



**Parliamentary Joint Committee on Corporations and Financial Services - Oversight of ASIC,  
the Takeovers Panel and the Corporations Legislation - Response to Question on Notice**

Hearing Date: 27 June 2023  
Response Date: 28 July 2023  
Question Reference: Page 54

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**Question:**

Chair: Could you also provide us with your view about the co-regulatory model of the RBA and ASIC looking after clearing and settlement facilities? You talked about rules. We've heard a bit from ASIC around that today and their capacity to act in the sector. Are the regulator's powers to oversee such projects appropriate? What needs to change there or improve or reduce? Give us your insights. Do the regulators use their powers effectively and in a timely way? Are they sufficiently sensitive to what is happening in the market? Do they have sufficient insight? Do they have the right tools to allow them to actually interrogate what is really going on?

**Response:**

**Could you also provide us with your view about the co-regulatory model of the RBA and ASIC looking after clearing and settlement facilities?**

Cboe considers that the principle that underlies the co-regulatory model is sound. At a high-level, ASIC acts as the conduct regulator and the RBA acts as the financial stability regulator. In most cases these objectives will be complementary, and our understanding is that the two regulators generally work together on most matters affecting clearing and settlement facilities. However, given the possibility for those two objectives to come into conflict, it is sensible that regulatory oversight is split.

We understand that the regulators have recommended reforms to:

- introduce a resolution regime for licensed clearing and settlement facilities;
- strengthen their supervisory and enforcement powers; and
- redistribute existing powers between ASIC, the RBA and the Minister to make the regulatory process more efficient and to better distinguish between operational and strategic functions.

We understand a consultation on these reforms is imminent. We will consider the proposals in the consultation paper and provide our views.

However, Cboe considers that one critical measure to improve the existing co-regulatory model would be to strengthen (in the case of ASIC) and embed (in the case of the RBA) competition, competitiveness, and growth into the mandates of the regulators.



Currently, AISC is required to “consider the effects that the performance of its functions and the exercise of its powers will have on competition in the financial system”<sup>1</sup>. There is no equivalent RBA mandate with respect to its supervision of clearing and settlement facilities.

We consider that a greater focus on competition, competitiveness, and growth, in both regulation and supervision, will lead to better outcomes for investors, the market, and Australia’s attractiveness as a financial centre. In the context of the new CHES Replacement project, it could empower regulators to scrutinise more deeply the competition outcomes of the project.

In the UK, the conduct and financial stability regulators have these mandates<sup>2</sup>. Importantly, they have been implemented as secondary objectives and must be advanced as far as reasonably possible, having regard to their primary objectives.

**Are the regulator's powers to oversee such projects appropriate? What needs to change there or improve or reduce?**

The regulators have broad powers, including through license conditions and directions, to require financial market infrastructure (FMI) providers to do or not do certain things. Both regulators have various means to obtain information from FMI providers.

We consider regulators have sufficient tools to oversee projects carried out by FMI providers. Cboe was subject to ASIC’s oversight process during its technology migration project in March 2023 and this involved close and continuous oversight.

Consistent with our response above, we are mindful that further powers for the regulators are being proposed. We also consider a stronger emphasis on competition, competitiveness and growth in the regulators’ mandates could help drive better outcomes for the Australian market.

**Do the regulators use their powers effectively and in a timely way? Are they sufficiently sensitive to what is happening in the market?**

Cboe considers that the regulators are sufficiently sensitive to what is happening in the market. ASIC has an extensive regulated population within the financial market sector that they continuously interact with. The regulators also maintain various forums for the purpose of receiving industry sentiment. They can also undertake formal or informal consultations at any time.

Cboe has no comment on the effectiveness and timeliness of the regulators’ use of their powers.

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<sup>1</sup> s1(2A) Australian Securities and Investments Commission Act (Cth) 2001

<sup>2</sup> s25, 26 Financial Services and Markets Act (UK) 2000



**Do they have sufficient insight? Do they have the right tools to allow them to actually interrogate what is really going on?**

Cboe considers that the regulators have sufficient tools to obtain information from FMI providers. ASIC, in particular, has broad, formalised information gathering powers, including compulsory powers.

Cboe also notes that regulators expect FMI providers be proactive and transparent in sharing information with them.