



6 February 2023

Chair  
Parliamentary Joint Committee on Corporations and Financial Services  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email to: [Corporations.Joint@aph.gov.au](mailto:Corporations.Joint@aph.gov.au)

#### **RESPONSES TO QUESTIONS TAKEN ON NOTICE AT OVERSIGHT OF ASIC, THE TAKEOVERS PANEL AND THE CORPORATIONS LEGISLATION HEARING**

When appearing before the Parliamentary Joint Committee on Corporations and Financial Services (the “Committee”) on 5 December 2022, ASX took several questions on notice. Please find our responses to those questions attached. If we have inadvertently missed any questions, please let us know so that we can promptly rectify.

We note the Committee’s recent invitation for ASX to attend a further public hearing. We reaffirm ASX’s willingness to continue to engage with the Committee in both private and public hearings as required. The Committee may also be interested to know that ASX’s half-yearly results will be released on 16 February 2023, which will include further information about the CHES replacement project.

Subject to the Committee’s approval, a copy of this letter will be provided to both ASIC and the RBA in the interests of transparency.

Should the Committee have any questions about the material provided or if we can be of any further assistance, please contact me on the details below. Alternatively, ASX’s Head of Government and Regulatory Affairs, Grant Lovett is available to assist the Committee at [grant.lovett@asx.com.au](mailto:grant.lovett@asx.com.au) or on +61 406 528 007.

Yours sincerely

**Helen Lofthouse**  
Managing Director and Chief Executive Officer

#### **Attachments**

- Attachment A – Responses to questions taken on notice
- Attachment B – ASX Market Announcement, 15 December 2022

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## ATTACHMENT A – RESPONSES TO QUESTIONS TAKEN ON NOTICE

### Response to Accenture report

The Chair asked: “On notice, you might provide us with your assessment of Accenture’s report, given what you’ve just said to me, and what you’re rejecting, for whatever reason, and what you’re accepting going forward and on what timeline” (refer page 4 of the Hansard transcript).

ASX accepts all 45 recommendations included in the Accenture report and is developing an action plan to address them. Notable progress has been made in several areas including solution design quality engineering and testing. While the report relates to CHES Replacement specifically, ASX has identified recommendations which it will extend to policies and practices across the organisation.

In accordance with the RBA’s expectations set out in paragraph 8 of its Letter of Expectations to ASX on 15 December 2022, ASX will publicly respond to the 45 recommendations and include a plan with timelines to address these recommendations by 30 June 2023.

An ASX executive, who reports directly to the CEO, is leading the work to address all of Accenture’s recommendations and expanded resourcing has been committed to deliver the response program.

ASX is on track to provide its action plan in February 2023 for Accenture to conduct its design adequacy review. This independent review will assess whether ASX’s response sufficiently incorporates and addresses all of the recommendations.

The plan will also be provided to regulators for feedback.

As part of ASX’s governance processes for addressing the recommendations, an independent external party will be commissioned to assess the adequacy of actions taken for each recommendation and the specifics of the redesign for CHES Replacement.

The key milestones for our response are:

- January 2023 – Accenture clarification workshops and draft action plan completed
- February 2023 – Design Adequacy Review by Accenture
- February 2023 – Draft Action Plan provided to regulators for feedback
- March – May 2023 – Refine and update actions and planning to address adequacy review and feedback
- June 2023 – Program Plan approved by boards of ASX Limited, ASX Clear and ASX Settlement; plan initiation underway and public release.

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## Regulatory framework for clearing and settlement

The Chair asked: "On notice, what are the advantages and disadvantages of the current co-regulatory model where the RBA and ASIC co-regulate clearing and settlement facilities? How are the two regulatory roles differentiated? In your view, how do you interact with them differently? Which parts are responsible for which functions? Which entity is most critical in going forward? How are clearing and settlement facilities regulated in other jurisdictions?" (refer page 3 of the Hansard transcript).

Please find responses to each sub-question below.

- a) What are the advantages and disadvantages of the current co-regulatory model where the RBA and ASIC co-regulate clearing and settlement facilities?

