governance requirements

#### 2.1.1 Board composition

- (1) A Covered Licensee's board must be comprised of at least 50% non-executive directors who are independent of its ultimate holding company.
- (2) A quorum of a Covered Licensee's board must be able to be formed by the non-executive directors referred to in subrule (1).
- (3) An Associated Entity of a Covered Licensee that controls a Covered Licensee must ensure a Covered Licensee's compliance with subrules (1) and (2).

#### 2.1.2 User input

- (1) A CS Service Provider's governance framework for decisions that relate to Covered Services (including investment strategy for Covered Services) must incorporate arrangements that:
  - (a) provide for one or more representative bodies of Users and Technology Service Providers to meet with the CS Service Provider regularly, and at least quarterly;
  - (b) ensure the representative body or bodies is or are representative of all Users and Technology Services Providers;
  - (c) enable the members of the representative body or bodies to contribute to the agenda and format of the relevant body's meetings;
  - (d) ensure that members of the representative body or bodies have input into the CS Service Provider's strategy setting, priorities, operational arrangements, and Core System design;
  - (e) enable the representative body or bodies to review and provide feedback on:
    - (i) proposed terms of reference for the annual audit required under Rule 2.4.3; and
    - (ii) on any external assurance report required under Rule 2.4.6;
  - (f) ensure that the board of the CS Service Provider considers all relevant issues raised, and any recommendations made, by a representative body; and
  - (g) ensure any decision to take action that does not accord with the recommendations of a representative body are documented and given to the representative body, together with reasons for the decision, as soon as practicable after the decision is made.
- (2) A CS Service Provider must have regard to feedback provided under paragraph (1)(e) before:
  - (a) finalising the terms of reference for the annual audit required under Rule 2.4.3; or

- (b) a final decision is made by the board on the investment, design, development, or implementation of its Core Systems, including any material changes to its Core Systems.
- (3) A CS Service Provider must:
  - (a) publicly report on the CS Service Provider's interactions with Users (including but not limited to interactions with the representative body or bodies referred to in subrule (1) for each quarter starting on the date these Rules commence, within one month of the end of each quarter; and
  - (b) publicly report on service developments and investment projects related to Covered Services, for each 12 month period starting on the date these rules commence, within one month of the end of each 12 month period; and
  - (c) ensure that both the quarterly and annual reports referred to in this subrule include an explanation of feedback received from Users and Technology Service Providers, and explain how that feedback has contributed to decision making by the CS Service Provider.

### 2.1.3 Organisational requirements

- (1) A CS Service Provider must maintain and operate effective written organisational and administrative arrangements that promote access to its Covered Services on commercial, transparent, and non-discriminatory terms in accordance with Rule 2.3.1. These arrangements must include, but are not limited to:
  - (a) well-defined, transparent and consistent reporting lines;
  - (b) ensuring staff with appropriate seniority and authority regularly review the effectiveness of the reporting lines referred to in paragraph (a);
  - (c) ensuring that key performance indicators for relevant staff include accountability for compliance with this Rule.
- (2) A CS Service Provider must maintain accurate records of the written arrangements required under subrule (1) and the allocation of responsibilities in relation to Covered Services, and retain those records for a period of at least 5 years.

### 2.1.4 Core Systems

A CS Service Provider must take all reasonable steps to ensure that:

- (a) its Core Systems meet the differing needs of Users;
- (b) its Core Systems do not raise barriers to access by Users; and
- (c) any changes to its Core Systems accommodate International Open Communication Procedures and Standards.

