

RESPONSE TO QUESTION ON NOTICE

Inquiry	Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 [Provisions]
Hearing Date	23 April 2024
Topic	850B(1)(c) of the Corporations Act

Questions

Senator Andrew Bragg:

1. Please list the occasions in the past when the Treasurer/Commonwealth has provided written advice to an institutional investor specifying that the Treasurer/Commonwealth intends to institute regulations as per 850B(1)(c) of the Corporations Act to allow an institutional investor to have voting power in ASX Limited in excess of 15% or any other prescribed limits for the purpose of section 850b of the Corporations Act.
2. Please list the occasions in the past under which the ASX has received advice from the Treasurer/Commonwealth notifying them of their intention to institute regulations giving effect to any proposed arrangements as per question 1.
3. Please list the occasions in the past when institutional investors have applied for or sought increased ownership of ASX Limited beyond the limit in 850B of the Corporations Act, which would require the Treasurer/Commonwealth to institute regulations as per 850B(1)(c) of the Corporations Act.
4. Which institutional investors, and when did they apply?
5. Were these institutional investors overseas or domestic investors?
6. Who are the current top 10 institutional investors in ASX limited (please provide their ownership share as a percentage)?
7. What did the ASX mean when it described the current process for approval via regulation as “onerous”?
 - a. Does the ASX consider the Senate disallowance mechanism to be an important tool to ensure sound oversight over major voting power acquisitions?
 - b. Does the ASX consider that it plays a different role in the Australian market to the other widely held market bodies?

Answer

1. ASX is not aware of any formal advice from the Treasurer/Commonwealth to an institutional investor notifying of an intention to make regulations allowing institutional investors to exceed the prescribed ownership limits under section 850B(1)(c).
2. ASX is not aware of any formal advice from the Treasurer/Commonwealth to ASX notifying of an intention to make regulations allowing an institutional investor to exceed the prescribed ownership limits under section 850B(1)(c).
3. ASX is not aware of an institutional investor having applied for or sought increased ownership of ASX Limited beyond the 15% threshold as set out in in the Corporations Act. Should an investor wish to increase its holding in ASX at any time from any level, it would not be required to notify ASX. In practice, ASX becomes aware of an investor’s holding in the company when there is a market announcement filed under the substantial holding requirements of the Corporations Act, that is where relevant interests represent 5% or more of the issued shares in ASX, or when the substantial holding changes by 1%, or the investor ceases to have a substantial holding (less than 5%).

4. Please see answer to Q3.
5. Please see answer to Q3.

6. Please see below table for ASX's top ten institutional investors*:

	Investor name	% of issued capital
1	UniSuper (Melbourne)	13.2
2	Australian Super (Melbourne)	7.6
3	State Street Corporation	6.7
4	BlackRock Inc	5.7
4	The Vanguard Group Inc.	5.3
6	Northcape Capital	1.9
7	Schroders	1.8
8	Macquarie Group	1.6
9	UBS Group AG	1.5
10	Geode Capital Mgt	1.3

*as at 16 February 2024

7. The reference to the current process as being 'onerous' was a reference to the process of drafting and tabling regulations, as compared with the process of Ministerial approval. This was referenced by the Council of Financial Regulators when recommending the change in 2019.

Ministerial approval of increases in voting power above the specified threshold for ASX is consistent with:

- arrangements in place under the *Financial Sector (Shareholdings) Act 1998* (FSSA), which provides for approval by the Treasurer for applications to exceed the 20 per cent shareholding limit in financial sector entities (defined as ADIs, authorised insurance companies, or their holding companies); and
- certain approval processes under the *Foreign Acquisitions and Takeovers Act 1975* (FATA), which allows the Treasurer to review and make determinations in respect of certain acquisitions and actions that may be contrary to the national interest or pose a national security concern.

Ensuring appropriate oversight of material changes in the voting interests in important financial sector entities is ultimately a matter for the Parliament. ASX considers that allowing for Ministerial approval which takes into account certain factors (such as national interest considerations) will aid in achieving a level of consistency with the oversight provided for under the FSSA and FATA.

The current list of widely held market bodies is prescribed in Corporations Regulation 7.4.01. ASX notes that all of the markets and clearing and settlement facilities prescribed as widely held market bodies are part of the ASX group, although some are referred to by previous names.