The co-regulatory model<sup>1</sup> is the more prevalent approach to regulation globally at this time.

The key advantage of a co-regulatory model is that each regulator has a specific and complementary regulatory remit with clearly defined regulatory objectives. This allows each regulator to develop more targeted supervisory tools, metrics and approaches based on the defined scope of their specific legislative powers and prescribed objectives. The specialisation and dedicated focus on specific objectives may lead to more efficiencies and improved outcomes over a longer time horizon.

If the regulatory remit and objectives of the respective regulatory agencies are not clearly defined and considered holistically, some of the potential disadvantages of a co-regulatory model could include:

- potential for regulatory overlap and oversight duplication;
- potential for regulatory oversight gaps between the different agencies; and
- potential inconsistencies in the regulatory objectives across the different agencies.

These potential disadvantages can be addressed through clear mandates for each of the regulators, their ongoing co-operation and alignment on approach, supported by timely and effective information sharing arrangements.

As outlined in (f) below, alternative approaches to the co-regulatory model in other key jurisdictions include:

- a single regulator approach (e.g. Singapore), where a single regulator supervises an entity from both the conduct/licensing and the prudential/risk management perspectives;
- a sectoral approach (e.g. Hong Kong), where each regulator is responsible for regulation, supervision and oversight based on the respective legal framework and policy mandate of that regulator in relation to a defined sub-set of the relevant industry; and
- a multi-layered approach (e.g. European Union), where multiple regulators operate together across different levels of government.

These alternative models operate with different advantages and disadvantages to the co-regulatory model. For example, the single regulator approach offers the advantages of one regulator potentially having a more comprehensive information set on all activities of an entity and greater visibility over the totality of the regulated conduct. The key disadvantage of the single regulator approach is that one set of matters against a subset of regulatory objectives may attract a disproportionate amount of attention to the detriment of other regulatory objectives and a targeted approach may be more difficult to implement. The regulatory model adopted may also be influenced by the government framework in which it operates (e.g. European Union).

It is worth noting that, irrespective of the regulatory model adopted, clearing and settlement facilities ("CS facilities") are generally regulated based on the internationally accepted principles issued by the Committee on Payments and

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<sup>1</sup> In this response, the term "co-regulatory model" refers to direct government regulation of an entity by at least two regulators that act in a complementary manner. This usage of the term is distinct from the typical meaning of co-regulation, which refers to instances where industry plays a key role in developing and administering its own arrangements.

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Market Infrastructures (“CPMI”) and the International Organization of Securities Commissions (“IOSCO”) – Principles for Financial Market Infrastructures (“PFMI”).

b) How are the two regulatory roles differentiated?

The *Corporations Act 2001* (Cth) (“Corporations Act”) gives ASIC and the RBA separate, but complementary powers and responsibilities for the supervision of CS facilities. ASX’s observation is that ASIC and the RBA work together closely to regulate CS facilities.

To operate a CS facility in Australia, the operator is required to hold an Australian CS facility licence, issued by the relevant Minister and administered by ASIC. As outlined by ASIC, ASIC’s main functions are to:

- advise the Minister about CS facility licence applications, licence exemptions, changes to operating rules and other matters relating to CS facilities;
- assess, report on and enforce licensees’ compliance with their obligations; and
- enforce the prohibition on a person operating, or holding out that they operate, a CS facility in Australia, if they are not licensed or exempt.<sup>2</sup>

A CS facility licensee has a number of obligations, including an obligation, to the extent that it is reasonably practicable to do so, to comply with dedicated standards. These standards are determined by the RBA for the purposes of ensuring that CS facility licensees conduct their affairs in a way that causes or promotes overall stability in the Australian financial system.<sup>3</sup>

The RBA determined the current standards (known as the Financial Stability Standards – “FSS”) on 10 December 2012, effective from 29 March 2013. The FSS are based largely on the PFMI referenced in (a) above.