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## Part 2.2: Pricing of Covered Services

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

- (1) A CS Service Provider must take all reasonable steps to ensure that the pricing of its Covered Services, is transparent, fair, and reasonable.
- (2) Without limiting the steps a CS Service provider must take under subrule (1), a CS Service Provider must:
  - (a) not discriminate in favour of the CS Service Provider or any of its Associated Entities, except to the extent that the efficient costs of providing the same service to another party was higher;
  - (b) publish fee schedules for each Covered Service, in a clear, consistent and accessible form, that includes:
    - (i) a description of the Covered Service;
    - (ii) applicable terms and conditions;
    - (iii) eligibility for any rebates;
    - (iv) any revenue-sharing arrangements; and
    - (v) discounts applicable;
  - (c) make available on its website, information and tools to assist Users to anticipate the price they will have to pay for the use of Covered Services, which enables Users to assess:
    - (i) the expected cost impacts of any pricing changes;
    - (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;
  - (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;
  - (e) maintain and publish a model for the internal allocation of costs, including the cost of allocated capital, and policies to govern the transfer of prices between the relevant CS Service Provider and Associated Entities, that ensures:
    - (i) where possible, costs are directly allocated to the services which gives rise to the costs; and
    - (ii) shared costs are allocated based on appropriate, proportionate and transparent metrics;
  - (f) maintain and publish a methodology for determining the prices of its Covered Services that demonstrates that the expected revenue from the provision of Covered Services

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reflects the efficient costs of providing those services, including a return on investment commensurate with the commercial risks involved;

- (g) ensure that any fee change for its Covered Services and any fees imposed for new Covered Services is consistent with subrule (1), and publish on its website a document explaining the basis of any such change or new fees, including, but not limited to:
    - (i) an explanation of the relevant metrics and other evidence used as a basis for the fee change; and
    - (ii) an explanation of how the fee change complies with the policies and procedures referred to in paragraph (2)(d);
  - (h) maintain records that demonstrate how it is complying with paragraph (2)(a), and retain those records for a period of at least 5 years; and
  - (i) negotiate commercially and in good faith with Users regarding fees and other financial contributions charged for changes to Covered Services provided to a User; and
  - (j) maintain accurate records that explain how it has negotiated with Users referred to in paragraph (2)(i), and retain those records for a period of at least 5 years.
- (3) A CS Service Provider must consult with Users about any proposed material changes to a policy, procedure, model, or other document required under subrule (2).

Note: A CS Service Provider must engage an independent person to prepare a report on compliance with subrule 2.2.1(2)(e): see Rule 2.4.2.

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## Part 2.3: Access to Covered Services—service levels, information handling and confidentiality

### 2.3.1 Non-discriminatory access

(1) A CS Service Provider must provide access to its Covered Services (including data) on commercial, transparent and non-discriminatory terms.

(2) A CS Service Provider must take all reasonable steps to ensure that:

- (a) it deals with User requests to access Covered Services (including access to its Core Systems) in a fair and timely way;
- (b) the design of its Core Systems facilitates technical interoperability with systems used by Unaffiliated Entities to access Covered Services, including through the adoption of appropriate International Open Communication Procedures and Standards; and
- (c) its Core Systems are designed and developed in a way that does not raise barriers to access by Unaffiliated Entities

(3) Without limiting the manner in which a CS Service Provider complies with subrules (1) and (2), a CS Service Provider:

- (a) must 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 with the legitimate business interests of access seekers, including through the use of standardised terms and conditions;

- (b) 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 substantially equivalent to those that apply to the CS Service Provider or any of its Associated Entities;
- (c) maintain and publish with policies and procedures that:
  - (i) require requests for access to the CS Service Provider's services to be dealt with in a fair and timely way;
  - (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;
- (d) ensure the policies and procedures referred to at paragraph (c) above do not affect either party's right to refer a dispute for arbitration by the Australian Competition and Consumer Commission in accordance with Part XICB of the Competition and Consumer Act 2010;

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- (e) 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 raise barriers to access from Unaffiliated Entities;
- (f) include in any public statements about material investments in Core Systems, a statement whether the policies and procedures referred to in subrule (e) have been complied with.

Note: A CS Service Provider must engage an independent person to prepare a report on compliance with Rule 2.1.4 and subrules 2.3.1(2)(b) and (c); see Rule 2.4.6.

