

Thursday, 16th March 2023

Maggie Rider
Administrative Officer
Parliamentary Joint Committee on Corporations and Financial Services

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Dear Ms Rider

Following our presentation to the Parliamentary Joint Council (PJC) on 23rd February and your notice dated 1st March regarding Questions on Notice, please find below the questions we received and our responses.

Please note: the cost figure provided in question 6 has been provided in confidence.

1. How do the actions taken by ASIC (the special letters) intersect with what was put forward in our opening statement?

Through the ASIC notices, ASIC has sought reports on ASX's response to the findings and recommendations from the Accenture Review, and on its current project management frameworks. We expect these reports to focus on the technology aspects of the project and the implementation plans and remedial actions, given the scope of the Accenture Review. We agree that this is an important piece of work to be completed by ASX to ensure the issues identified by the Accenture review are not repeated, and we welcome ASIC's exercise of its powers.

However, our suggestion (as set out in our opening statement at the PJC) is that ASIC should, in addition, commission a detailed independent report that specifically addresses whether ASX complied with its statutory obligations, including its obligations to have adequate arrangements for managing conflicts between its commercial interests and the need for it to provide its services in a fair and effective way.

Given ASX's unique position as the operator of key market infrastructure, we see the assessment of whether it has prioritised its own commercial interests ahead of other industry stakeholders as key to ensuring these matters are addressed in any replan.

We also called for a new high-level Industry Steering Group to confirm the core guiding principles for the next phase of the CHES Replacement Project. This structure was established in the early 1990s to pave the way for the original implementation of CHES (from April 1994), ensuring governance through broad industry representation and true stakeholder engagement in the functional elements and impact of the new system.

2. In what way might the licensing regime and regulatory obligations for operators of financial markets need amending in light of what we've learned in relation to CHES's replacement?

We take your reference to "operators of financial markets" as a reference to "operators of financial market infrastructure", noting ASX Settlement is a licensed Clearing and Settlement (CS) facility operator.

We do not consider that the licensing and regulation of CS facility operators needs to be amended in any fundamental way. The framework already requires CS facility operators to:

- have adequate arrangements to manage conflicts of interests, and
- provide the facility in a fair and effective way.

A licensed CS facility operator is also required to comply with RBA's Financial Stability Standards (FSS), which imposes high standards. One of the standards is to have governance arrangements which ensure the design, rules, strategy and major decisions of a settlement facility appropriately reflect legitimate interests of its participants and stakeholders.

There are, however, two areas of reform which we believe should be considered as follows:

A. Include an express obligation on ASX to take into account the public interest and the interests of stakeholders

We believe the Corporations Act should be amended to contain an express obligation on ASX to take into account the public interest and the broader interests of market stakeholders. Some commentators believe this is an implied obligation. In his recent statements to the PJC, ASIC Chairman Joe Longo made the following comment:

[ASX] has certain privileges, frankly, in the way it has historically evolved and in the way our current regulatory arrangements operate. And so it must, in my view, take into account the public interest in all of its decision making and cannot only look to its own interests. It's failed, I think, to comprehensively take into account the other interests, other than its own interest, in conducting its affairs. So this is a very serious matter because we're talking about key infrastructure.

In light of the experience of the last 7 years, and noting Mr Longo's statements to the PJC, we believe that this obligation to take into account the public interest and the interests of stakeholders should be further strengthened and made explicit in the Corporations Act.

B. Reforms to stimulate innovation and competition

There are material barriers to entry for any operator that may wish to offer competitive services to ASX Settlement. We consider that there should be greater proportionality in how the regulation is implemented, to encourage competition. This is consistent with the policy paper issued by Treasury in 2017, in which it proposed reforms to implement a graduated approach to regulation. Refer to: <https://treasury.gov.au/publication/ensuring-appropriate-influence-for-australian-regulators-over-cs-facilities/graduated-approach-to-additional-requirements>

Specifically, we note there are anomalies in the existing regulatory structure that help to perpetuate ASX's monopoly in the clearing and settlement marketplace. Examples include:

- (i) ASTC¹ (ASX Settlement and Transfer Corporation) being hard-coded in certain provisions of the Corporations Regulations, with regards to the electronic transfer of title,
- (ii) ASX's regulatory control of electronic securities issuance, transfer and registration processes, as these are, under authorisation of the Corporations Act, governed, and therefore constrained, by ASX's listing and settlement rules, and
- (iii) ASX rules dictate the manner in which public companies administer their issuer-sponsored sub-registers. Arguably, this should sit outside the ASX rule book. We believe there are aspects of ASX's rules that represent a barrier to innovation, which we have previously raised with ASIC.