The RBA provides ongoing supervision and oversight of CS facilities throughout the year. In accordance with its “Approach to Supervising and Assessing Clearing and Settlement Facility Licensees,”<sup>4</sup> the RBA carries out periodic assessments of each facility’s compliance with the FSS. In relation to ASX’s CS facilities, these assessments are carried out on an annual basis and are publicly available.<sup>5</sup>

On a periodic basis, the RBA and ASIC jointly undertake assessments of ASX’s CS facilities against the PFMI.

The RBA and ASIC, together with the ACCC, also jointly oversee ASX’s adherence to the Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia.<sup>6</sup>

c) In ASX’s view, how do you interact with them differently?

In relation to the supervision of CS facilities, including the oversight of the CHES replacement project, the majority of ASX’s formal engagements with the RBA and ASIC take place jointly with representatives from both agencies to discuss matters that are relevant to both agencies having regard to their particular focus. Formal engagements occur on a planned and ad-hoc basis. This is supported by a broad range of day-to-day administrative and operational engagements (such as calls and emails).

The RBA takes the lead for matters that primarily arise in relation to the FSS, whilst ASIC is kept informed of the developments. This is supported by very detailed regulatory reporting that is provided by ASX to the RBA – similar to the prudential reporting provided by deposit-taking institutions to APRA.

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<sup>2</sup> <https://asic.gov.au/for-finance-professionals/market-infrastructure-licensees/licensed-and-exempt-clearing-and-settlement-facilities/>

<sup>3</sup> [http://classic.austlii.edu.au/au/legis/cth/consol\\_act/ca2001172/s827d.html](http://classic.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s827d.html)

<sup>4</sup> <https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/standards/approach-to-supervising-and-assessing-csf-licensees.html>

<sup>5</sup> <https://www.rba.gov.au/payments-and-infrastructure/financial-market-infrastructure/clearing-and-settlement-facilities/assessments/asx/>

<sup>6</sup> The Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia is a policy statement issued by the Council of Financial Regulators in September 2017.

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The legal basis for reporting and escalating matters to each of the regulators is based on the Corporations Act and supplemented by more detailed arrangements. Detailed ASIC reporting requirements are set out in certain memoranda of understanding. Detailed RBA reporting requirements are set out in a set of bi-lateral cooperation letters. Whilst the arrangements for reporting differ, matters that relate to ASX's CS facilities' compliance with their regulatory obligations are generally raised with both agencies.

More broadly, ASX also interacts with the regulators in relation to other aspects of ASX's business (i.e. separate to matters relating to the CS facilities). For example, ASX interacts with ASIC in relation to ASIC's oversight of ASX as a market operator and benchmark administrator.

d) Which parts are responsible for which functions?

Please see the information in (b) above concerning the different functions of ASIC and the RBA as it relates to CS facilities.

e) Which entity is most critical going forward?

From ASX's perspective, both ASIC and the RBA play important roles going forward.

As explained in (b) above, ASIC is responsible for licensing of CS facilities, changes to operating rules and assessing, reporting and enforcing compliance with licence obligations, and ensuring that entities do not operate without a licence. It is important to have a licensing and regulatory regime in which CS facilities operate.

The RBA determines the FSS that a CS licensee must comply with, to the extent that it is reasonably practicable to do so. The RBA carries out periodic assessments of each facility's compliance with the FSS and provides ongoing supervision and oversight of CS facilities. This is important to ensure that CS facilities conduct their affairs in a way that is consistent with the stability of the financial system.

Hence, as Australia has a co-regulatory model, both ASIC and the RBA have a critical role in their areas of responsibility concerning the licensing and activities of CS facilities.

Any future changes to the regulatory environment for CS facilities are a policy matter for Government and ASX will work with Government to implement those changes.

f) How are clearing and settlement facilities regulated in other jurisdictions?

As described in (a) above, CS facilities in key global economies are regulated based on the internationally accepted PFMI issued by the CPMI and the IOSCO, in line with the G20 expectations.