## Part 2.4: Reporting, policies and procedures

### 2.4.1 Covered Services comparative report

- (1) A CS Service Provider must:
  - (a) engage an independent person with appropriate skills, knowledge, and experience to prepare a report (comparative report) comparing the pricing of its Covered Services against the price of similar services in other comparable international markets; and
  - (b) publish a summary of the comparative report as soon as practicable after the comparative report is prepared.
- (2) A CS Service Provider must prepare and publish a summary of the comparative report as required under subrule 2.4.1(1):
  - (a) within 12 months after these Rules commence; and
  - (b) at least once in each five year period starting on the date the first comparative report is published under paragraph (a).

### 2.4.2 Cost Allocation Model report

- (1) A CS Service Provider must engage an independent person with appropriate skills, knowledge, and experience to conduct a review and prepare a written report (Cost Allocation Model report) about the extent to which the CS Service Provider's model for the internal allocation of costs referred to in subrule 2.2.1(2)(e) ensures the matters specified in subrules 2.2.1(2)(e)(i) and (ii).
- (2) A Cost Allocation Model report must be:
  - (a) prepared before any change is made to the CS Service Provider's model for the internal allocation of costs referred to in subrule 2.2.1(2)(e); and
  - (b) completed and provided to the board of the CS Service Provider as soon as reasonably practicable after it has been prepared, and in any event no later than 2 months after the completion of the report; and
  - (c) made publicly available as soon as reasonably practicable after it has been provided to the board, and in any event no later than one month after it has been provided to the board.

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(3) If no Cost Allocation Model report needs to be prepared under subrule (2) in the 12 month period from the commencement of these Rules, a CS Service Provider must arrange for a Cost Allocation Model report to be prepared, provided to the board and made publicly available by no later than 13 months after these Rules commence.

### **2.4.3 Annual external audit**

(1) A CS Service Provider must engage an independent expert to conduct an audit and prepare a written report (Annual Review report) about the CS Service Provider's compliance with these Rules.

(2) The Annual Review report must be:

- (a) prepared each year, starting on the date these Rules commence;
- (b) completed and provided to the board of the CS Service Provider as soon as reasonably practicable after the report has been prepared, and in any event no later than 2 months after the completion of the report; and
- (c) made publicly available as soon as reasonably practicable after it has been provided to the board, and in any event no later than one month after it has been provided to the board.

### **2.4.4 Management accounts**

(1) A Covered Licensee must publish management accounts in respect of its Covered Services.

(2) The management accounts must:

- (a) include a cost allocation and transfer pricing policy that describes the methodology used for allocating revenue, directly attributable costs, indirect and common shared costs and capital that relates to all services provided by a CS Service Provider, including those relating to Covered Services;
- (b) be published annually; and
- (c) be subject to an assurance review by an independent person with appropriate skills, knowledge, and experience.

### **2.4.5 Policies and procedures**

(1) An entity that is required to comply with these Rules must maintain documented policies and procedures that ensure as far as reasonably practicable ensure compliance with these Rules.

(2) Without limiting subrule (1), a Covered Licensee 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 Covered Licensee, or an Associated Entity; and
- (b) an Unaffiliated Entity.

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(3) Without limiting subrule (1), a CS Service Provider must maintain and review, at least on a quarterly basis, documented policies and procedures for the 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,
- (b) provided only to those with a need to know, and
- (c) not used to advance the interests of the CS Service Provider or its Associated Entities.

#### **2.4.6 External assurance report—Core Systems**

(1) A Covered Licensee must engage an independent expert to conduct a review and prepare a written report (External Assurance report) about compliance with Rule 2.1.4 and subrules 2.3.1(2)(b) and (c).

(2) The External Assurance report must be:

- (a) prepared prior to each final decision by the board about investment, design, development, or implementation of its Core Systems, including material changes to its Core Systems;
- (b) provided to the representative body for feedback in accordance with Rule 2.1.2;
- (c) provided to the board of the CS Service Provider as soon as reasonably practicable after the representative body has provided its feedback, and in any event no later than 2 months after the completion of the report; and
- (d) made publicly available as soon as reasonably practicable after it has been provided to the board, and in any event no later than one month after it has been provided to the board.