



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.	015
Topic	ASX & CHESSE Replacement – Competition in clearing and settlement
Reference	Spoken, 5 December 2022, Hansard page 66
Committee member	Senator Deborah O’Neill

Question

CHAIR: Thank you very much. I'm going to put a number of questions on notice because we're running out of time. Since this morning another article has emerged in the AFR about the ASX; it's an opinion piece. It extends the discussion we had about what a best-fit solution might be for the Australian context. It suggests we should follow a dual-track approach. The writer, David Ferrall, CEO of FinClear, asserts:

There is both a great need for long-term structural reform as well as immediate action on allowing new and better clearing and settlement facilities to enter Australia, by allowing them to access the current licensing framework. Both are needed to preserve the health and competitiveness of our financial markets.

In the context of conversations we were having earlier, it talks about technology alongside whatever might happen to hold up the old CHESSE system and whatever reform might be proposed by the ASX in the monopolistic style arrangement that currently exists. It really puts in a plug for technologies to supplement and eventually replace CHESSE, saying they already exist. The question I was asking was to that end; that's why I'm particularly interested in this piece. I'll table that article, and I ask you on notice to give your critical response about what you see is possible and where risk might be embedded in what's being proposed there. That would be of interest to the committee for its next hearing. I'm sure will be asking more questions about the ASX.

Answer

Competition in Clearing and Settlement reforms

Competition in the clearing and settlement of Australian cash equities is a key focus area for ASIC and the Council of Financial Regulators (**CFR**). In June 2015, ASIC with the CFR and the Australian Competition and Consumer Commission (**ACCC**) provided its advice to Government following a review of competition in the clearing and settlement of Australian cash equities.¹ In March 2016, the Treasurer released CFR's advice, accepted CFR's recommendations and endorsed a policy stance of openness to competition in clearing for cash equities.² The recommendations included implementing legislative changes to:

- allow the regulators to impose requirements on ASX's cash equity CS facilities, including rule-making powers for ASIC in respect of CS facilities; and
- grant the ACCC an arbitration power to provide for recourse in disputes about the terms of access to ASX's cash equity CS services.

These legislative changes have not been implemented. However, following the Government's acceptance of the CFR's recommendations, ASIC with the CFR and ACCC developed a policy framework to support competition in clearing and settlement of Australian cash equities. This policy framework includes the following CFR policy statements:

¹ <https://www.cfr.gov.au/publications/consultations/2015/review-of-competition-in-clearing-australian-cash-equities/pdf/review-of-competition-in-clearing-australian-cash-equities.pdf>

² <https://ministers.treasury.gov.au/ministers/scott-morrison-2015/media-releases/turnbull-government-open-competition-share-clearance>

- Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia (**Regulatory Expectations**);³
- Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia;⁴ and
- Minimum Conditions for Safe and Effective Competition in Cash Equity Settlement in Australia.⁵

On 14 December 2022, the Government announced its support for competition in the clearing and settlement of cash equities and intention to legislate the CFR's recommendations.

Regulatory Sandbox

The AFR article states "Globally, regulators have promoted new technologies through the use of pilot or 'sandbox' arrangements.."

On 1 September 2020, the Australian Government introduced the enhanced regulatory sandbox (**ERS**) that superseded ASIC's previous regulatory sandbox. It was introduced by legislative amendments made in February 2020, and subsequent regulations made on 28 May 2020, that provide for conditional exemptions from the Australian Financial Services Licence (AFSL) and Australian Credit Licence (ACL) regimes for certain specified financial services/products and credit activities for a period of up to 2 years. The relevant licensing exemptions are provided under the Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020 and/or the National Consumer Credit Protection (FinTech Sandbox Australian Credit Licence Exemption) Regulations 2020 (collectively, the ERS Regulations).

Under section 5 of the Corporations (FinTech Sandbox Australian Financial Services Licence Exemption) Regulations 2020 which defines persons eligible for the ERS, the ERS is not available for operators of a financial market or operators of a clearing and settlement (**CS**) facility.

Given the critical, systemic importance of CS facilities to the Australian financial system, and the significant obligations imposed by the holding of a CS facility licence, ASIC take a rigorous approach to its supervision of the ASX Group's clearing and settlement facilities and in assessing CS facility licence applications. This includes assessing the entity's governance arrangements, resources, systems and skills to operate the CS facility and the ability to comply with obligations under Part 7.3 of the *Corporations Act 2001*, and any additional regulatory obligations. Both exemptions and licence applications must be supported by comprehensive external legal opinions.

³ <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2016/regulatory-expectations-policy-statement/>

⁴ <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2016/minimum-conditions-safe-effective-cash-equity/>

⁵ <https://www.cfr.gov.au/publications/policy-statements-and-other-reports/2017/minimum-conditions-safe-effective-competition/>