The PFMI are not legally binding on CS facilities per se. The PFMI can be adopted into local regulatory regimes directly, or modified to suit the local environment and financial market infrastructure arrangements. CPMI-IOSCO track and report on the implementation of the PFMI across 28 jurisdictions.

As noted in (a) above, the global approach to regulation typically follows a co-regulatory approach.

We set out the regulatory approach to financial market infrastructure ("FMI"), which includes CS facilities, in key jurisdictions below. Given the arrangements in many jurisdictions are complex, the below is intended to serve as a simplified high-level summary.

Jurisdiction	Approach	Key Regulators
US	Sectoral regulation / Co-regulatory model	Commodity Futures Trading Commission (CFTC) is the lead regulator for Derivatives Clearing Organizations (DCOs) for futures and swaps Securities and Exchange Commission (SEC) is the lead regulator for Clearing Agencies (CAs) for securities and for futures, options and swaps referencing securities or a narrow index of securities Systemically important DCOs and CAs are subject to additional oversight from The Board of Governors of the Federal Reserve System
UK*	Co-regulatory model	Bank of England (BoE) Financial Conduct Authority (FCA)
Canada	Co-regulatory model	Bank of Canada Canadian Securities Administrators (comprising of the Autorité des marchés financiers (AMF), Ontario Securities Commission (OSC), British Columbia Securities Commission (BCSC), Manitoba Securities Commission (MSC), and Alberta Securities Commission (ASC))
EU	Multi-layered	Regulation applies at the EU-level and at a national level. At an EU level, European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) make proposals for regulation to the European Commission (established via the European Parliament and the European Council).  This is then supplemented by the authorisation and regulation of relevant FMIs at a country level by the national competent authorities and central banks.
Germany	Co-regulatory model	Bundesanstalt für Finanzdienstleistungsaufsicht (Bafin) Deutsche Bundesbank (Buba)
France	Co-regulatory model	Banque de France (BDF) Autorité des Marchés Financiers (AMF)
Hong Kong	Sectoral regulation	Clearing and settlement for securities and futures are regulated by the Securities and Futures Commission Clearing and settlement for debt securities is regulated by the Hong Kong Monetary Authority
Singapore	Single regulator	Monetary Authority of Singapore (MAS)
Japan	Co-regulatory model	Bank of Japan Financial Services agency Securities and Exchange Surveillance Commission Ministry of Finance Ministry of Justice
New Zealand	Co-regulatory model	Reserve Bank of New Zealand (RBNZ) Financial Markets Authority (FMA)

\*In the United Kingdom, a single regulator approach (that is, a combined conduct and prudential regulator) was used in regulating the banking industry for a period of time. This approach was reviewed in the aftermath of the Global Financial Crisis, and the existing Financial Services Authority was replaced in 2013 by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). Some of the reasons for the restructure included perceived failures in identifying broader prudential concerns and enforcement.

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## International comparisons

The Chair asked: “Can I also ask if you have provided to the board any briefing papers that compare the situation here at the ASX with competitors in other markets—in the EU and in the US? What documentation have you provided to the board that provide comparative models for their consideration at this juncture when significant change looks like it's on the horizon? Or is it just, 'Let's reshape the system'? I'd like to know what you've provided to the board. If you've provided any international context for this moment of designing and determining what comes next, I'd like those to be provided to this committee” (refer pages 13 and 14 of the Hansard transcript).

The Boards have a good understanding of clearing and settlement in other jurisdictions and are regularly briefed by management on international regulatory, market structure and infrastructure developments. International developments that the Boards have been briefed on over recent years include:

- The reduction in settlement cycles in other markets
- The adoption of global standard messaging
- Evolving industry standards for cash market margining.

ASX commenced the process to evaluate replacement options for CHES at a time when distributed ledger technology (“DLT”) was emerging as a credible platform solution that could provide the kind of innovation and longevity which allowed CHES to be world-leading when it was first introduced in 1994. During the initial discussions on CHES replacement in 2015, the technology used by other exchanges was raised even though a specific paper on international comparisons was not formally presented to the Board. It was well understood that the Australian market structure and characteristics would require a tailored solution and it was known that no other major jurisdiction was using a DLT-based post trade platform for the equities market. Against this backdrop, the evaluation process for CHES replacement was focused on the capability of DLT to meet the requirements for the Australian market.

