



23 June 2023

Chair
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email to: Corporations.Joint@aph.gov.au

ADDITIONAL INFORMATION FOLLOWING ASX APPEARANCE ON 8 JUNE 2023

Dear Chair

At ASX's appearance before the Parliamentary Joint Committee on Corporations and Financial Services (the **Committee**) on 8 June 2023, ASX provided evidence on a number of matters, responding to questions from Committee members. In addition to the evidence given on the day, and in light of evidence given by other witnesses during the hearing, ASX would like to provide the Committee with additional information to supplement its oral evidence.

We also note that ASX took a number of questions on notice during the hearing, answers to which are being provided separately at the same time as this letter. We have endeavoured to respond to all of the questions related to Digital Asset taken on notice in the hearing and provide as much clarifying information related to Digital Asset in this letter as possible given the current ASIC investigation. Given the ASIC investigation, we are unable to provide any further responses to the matters raised in Digital Asset's submission to the Committee.

Independence of Accenture

As noted during ASX's appearance before the Committee, ASX is of the view that it received an independent report on the ASX CHES Replacement Application Delivery Review by Accenture (the **external review**). The findings from the external review were difficult to receive from ASX's perspective and led to ASX taking the difficult decisions it did in November 2022.

Arrangements were put in place to manage the conflicts of interest and ensure an independent report was provided, including:

- > ASX engaged with the regulatory agencies on the statement of work for the external review and, as part of this process, incorporated their feedback.
- > The statement of work (which set out the scope of the review) was also independently reviewed by EY at the start of the review process. As a result of this review, some changes were made to the scope of work.
- > The six core areas considered by the external review were identified by ASX and Digital Asset in collaboration.
- > Throughout the review process, Accenture had direct engagement with the regulatory agencies on the progress and findings of the review. The agencies were also provided the deliverables from the review by Accenture at the same time as they were provided to ASX.

20 Bridge Street
Sydney NSW 2000

ASX also notes that Digital Asset was consulted on the statement of work for the external review. Changes were made to the statement of work to reflect feedback from Digital Asset, which Digital Asset subsequently agreed to prior to ASX's execution of the statement of work with Accenture.

Chairmanship of Digital Asset

ASX confirms that Mr Peter Hiom was Chair of Digital Asset from approximately June 2019 to October 2020. Mr Hiom's appointment as Chair was made following the unexpected resignation of the previous Chair. Upon Mr Hiom's appointment, ASX understands it was the intention of the Digital Asset Board was to reassess the appointment to Chair after a period of 12 to 18 months with the objective of identifying a long-term independent Chair.

Mr Hiom agreed to the appointment on the basis that it was supported by the other directors of Digital Asset and that arrangements were put in place to ensure that Mr Hiom and the Board were able to appropriately manage any conflicts of interests (perceived or actual), including an alternate Chair in the event that Mr Hiom needed to recuse himself. The Digital Asset Board met and unanimously voted to appoint Mr Hiom as Chair, and for Mike Bodson, the CEO of the Depository Trust and Clearing Corporation (DTCC) to act as the alternate.

Mr Hiom remained on the Board of Digital Asset until June 2021. ASX confirms that there are currently no ASX employees on the Board of Digital Asset.

Engagement of EY

Following the Chair's questions relating to whether EY were retained to manage Digital Asset's Australian interests, ASX has sought further information directly from EY. EY has confirmed to ASX that:

- > EY is not retained to manage Digital Asset's Australian interests.
- > Since 2016, EY Australia has not been engaged by Digital Asset.
- > The US EY firm has an agreement with Digital Asset in the US market. It has not provided services to Digital Asset in connection with the ASX CHES replacement project.

A copy of EY's letter to ASX on this matter is attached. ASX requested, and EY consents, to the letter being provided.

Location of Digital Asset office

In the hearing, the Chair indicated that Digital Asset is no longer located at 20 Bridge Street, Sydney. ASX would like to confirm that Digital Asset continues to occupy the offices on Level 12 at 20 Bridge Street, Sydney. It is noted that ASX occupies the offices on Levels 1 – 6, Level 11 and Exchange Square at 20 Bridge Street, Sydney.

Trade Acceptance Service

Evidence given by the National Stock Exchange of Australia (NSXA) indicated that there was a three and half year process for NSXA to gain access to the Trade Acceptance Service (TAS). ASX would like to note the following timeline:

- > **June 2018** – NSXA formally lodged an application for the use of the TAS, following discussions commencing in 2017.
- > **September 2018** – Management of ASX Clear and ASX Settlement began discussions with ASIC and the RBA about the NSXA application. The results of the clearability assessment of NSXA securities were provided to ASIC and the RBA at this time.
- > **December 2018** – Management wrote to ASIC and the RBA, setting out the terms on which ASX was prepared to accept NSXA's application for the TAS and to formally seek a response from the regulatory agencies on certain regulatory questions before a final decision could be taken. The questions related to ensuring ASX Clear and ASX Settlement were able to continue to meet their regulatory obligations.
- > **February 2019** – Management responded to RBA and ASIC requests for further information.
- > **August 2019** – ASIC and RBA arranged a meeting with ASX to discuss the provision of the TAS to NSXA. During this meeting, the agencies set out their agreed 'Open Access Principles for a licensed market seeking access to ASX Clear' (Open Access Principles).

- > **February 2020** – Management informally lodged rule amendments with ASIC which incorporated references to the Open Access Principles within the rules and permitted NSXA to receive the TAS.
- > **February 2020** – Access to the TAS was provided to NSXA for testing.
- > **October 2020** – The Council of Financial Regulators released the final Open Access Principles and ASX was invited by ASIC to formally lodge the rule amendments.
- > **November 2020** – The rule amendments received regulatory clearance on 9 November 2020. NSXA commenced use of the TAS on 23 November 2020.

