

Senate Standing Committee on Economics
ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

Department: Department of the Treasury
Topic: Legislation consultation
Reference: Spoken (23 Apr 24 p.39)
Senator: Dean Smith

Question:

Senator DEAN SMITH: But we're actually not talking about the minister's authority; we're talking about the parliament's authority. This is a policy decision that seeks to remove parliamentary scrutiny and parliamentary oversight. Is this a proposition that the Treasury put to the Treasurer, or is this a proposition that the Treasurer has put to the Treasury and asked it to be included in the bill? Secondly, am I clear that the Treasury has not engaged with the Australian stock exchange or any other stakeholders in regard to this particular proposal?

Mr Wilkey: I might have to take that one on notice. The consultations for this legislation go back to 2011, so I can't speak to the prior consultations that have gone on.

Senator DEAN SMITH: To be clear, I'm just interested in the attitude of this government to this bill, which is in its name, and the origin of this particular amendment. On notice, could you provide me with some information about who Treasury has consulted on this particular aspect of the bill and to what extent?

Ms Hoang: Yes.

Senator DEAN SMITH: That would be great. Thank you very much.

Answer:

In 2019, Treasury consulted industry on a broad range of reforms to the regulation of financial market infrastructures (FMI) including changing legislation to align restrictions to Australian Stock Exchange (ASX) Limited voting power to be treated the same as other widely held market bodies. This proposal was originally put forth by the 2014 *Financial System Inquiry* (FSI), which recommended to “*remove market ownership restrictions from the Corporations Act 2001 once the current reforms to cross-border regulation of financial market infrastructure are complete.*” The FSI added that ownership restrictions on the ASX should be the same as for other entities in the financial sector.

Subsequently, the Council of Financial Regulators (CFR) in its 2020 advice to the Government recommended to “*allow the Minister to approve increases in voting power in ASX Limited above 15 per cent under the widely held market body provisions.*”

In August 2022, the Treasurer agreed to all CFR recommendations and policy authority was subsequently granted by the Prime Minister.

Treasury undertook a public consultation on the draft legislation from 15 December 2023 to 9 February 2024. The ASX submission to the public consultation supported the policy.

Specifically, the submission stated, “*ASX supports transitioning to a Ministerial approval process for persons seeking to take a significant stake in all widely held market bodies, including ASX Limited. Repealing the bespoke ASX Limited provision ensures regulatory consistency with the broader process for widely held market bodies, is consistent with the Financial Sector Shareholdings Act 1998 (FSSA), and will streamline the process for interested parties seeking to take a significant portion of voting power in ASX.*”

Treasury did not receive any other substantive feedback on this particular amendment to legislation from the submissions.