This included an examination of the potential application of DLT and the global search for a vendor focused on the development of DLT software for financial markets. In January 2016, ASX selected Digital Asset as a technology partner to develop, test and demonstrate a working prototype of a DLT-based post-trade platform. ASX then undertook an extended two year proof of concept (“POC”) process with Digital Asset to test the capabilities of using DLT.

As Ms Lofthouse informed the Committee during the hearing, following the pause to the CHES replacement project last November, ASX is now giving wide-ranging consideration to the technology solution options available for the project going forward. Our different approach today is informed by several key factors including a genuine reset of the program from the new leadership, recent developments in technology being used internationally and greater emphasis on technical feedback from stakeholders.

An international comparison exercise to identify leading technology vendors has completed and is the first key step in the solution redesign. Its scope covers the top 20 international exchanges and identifies all relevant software/technology providers for clearing and settlement functions. This will be used to invite suitable parties to respond to a request for information (“RFI”) to determine software/technology components most appropriate for the CHES replacement redesign. Further detail on the RFI process will be included in ASX’s half yearly result announcement on 16 February 2023.

The focus of this work is on the technology solutions used in other jurisdictions, rather than considering the different market structures in place for equities clearing and settlement in other markets given this project is not seeking to change market structure for Australia.

ASX is cognisant of the impact on industry stakeholders of material changes to business processes related to clearing and settlement. As has previously been the case, ASX would undertake public consultation on any proposals to materially change business processes to support decision-making at the appropriate time. There are examples where the project previously consulted on proposals to materially change business processes that were not broadly supported by the industry and, as a result, ASX did not pursue those changes.

## Current CHES

The Hon Keith Pitt MP asked: “Can you come back to us on the increase in cost? There’s a lot of variability between what people consider to be extensive, excessive and not” (refer page 8 of the Hansard transcript).

As part of ASX’s commitment to transparent and non-discriminatory pricing in the Code of Practice for Clearing and Settlement of Cash Equities in Australia (“the Code”), management accounts for the clearing and settlement of cash equities in Australia are published annually. The accounts are published on ASX’s website.<sup>7</sup>

As set out in the published accounts over the past 5 years, ASX has incurred operating expenditures of \$184.2 million. This expenditure is inclusive of direct and indirect expenditures to operate and maintain the clearing and settlement of the cash equity market, including the CHES system. This is separate to and does not include expenditures associated with the CHES replacement project.

\$ million	Clearing	Settlement	Total
FY18	13.2	15.4	28.6
FY19	15.2	17.7	32.9
FY20	16.3	18.8	35.1
FY21	19.4	21.0	40.4
FY22	22.5	24.7	47.2
<b>Total</b>	<b>86.6</b>	<b>97.6</b>	<b>184.2</b>

Expenditures directly attributable to the CHES system, which relate to maintenance and development over the past five years, are approximately \$12.7 million.

ASX will commit appropriate resources to the continued operation of the CHES system to provide regulators, customers and other stakeholders the confidence expected with ASX’s operation of critical market infrastructure.

On 15 December 2022, ASX responded to the RBA’s expectations for current CHES and CHES replacement. ASX’s response included a commitment that ASX will maintain the resources and capabilities to support the ongoing operation, maintenance and investment in current CHES to ensure it will continue to service Australia’s cash equities markets reliably until CHES replacement goes live. This includes ensuring ASX has sufficient resources with experience in the programming language used in current CHES. A copy of ASX’s response to the RBA was attached to ASX’s market announcement on 15 December 2022, and can also be found at **Attachment B** to this letter.<sup>8</sup>

In response to ASIC’s notices issued on 15 December 2022, ASX is preparing a special report about arrangements for current CHES. This special report will detail how ASX intends to ensure that current CHES is supported and maintained until the go-live of the CHES replacement system. It will also cover the ongoing operation, security and continuity of CHES, and ASX’s governance arrangements for the current system. ASX will also provide ASIC with an EY audit of the report. ASX will make a version of the special report and audit report publicly available.