A review and subsequent actions to address these regulatory hurdles should be undertaken.

¹ The entity is now called "ASX Settlement Pty Limited"

3. What issues does this raise in terms of how Australians participate in crypto or other markets?

Working on the basis that crypto assets may be viewed simply as another market segment, our view is that any market infrastructure which supports crypto assets should be subject to the same or similar regulation as other financial assets such as securities, derivatives and other regulated financial products.

Specifically in relation to CHES replacement, we do not consider that ASX's failure should hinder innovation or the adoption of new technology in financial market infrastructure for such products. The issues with the CHES replacement project flow from significant governance failures of a technology project and these governance failures led to a number of shortcomings in decisions across the many years of the project. The fact that distributed ledger technology may not be appropriate for CHES replacement does not necessarily mean that it may not have application for certain other financial products, e.g. crypto assets.

4. Do you consider there's been a breach of the existing licence rules by the ASX?

Such a breach is a matter for the regulators of ASX to determine and Computershare does not have all the information to be able to form this view. However, we do believe there are reasonable grounds (per our opening statement) for an independent report into whether ASX has complied with its statutory obligations be undertaken.

As we have also stated in our prior submissions, we believe that ASX was seeking to use its rule making powers to extend its services into the area of "post-settlement". In particular, we note ASX's commentary to the PJC on 23rd February 2023 that it does not wish to enter the registry services market. However, at ASX's Technical sub-committee meeting on 22nd February (day before the PJC) and at the subsequent meeting on 9th March, ASX continued to discuss the so-called "Day 2" future functionality, which among other things, will require public companies to upload their registers to ASX on a daily basis². *For context, we have included a copy of ASX's Chess Replacement Scope provided to the Technical Sub Committee for your reference.*

It remains unclear why ASX continues to include this functionality as "in scope" given their public statements made to the PJC. We are aware that ASX's recent Request for Information (RFI) issued to four potential software vendors asked the recipients to confirm their ability support this data centralisation³. ASX has always remained committed to the full suite of proposed functionality slated for "Day 1" and "Post Day 1/Day 2/beyond". This is one example of the potential conflict of interest concerns raised by the share registries.

5. If they're already doing things outside their remit, in what way might they be able to plug in this new product with other markets? Could the regulator already control that?

In theory, the regulators can reject any proposed changes which ASX Settlement make to its operating rules via the rules disallowance process. They can reject rule amendments which appear to extend beyond the settlement of cash equities.

A fundamental reason for our recommendation to implement an Industry Steering Group is to ensure that a business case is developed, impact analysis undertaken, the program agreed and then implemented. Without this governance, the (ASX Settlement Operating Rules) rule

² This is a technical element and discussion is beyond the scope of these responses. An overview will be included in our additional submission in early May.

³ As explained by ASX at the Technical Committee session on 22nd February 2023.

disallowance process occurs too late and the industry incurs development costs before the model is tested and assessed by ASIC.

Stakeholders need to have a stronger voice in the planning, implementation and operation of the next phase of the project. We therefore propose that giving effect to the regulators' call for enhanced authority to supervise their licensees should be complemented by ensuring that key industry stakeholders have an effective seat at the table. This 'twinned solution' will better hold ASX to account when replacing this critical piece of national infrastructure. This solution, if adopted, will provide the appropriate guardrails to require transparency and accountability and give the project the best chance of success.

6. Could you, if required in confidence, provide the committee with an understanding of the losses incurred to date for each of your entities? We understand that may well be commercial-in-confidence, but it would help us to get a sense of the scale of the impact.