Interoperability of CHESS replacement solution

Evidence given by NSXA also raised the issue of interoperability.

ASX notes that interoperability is a requirement for the new solution design, including that there be modular technology architecture with separate components for clearing, settlement and sub-register services. In the Request for Information (RFI) to vendors, there were four specific questions related to the requirements for interoperability and extensibility. Subsequent to the RFI process, a Request for Proposal (RFP) was sent to certain vendors and there were eight requirements related to interoperability. Separately, there are criteria related to interoperability and extensibility in the project principles and the Solution Decision Framework, which is used for assessing the respective solution options during this phase of the project.

The RFI questions, the project principles and the Solution Decision Framework have all been shared with members of the Technical Committee.

Componentisation in the technology architecture and extensibility are key to enabling interoperability. Interoperability will make it easier to facilitate competition in clearing and settlement services, should a competitor emerge.

Issuer services pricing changes

Evidence given by NSXA also raised changes made to issuer services pricing. The Committee expressed an interest regarding the timing of these changes.

The changes to issuer services pricing commenced on 1 July 2022. This followed a public consultation process on the proposed changes to issuer services pricing, which commenced on 3 March 2022. ASX's response to consultation feedback was publicly released on 1 June 2022.

The decision to pause the CHESS replacement project in November 2022 was taken following the findings of the ASX CHESS Replacement Application Delivery Review by Accenture, which was commissioned by ASX in early August 2022.

Changes to ASX's staggered opening

Evidence given by the Financial Services Council raised the issue of removing ASX's staggered opening, and the Committee members indicated they would consider putting further questions on notice to ASX. While we are yet to receive further questions on notice, the following information may be of assistance to the Committee.

The staggered open for groups of securities has been in place for some time to facilitate order management by ASX market participants during the opening of the equity market.

ASX acknowledges that a single opening time is the globally accepted method for opening equity markets and notes that it would reduce technical and operational complexities on both a regular basis and during recovery from an outage event.

On 21 March 2018, ASX released a consultation paper on the Management of the ASX Market that included a proposal to remove the staggered open. Respondents expressed a range of views regarding the proposal, with eight favouring the removal of the staggered open whilst six respondents supported maintaining it. Four respondents did not express a view. ASX considered all feedback in relation to the proposal, and further considered the impact on market practice and the effort required by participants in adjusting to the proposal.

In light of these considerations, ASX decided to maintain the staggered open for the near term, whilst committing to further explore possible ways of simplifying the opening process. Following the upgrade of ASX trade, ASX has continued to engage with customers on the opening of the equity market. It is ASX's intention to remove the staggered open in 2024.

ASX welcomes the opportunity to discuss these matters further with the Committee.

Kind regards

Johanna O'Rourke
Group General Counsel and Company Secretary

Attachments:

- > **Attachment A** – Letter from EY to ASX regarding Digital Asset



Ernst & Young Australia
200 George Street
Sydney NSW 2000 Australia

Tel: +61 2 9248 5555
Fax: +61 2 9248 5959
ey.com/au

16 June 2023

ASX Limited
20 Bridge Street
Sydney NSW 2000

Parliamentary Joint Committee ('PJC') inquiry re Digital Asset links

Dear

I refer to your letter dated 14 June 2023 regarding questions asked of ASX attendees at the PJC hearings on 8 June 2023. The questions from Senator O'Neill referred to a business relationship between EY and Digital Asset Holdings LLC ('Digital Asset') and suggested that the nature of such connections would have an impact on EY's ability to be truly independent in discharging our role in relation to the ASX CHES replacement program.

You will recall that, prior to being appointed in December 2021, we had several exchanges with representatives of ASX and with officers of ASIC and RBA in relation to a number of matters, including the scope of our work; agreement for our reports to be made publicly available; and our ability to demonstrate and maintain independence from ASX. You might also recall that our independence was specifically required to be demonstrated prior to the regulators agreeing that EY was a suitable appointee.

Concurrently, although our scope of work did not extend to the choice of technology nor its functionality, and therefore the risk of any conflict was minimal, we undertook internal systems checks and made inquiries regarding prior and existing engagements, and the extent of any EY relationship, with Digital Asset. These procedures did not identify any conflicts or perceived conflicts, nor any impediment to our independence.

Hence, we were surprised by the inferences which Senator O'Neill's questions of ASX raised. Accordingly, since the hearings on 8 June 2023, we have repeated our independence and conflict checks in relation to Digital Asset.

That exercise has not uncovered any matters that would impair our independence or present a conflict or perceived conflict to our appointed roles. Specifically, consistent with the outcomes of our review in 2021, we can confirm that:

- EY does not have any engagement under which we are 'retained to manage Digital Asset's Australian interests' (adopting the expression used by the Senator). We have reconfirmed this both locally and with the EY US firm.
- Since 2016 EY Australia has not had any engagements with Digital Asset. The engagement that was completed in 2016 was limited to immigration services – for example, submitting visa applications.



- The EY US firm has an agreement with Digital Asset for that firm in the US market whereby, in circumstances where specialised products or services of Digital Asset are suitable for client needs, EY US and Digital Asset will deliver the solution to that client. Neither EY Australia nor EY US have worked in that capacity in connection with the ASX CHESS replacement program.

Further, I would like to also confirm that ASX Limited and its affiliates are flagged in EY's Global Independence System, our intranet-based tool that helps EY professionals identify entities for which independence is required, as requiring consultation with me prior to any engagement with ASX being accepted. This allows me to appropriately monitor our ongoing relationship with ASX and preserve the independence required of our appointments in connection with the CHESS replacement program.

If you have any questions about these arrangements, please contact me.

Yours sincerely,

Rowan Macdonald

Partner