<sup>7</sup> <https://www2.asx.com.au/about/regulation/clearing-and-settlement-of-cash-equities-in-australia/financial-statements>

<sup>8</sup> <https://www2.asx.com.au/content/dam/asx/about/media-releases/2022/63-15-december-2022-asx-responds-to-asic-and-rba-ches-related-requirements.pdf>



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**ATTACHMENT B – ASX MARKET ANNOUNCEMENT, 15 DECEMBER 2022**





15 December 2022

Australian Securities and Investments Commission  
Mr Nathan Bourne  
Senior Executive Leader, Market Infrastructure  
Level 5, 100 Market Street  
SYDNEY NSW 2000

ASX Market Announcements Office  
ASX Limited  
20 Bridge Street  
SYDNEY NSW 2000

## **ASX ACKNOWLEDGES ASIC REQUIREMENT FOR A SPECIAL REPORT ON CURRENT CHESSE AND RBA EXPECTATIONS FOR CURRENT CHESSE AND CHESSE REPLACEMENT**

ASX acknowledges that the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) have set out their immediate requirements and expectations of ASX about current CHESSE and the plan to replace it.

ASIC requires ASX to prepare a special report about arrangements for current CHESSE. Additionally, the RBA expects ASX to maintain current CHESSE sufficiently, which we have undertaken to do in a letter to the RBA Governor attached to this announcement.

ASX will act in accordance with these requirements and expectations, and will engage proactively and transparently with the regulatory agencies and other stakeholders on this work.

The special report ASX is preparing for ASIC will detail how ASX will ensure that current CHESSE is supported and maintained until the go-live of the CHESSE replacement system. It will also cover the ongoing operation, security and continuity of CHESSE, and ASX's governance arrangements for the current system.

ASX will also provide ASIC with an EY audit of the report. In line with ASIC's expectations, ASX will make a version of the special report and audit report publicly available.

ASX Managing Director and CEO Helen Lofthouse said: "Maintaining the stability, security and high performance of current CHESSE, which is critical to the operation of Australia's financial markets, is an ASX priority. With the enhancements we have made to the system's capacity and resilience in recent years, and the investments that we will continue to make, ASX is confident that current CHESSE will serve the Australian market well into the future.

"ASX will engage transparently and constructively with the regulatory agencies about the requirements announced today.

"We remain committed to working closely with stakeholders to deliver the best long-term clearing and settlement solution for the Australian financial market."

Release of market announcement authorised by:  
Johanna O'Rourke  
Acting Group General Counsel and Company Secretary

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15 December 2022

**Dr Philip Lowe**  
Governor  
Reserve Bank of Australia  
65 Martin Place  
SYDNEY NSW 2000

By email

**Re: RBA expectations for the current CHES and CHES replacement**

Dear Dr. Lowe

Thank you for your letter dated 15 December 2022 regarding RBA's expectations for current CHES and CHES replacement.

We acknowledge your request for a public undertaking in paragraph 2 of your letter regarding ASX's arrangements for current CHES.

On behalf of the Boards of ASX Limited, ASX Clear Pty Limited and ASX Settlement Pty Limited, we undertake to the RBA that ASX will maintain the resources and capabilities to support the ongoing operation, maintenance and investment in current CHES to ensure it will continue to service Australia's cash equities markets reliably until CHES replacement goes live. This includes ensuring ASX has sufficient resources with experience in the programming language used in current CHES.

Yours sincerely

**Mr Damian Roche**  
Chair, ASX Limited

**Mr Stephen Knight**  
Chair, ASX Clear Pty Limited and ASX  
Settlement Pty Limited

**Ms Helen Lofthouse**  
Managing Director and CEO

Cc: Ms Michele Bullock, Assistant Governor, Reserve Bank of  
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