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Dr Sean Turner
Committee Secretary
Parliamentary Joint Committee on Corporations
and Financial Services
Parliament House
CANBERRA ACT

By Email – Corporations.Joint@aph.gov.au

Dear Dr Turner

**Statutory Inquiry into ASIC, the Takeovers Panel and the Corporations Legislation:
Cboe Submission**

Thank you for providing the Reserve Bank of Australia (RBA) with the opportunity to comment on the recommendations in the submission (Cboe Submission) from Cboe Australia Pty Ltd (Cboe) of 28 July 2023. Many of the recommendations cover matters within the jurisdiction of other Australian government agencies, including the Treasury and the Australian Securities and Investments Commission (ASIC). This submission will cover two matters of relevance to the RBA.

Default Fund

In Section 1.1 of the Cboe Submission, Cboe suggests that authorities reconsider the role of the Restricted Capital Reserve held by ASX Clear. Cboe indicates that there may be a case for returning those funds to the National Guarantee Fund (NGF) to support default management at all clearing and settlement facility licensees.

It is unclear whether these funds could legally be recoverable in the manner suggested by Cboe. Furthermore, any funds relied upon by a clearing and settlement facility licensee as part of its participant default resources would need to be held in a manner consistent with the RBA's Financial Stability Standards for Central Counterparties (FSS). The RBA had previously formed the view that funds held in the NGF did not meet that criterion.

In 2003, the Reserve Bank determined the first FSS. The standards, which reflected evolving international best practice with respect to risk management arrangements, required Central Counterparties (CCPs) to have liquid resources reliably available to settle obligations in the event of a participant default. At the time, ASX's CCP, the Australian Clearing House (ACH), was relying on recourse to the NGF to meet its default obligations. The RBA considered this arrangement to be inconsistent with FSS because the NGF could be subject to competing claims, eg from market participants seeking compensation for losses arising

from coincident broker failures.¹ There were also concerns that funds from the NGF could not be accessed in a timely manner and that access to additional funding to bridge this liquidity gap could be needed. The permanent transfer of funds from the NGF to ACH was undertaken as part of a coordinated effort to bring ACH (at the time the sole active clearing house) into compliance with the FSS.²

The increasing strategic importance of CCPs arising from mandatory clearing for some products means that dedicated resources for default management are now even more critical for effective risk management and for maintaining market confidence in the integrity of CCPs. Although the FSS have been updated several times since 2003, the RBA's concerns regarding reliance on NGF funds for default management remains unchanged. A common pool of NGF funds is neither sufficiently reliable nor sufficiently liquid to be considered as a resource available for default management under the FSS.

It is also unclear how any centrally held funds would be allocated among existing and future clearing and settlement licensees. As a result, any new entrant would likely still be required to raise and maintain sufficient liquid resources to meet its obligations on participant default in extreme but plausible circumstances, to achieve regulatory compliance.

RBA mandate

We also refer to Cboe's answer to QoN7, which was referred to in your letter. On page 1 of Cboe's answer, Cboe suggests that competition, competitiveness and growth should be included in the RBA's mandate. The RBA considers this to be a matter for the Government to determine. We note, however, that the RBA works closely with ASIC and the Australian Competition and Consumer Commission (ACCC) in its supervision of clearing and settlement facility licensees. ASIC and the ACCC both have responsibility to consider competition issues.

¹ Payments System Board Annual Report 2005 (rba.gov.au), page 32.

² ACH was granted transitional relief from the relevant FSS from 2003 until March 2005 when the transfer from the NGF occurred.