



Stockbrokers and Investment
Advisers Association

Serving the interests of investors

22 March 2023

By email: corporations.joint@aph.gov.au

Committee Members

Parliamentary Joint Committee on Corporations and Financial Services

Parliament House

Canberra ACT 2600

Dear Committee members

OVERSIGHT OF ASIC, THE TAKEOVERS PANEL AND THE CORPORATIONS LEGISLATION – PUBLIC HEARING 23 FEBRUARY 2023 – ANSWERS TO QUESTIONS ON NOTICE

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

The history of the stockbroking profession in Australia can be found [here](#).

Thank you for the opportunity to provide answers to questions on notice. Our answers are on the following pages.

Yours faithfully

Judith Fox
Chief Executive Officer

ANSWERS TO QUESTIONS ON NOTICE – QUESTION 1

Do you have a view about the ASIC regulatory response on CHESS that was made public yesterday? Do you have a view about how effectively that will assuage the concerns that you've put on the record today?

We welcome the ASIC notices issued on 21 February 2023 requiring a special report detailing ASIC's response to the findings of the CHESS Replacement Program External Review as well as the special report detailing ASX's current portfolio, program and project management frameworks as assessed against internationally recognised frameworks. We note that these reports are in addition to the special report on current CHESS as per the ASIC notices issued on 14 December 2022 and the ASIC and RBA joint letter of expectations.

We hope that these reports will address our members' concerns but are not in a position to definitely say if they will until we have the opportunity to read them.

ANSWERS TO QUESTIONS ON NOTICE – QUESTION 2

Could I ask you also to give a response to the suggestions in the Computershare opening statement today asking regulators to commission a new high-level industry steering group to confirm the core guiding principles for the next phase of the CHES replacement, and also to ensure that there's adequate arrangements for managing conflicts of interest?

Our members have raised the following issues concerning the CHES Replacement Project:

- ASX stakeholder engagement was conducted bilaterally, with little visibility of view from the various stakeholders.
- The scope kept moving and extended beyond a CHES replacement piece.
- Stakeholders were unable to challenge decisions and their concerns were not directly dealt with by ASX.

We consider that for the next phase of CHES replacement to be successfully conducted, stakeholders will need:

- greater transparency on the progress of the CHES replacement project
- multilateral engagement to ensure that all industry views are gathered and considered together
- confidence that ASX will properly consider stakeholder feedback and take it into account when making decisions on the project
- confidence in a definitive scope that it is about the core exercise, and that is both clear and adhered to.

SIAA welcomes the establishment of the ASX CHES Replacement Technical Committee. SIAA is an observer member of the ASX CHES Replacement Technical Committee and eight of our organisational members serve on the committee. The Technical Committee has held two meetings and intends to meet monthly over the coming year. The Technical Committee's Charter shows that it is intended to provide a forum for industry engagement to review, debate and provide input in relation to project planning, and design assumptions and scope of the project. Representatives from ASIC and the RBA also attend the meetings of the Technical Committee as observers.

While we recognise that some stakeholders have expressed concern that the ASX Replacement Technical Committee (to which every member of the ASX Business Committee has been invited to nominate a representative) is too large to act as a steering group, our members confirm that they would not support a steering group that excluded some stakeholders. The importance of ensuring a broad range of impacted stakeholders has the ability to review, debate and provide input on the scope and path forward for the replacement of CHES, as well as the benefit of members hearing perspectives from other impacted stakeholders to come to solutions that work for the market overall is central to our members' support of the CHES replacement project. The ASX Replacement Technical Committee provides such a forum. A smaller steering group would disadvantage our

members.

