



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 No.1 of the 46th Parliament
Question No.	008
Topic	ASX & CHESSE Replacement - Current ASIC/RBA co-regulatory framework for CS facilities, overseas comparable example and implementation of Accenture recommendations
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Committee member	Senator Deborah O'Neill

Question

CHAIR: Could you give consideration to the advantages and disadvantages of the current co-regulatory model, where the RBA and ASIC co-regulate: how are the two regulatory roles regulated, so which regulator is responsible for which functions? Could you also give us any insights from what you've described is non-comparable at the jurisdictions or any learnings we could take from overseas, particularly if they've encountered a similar crisis? Perhaps the system might not meet our system, but how was crisis management undertaken, and what was the timeline for resolution? I'd be happy for you to take these questions on notice and, also on notice, the ASX gave their response this morning on the record to the Accenture recommendations. Some of them they said wouldn't be relevant and some would be. There were 45 recommendations. How will you monitor the implementation of the Accenture recommendations? How critical is that document in your plan of work going forward?

Mr Longo: It will certainly inform it. The regulatory response that I have in mind deals more with current CHESSE, but there is much in the Accenture report that will inform how we'll go about doing that.

Answer

1. Description of current regulatory arrangements

ASIC and the RBA (the **regulators**) share regulatory responsibilities under Part 7.3 of the *Corporations Act 2001* (Cth) (the **Act**). The co-supervisory model has ASIC as the lead agency on the provision of CS facility services to the Australian market in a fair and effective way with the RBA as the lead agency on the mitigation of systemic risk by CS facilities. This reflects the regulators' particular mandates with respect to CS facilities. The focus on the fair provision of services in ASIC's mandate includes but is not limited to concepts such as disclosure, level playing field between large and small participants, and governance arrangements for a CS facility.

RBA has supervisory responsibilities for financial stability, including setting Financial Stability Standards (**FSS**) for CS facilities and assessing CS facilities against those standards. The RBA does not currently have statutory powers to enforce the FSS.

ASIC is responsible for monitoring compliance with all other obligations imposed on CS facility licensees including supervisory responsibilities in relation to the fair and effective provision of CS facility services, and sole responsibility for assessing domestic CS facilities against the Communication Standards and Efficiency principles of the CPMI-IOSCO *Principles for Financial Market Infrastructures*. ASIC is responsible for enforcing compliance with all obligations imposed on licensees. ASIC is also responsible for administrative matters relating to licensing (receiving licence applications and operating rule changes) that have been delegated by the Minister to ASIC. ASIC can, subject to a Ministerial determination, set mandatory clearing requirements for specified classes of over-the-counter (OTC) derivatives for clearing entities (Derivative Transaction Rules). ASIC in collaboration with the RBA determines whether CS facilities are operating in Australia, which is relevant in considering whether a particular CS facility requires a CS facility licence.

It is ASIC's view that this co-supervisory model applies an appropriate dual policy lens in circumstances that cover both the effective provision of those services relevant to licensed financial markets (ASIC) and the provision of those services in a way that mitigates systemic risk (RBA). ASIC considers the co-supervisory model is critical to the effective supervision of CS facilities as it ensures a broad range of considerations are taken into account as a result of our different mandates. There is also significant regulatory leverage and suasion that can be applied by regulators working closely together.

ASIC deals with complexities raised by potentially conflicting regulator mandates in other areas of the Act (e.g. Australian Financial Service licence and credit licence regimes). There are also legislative precedents for dealing with such conflicts, for example, the FSS prevail over any inconsistencies with the OTC derivative transaction and trade repository rules.

Financial Market Infrastructure (FMI) regulatory reforms

ASIC with the RBA considered whether the co-supervisory model is fit for purpose (and will remain so into the future) as part of advice by the Council to the Financial Regulators (**CFR**) on the recently announced FMI regulatory reforms package that will be implemented by Government. ASIC's view, and that of CFR, is that the changes contemplated by the FMI regulatory reforms will ensure that Australia's regulatory regime for CS facilities remains fit for purpose. More broadly, the reforms will address gaps in the current regulatory regimes for different FMIs operating in Australia, including financial markets, CS facilities, benchmark administrators and derivative trade repositories. For CS facilities, the reforms will:

- introduce a crisis management and resolution regime for CS facilities, which includes appointing the RBA as the resolution authority. These powers will be supported by a \$5 billion standing appropriation, with Ministerial agreement, to provide temporary funding to a CS facility if that were necessary to ensure the continuity of critical CS services;
- broaden the range of enforcement tools available to the regulators and strengthen their supervisory powers; and
- better align the regulators' powers with their respective legislative mandates and distinguish regulators' operational responsibilities from the strategic role of the Government. These include operational licensing and supervisory powers of the Minister that will be transferred to ASIC and, where appropriate, the RBA.

2. Comparable example – TAURUS

The Transfer and Automated Registration of Uncertified Stock (**TAURUS**) was a program designed to replace the London Stock Exchange's use of paper share certificates with an automated electronic system in the 1980s.

Support was withdrawn from TAURUS in 1993 at an advanced stage in the program because the program had become so large and complex that the system could not be built in an acceptable timeframe or budget. Other reported contributing factors included failure to align different interests of stakeholders, underestimation of complexity, increasing size and scope of the program, and lack of effective governance. It was estimated to have cost between £400 million - £500 million.

3. Implementation of Accenture recommendations

On 17 November 2022, the regulators issued a [joint letter of expectations](#), setting out, amongst other things, our joint expectation that ASX significantly uplift its capabilities to address the gaps and deficiencies identified by Accenture in analysis and design and program delivery capabilities (e.g. execution rigour, program and project management, vendor management, testing, and risk management).

The regulators expect ASX to comprehensively address the areas for uplift during this next period of solution re-design and replanning to ensure ASX have built the required capabilities before

progressing the CHES Replacement Program. However, we think that ASX's broader program management capability across the ASX Group should also be considered as part of an uplift by ASX.

ASIC is considering and will take further regulatory measures to ensure ASX addresses the gaps and deficiencies identified by Accenture.