



ASIC
Australian Securities &
Investments Commission

Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
Question No.	029
Topic	ASX & CHES Replacement – ASIC Regulatory Powers
Reference	Spoken 27 June 2023, Hansard pages 30 - 31
Committee member	Senator O'NEILL

Question

CHAIR: Thank you very much. I want to ask a general question at this time before we move off. Could ASIC have identified the problems with the CHES replacement project earlier using your existing powers?

Mr Longo: Well, this question has come up at previous hearings. I think the level of supervision of ASX up until the announcement last November reflected our understanding of the facts and circumstances. I don't think even with the benefit of hindsight we might have taken any different steps. I'm happy to take that question on notice and reflect on it a bit more. Throughout the period, Chair, ASIC was having continuous engagement with ASX both at commission level and at what I will call working team level. You will recall that we imposed additional licence conditions in November 2021, well before the announcement from last November. So in fairness, certainly for the last two years, I think the record shows a greater level of intensity of supervision of ASX and, frankly, higher expectations of ASX not only from us but from the Reserve Bank as well. We can now say, 'Well, you should have realised sooner that there was a problem with CHES.' I'm not sure I would agree with that in all the circumstances.

CHAIR: Do you think the new powers would help you identify this sort of issue in future? Is the fundamental problem not to do with power but to do with transparency?

Answer

ASIC's regulatory responses were driven by ASIC's understanding of the facts and circumstances at the time. Our understanding was based on information and detail provided by ASX to ASIC and the RBA. The record shows that we have applied a greater intensity of supervision and we have publicly stated expectations of ASX reflecting its importance to the Australian financial system as a provider of critical market infrastructure.

Following the conclusion of our investigation into the ASX market trade outage, in November 2021 we imposed licence conditions on ASX Clear and ASX Settlement requiring an independent expert to be appointed, as approved by ASIC, to assess whether ASX's assurance program for the CHES replacement is fit for purpose, identify any shortfalls, and report regularly to ASIC. This reporting will continue until a CHES replacement is implemented. Following ASX's announcement in relation to pausing the CHES Replacement in November 2022 we exercised delegated powers that had not been previously used against an operator of licensed market infrastructure, to require the provision of three special reports to be audited by Ernst and Young. The special reports relate to: ASX's current maintenance and support of CHES, ASX responses to the Accenture Report's recommendations and ASX's Project, Program and Project Management (PPPM) frameworks.

ASIC will receive enhanced supervision and enforcement powers as proposed under both the Competition in Clearing and Settlement (CiCS) reforms included in Schedule 3 to the Treasury Laws Amendment (2023 Measures No. 3) Bill 2023¹ and the Financial Market Infrastructure Regulatory

¹ [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023 – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)



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Reforms announced on 8 June 2021² and by the Treasurer in December 2022³. With these powers ASIC will have a larger and more effective regulatory toolkit with which to deter conduct that is not compliant with both licence obligations and regulators' expectations. These new supervisory and enforcement powers will allow us to better shape ASX conduct and achieve regulatory outcomes such as greater transparency from licensed market infrastructure operators. We see an inextricable link with our proposed enhanced supervisory powers and transparency by all market infrastructure operators, including the ASX Group.

² [Media Release Number: 2021-02 – Financial market infrastructure regulatory reforms: Response to Consultation and Advice to Government – News – Council of Financial Regulators \(cfr.gov.au\)](#)

³ [Modernising Australia's financial system | Treasury Ministers](#)