We also recognise that some stakeholders have expressed concern that a steering group is required to strengthen the governance and accountability framework, given that the ASX Replacement Technical Committee is an advisory body and does not have decision-making authority. The ASX Replacement Technical Committee reports to the ASX Business Committee, which is comprised of all market stakeholders. While the ASX Business Committee has suffered in the past from being a committee that received reports from ASX about the CHES replacement project, without being able to “review, debate and provide input in relation to project planning, and design assumptions and scope” of the project, we were involved in the development of the ASX Replacement Technical Committee Charter which specifically provides for these activities. The Charter also provides for the Chair of the ASX Replacement Technical Committee to

- report to the Business Committee on the CHES Replacement Technical Committee’s discussions and
- provide copies of the minutes of the CHES Replacement Technical Committee to the subsequent meeting of the Business Committee and the boards of ASX Clear Pty Limited and ASX Settlement Pty Limited.

Our members are pleased that the governance and accountability framework has been strengthened and hope that the CHES Replacement Technical Committee provides the opportunity to address governance concerns and provide for input and debate.

Our members’ view is that the oversight role of ASIC and the RBA is key, of both the ASX Replacement Technical Committee and the ASX Business Committee to which it reports and which in turn provides a governance framework. Project governance is being re-shaped based on the current redesign phase of the project, and this will again change when the project moves into the implementation phase. We agree that regulatory scrutiny is required. Our members also consider there is a need for ASIC and the RBA to have resolution powers they can use in the event they have concerns regarding the orderly working of the clearing and settlement market (from the view of competition) caused by issues arising from the technology or the project. This is important given ASX’s unique position as a monopoly provider.

While it is early days, it is hoped that the ASX Replacement Technical Committee will be an effective forum for stakeholder engagement and input, with reporting to the ASX Business Committee providing the strengthened accountability framework, thus obviating the need for the high-level steering group proposed by Computershare. It is also hoped that the operation of the Technical Committee will address our members’ concerns that we have outlined earlier. We will know in a few months whether or not this is the case.

Conflicts of interest

We note that the RBA in its letter of 15 December 2022 requires ASX to seek external advice to identify the conflicts between the commercial interests of ASX Group Limited and the financial stability obligations of ASX Clear and ASX Settlement, and to put in place and document a robust framework for managing these conflicts and assurances regarding how the framework is being implemented and observed. We understand that Herbert Smith Freehills is providing advice on this matter and that their report will be made publicly available. We hope this work will enable ASX to

put in place adequate arrangements for managing conflicts of interest. Again, we will know once the report is issued and we see ASX's response to it whether or not those conflicts are being managed.

ANSWERS TO QUESTIONS ON NOTICE – QUESTION 3

What approaches did ASIC and the RBA use to monitor the impacts of the CHES replacement on stakeholders and how could these approaches have been improved? How closely were they watching what was going on?

SIAA is a member of the ASX Business Committee and has been for some years. As noted earlier, this committee has functioned in the past as a committee to which ASX reported on the project, rather than a committee in which it was possible to debate and provide input on the CHES replacement project. As set out above, the purpose of the ASX Replacement Technical Committee is intended to ensure that market stakeholders participate in the design and planning of the project in the future and the reporting role of the ASX Business Committee is then appropriate.

SIAA has also been a member of the CHES Replacement Project Stakeholder group which raised concerns about the project with ASX and ASIC over some years.

In March 2020 SIAA wrote to ASIC about the serious concerns it had with the project being delivered as per timetable in a manner that preserves an orderly market. SIAA pointed out that stakeholders still lacked clarity and certainty regarding project-critical technical and procedural aspects of the project and that we would not have a comprehensive view of the regulatory changes and their impact until at least mid-2020. SIAA emphasised that such uncertainty created substantial risk at this stage in the project, with stakeholders unable still to properly understand the full technical, legal and operational impact and requirements.

We called on ASIC take a more active role in overseeing the project. We considered that ASIC was in a position to ensure effective coordination and communication of the technical, procedural and regulatory strands of the project, utilising powers to ensure that markets were working efficiently. We highlighted that a review of the timetable set by ASX was urgently required, given the risk of market disruption and the lack of a roll-back plan.

We are unable to state what actions ASIC undertook in response to our approaches on this issue.