Please note: We are providing the below information in confidence.

Our direct costs reflect the significant engagement that our team members had with ASX and the project across the board, from analysts, developers, and testers through to operational and legal teams. At the time of the formal project pause, our teams were largely "code complete", preparing for the industry test phase. We had reviewed the proposed rules twice, once in tranches from 2019 onwards, and once as a complete set, providing considered feedback throughout.

We estimate our costs to develop and prepare for CHES replacement to be at least \$10 million, mostly incurred from 2016 - 2022. The opportunity loss from the significant commitment to CHES replacement over a 7-year period is exceptionally difficult to calculate.

All of the work completed will need to be reviewed once a new solution is identified to assess its applicability.

We are committed to supporting existing CHES and to participating in a revitalised process to drive a successful outcome for the next phase of the CHES Replacement project. Our appearance before the PJC on 23rd February, these responses, and the further submission(s) that we intend to make reflect our strong belief in the need for improved governance processes going forward.

Thank you for the opportunity to respond to these questions that were taken on notice. We acknowledge receipt of your email dated 10th March and confirm we will lodge an additional submission by 4th May.

Yours sincerely

Marnie Reid
CEO, Computershare Investor Services, ANZ

Paul Conn
President, Global Capital Markets

CHES REPLACEMENT SCOPE		
Under consideration for current CHES:	Existing scope for Day 1 CHES replacement – current CHES functionality plus the below:	Currently out of scope for Day 1 CHES replacement:
<p>Regulatory</p> <ul style="list-style-type: none"> • Implementation of FSS-related system features previously planned for CHES replacement (e.g. ISO 20022 messaging) • Whether the protections from the existing commingled house/client account structure in current CHES remain materially equivalent to those provided by individual or omnibus client segregation • Any changes in regulatory requirements or in the interpretation of regulatory requirements by a government agency <p>Customer</p> <ul style="list-style-type: none"> • Requests for the introduction of new features that have sufficient support from stakeholders (as well as ASX’s support) 	<p>Account information</p> <ul style="list-style-type: none"> • Standardised registration details <p>Pre-settlement</p> <ul style="list-style-type: none"> • Settlement lock for CHES holdings • Bilateral transaction matching (additional matching criteria and revised tolerances) <p>Clearing</p> <ul style="list-style-type: none"> • Changes to netting process (non-materialised NBO) <p>Settlement</p> <ul style="list-style-type: none"> • Changes to settlement process (net settlement) • Linking bilateral settlements • Non-batch DVP bilateral settlement <p>Corporate actions</p> <ul style="list-style-type: none"> • Electronic DRP and BSP elections, DRP enquiry 	<p>Account information</p> <ul style="list-style-type: none"> • Aggregated view of holdings • Common investor number • Additional investor information • Centralised data capture and storage <p>Pre-settlement</p> <ul style="list-style-type: none"> • Bilateral transaction matching (pre-matched status) • Single access point to validate SRNs • Settlement lock for issuer sponsored holdings • Transfer of novated equity transactions between CPs • Additional preliminary payment notifications <p>Settlement</p> <ul style="list-style-type: none"> • Settlement message enhancements • Settlement in foreign currencies • Optional early client settlement • Auto-borrow <p>Corporate actions</p> <ul style="list-style-type: none"> • Electronic processing of dividend claims • Electronic proxy voting • Transfer of cum entitlement balance • Electronic acceptance of entitlement offers • Electronic payment for entitlement offers <p>Reporting</p> <ul style="list-style-type: none"> • Continuous holding balance information <p>Participant structures</p> <ul style="list-style-type: none"> • Participant models for clearing and settlement services <p>mFund</p> <ul style="list-style-type: none"> • Real time cash settlement, 'hold' status and transfer capability • Sharing of investor details and automation of regular payments

Further details on each of the scope items can be found in the [2018 CHES Replacement New Scope and Implementation Plan](#) (2018), [CHES Replacement Changes to Netting & Settlement Workflow](#) (2021) and [CHES Replacement Tranche 3 and Combined Rule Amendments Consultation Paper](#) (2021).