

CHES Replacement Stakeholder Group

20 December 2019

FMI Regulatory Reforms Consultation Submissions, Payments Policy Department
Reserve Bank of Australia
GPO Box 3947
Sydney, NSW, 2001

By email: FMIconsultation@cfr.gov.au

RE: Submission to Consultation Paper on Financial Market Infrastructure Regulatory Reforms

The CHES Replacement Stakeholder Group welcomes the opportunity to respond to the Council of Financial Regulators' (CFR) Consultation Paper on Financial Market Infrastructure Regulatory Reforms.

This is a timely and necessary request for feedback and comment on the regulatory regimes overseeing financial market infrastructures (FMIs), including the operators of financial markets, benchmark administrators, clearing and settlement facilities and derivatives trade repositories.

CHES Replacement Stakeholder Group

The CHES Replacement Stakeholder Group (Stakeholder Group) is a diverse group of financial market firms and industry bodies concerned by ASX Ltd's conduct in relation to the development of the CHES Replacement project and its potential to further entrench ASX's existing monopoly powers over post-trade services and to facilitate extension of those monopoly powers into other areas.

The founding members of the Stakeholder Group include the Australasian Investor Relations Association, Australian Shareholders' Association, Governance Institute of Australia, Stockbrokers and Financial Advisers Association, Computershare, Link Group and BoardRoom.

We represent multiple corners of Australia's financial markets, from issuers and investors, and collectively more than six million mum and dad shareholders.

Support for Consultation Paper reforms

The Stakeholder Group broadly supports the proposals outlined in the Consultation Paper. These are sensible reforms that should help streamline the regulatory environment with clear allocation of authority and improved rule-making capacity.

We support, in particular, the proposal to give ASIC the power to make rules for clearing and settlement facility licensees (CSFLs) to promote "fair and effective provision of clearing and settlement facility services". The Stakeholder Group views this reform as an important potential avenue for members of the Stakeholder Group to seek ASIC's direct intervention in the scenario the CHES replacement project produces unfair, monopolistic or inefficient service and market outcomes.

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Our concerns

The regulatory regime is, however, unprepared for the effects of the CHES replacement project, which will permanently disrupt the market and regulatory landscape for market operators, benchmark administrators, clearing and settlement facilities and derivative trade repositories.

As a group, we fully support the goal of driving further innovation in the Australian financial market as CHES did when it was introduced. We also support the concept of a distributed ledger technology (DLT) platform, in principle. However, a DLT platform of this complexity, scale and criticality (to a diverse range of market stakeholders) has yet to be introduced to replace core market infrastructure in any major equity market anywhere around the world. Any platform needs to strike a sensible balance between risk, commercial viability and innovation.

As the Stakeholder Group has previously raised with Regulators, CFR must be given more defined and specific powers to enforce appropriate parameters around ASX's use of its monopoly powers and ensure competitive markets are maintained for the best outcomes for all Australians. Such powers would ensure this sensible balance is maintained and ASX made accountable. These parameters are already outlined in the Council's Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia.

In our view, ASX – a publicly listed, for-profit company – is at risk of effectively further monopolising what will be a valuable piece of national infrastructure that it will continue to 100 per cent own, to which it will control access, and over which it will have rule-making authority. Without appropriate oversight, vertical integration by ASX through the distributed ledger on which the CHES replacement system will reside could lead to a substantial lessening of competition in key market segments adjacent to ASX's existing monopoly. This could include hampering, damaging or even threatening the long-term survival of brokers, share registries and other stakeholders.

We note that prior consultations around competition in clearing and settlement have occurred and that CFR is not seeking feedback on this issue. The Consultation Paper states, however, that:

“A lack of competition in the provision of clearing and settlement services could result in higher prices for users than would be the case in a competitive market. It could also result in barriers to transparent and non-discriminatory access to those services and/or limited responsiveness to users' evolving needs. This would be contrary to the objectives of maintaining competitive and efficient financial markets... If competition does not emerge, then it is important that regulators have appropriate powers to address the potential for anticompetitive conduct of any incumbent.”

The Stakeholder Group supports this statement.

The CHES replacement program is expected to go live in 2021 and Regulators do not have the “appropriate powers” referenced in the Consultation Paper to address anticompetitive conduct. This is despite CFR and the ACCC's 2015 advice to the Federal Government that proposed the introduction of rule-making and arbitration powers through which:

1. ASIC would be given the power to enforce the regulatory expectations and set minimum conditions for competition in clearing and settlement services for cash equities.
2. The ACCC would be given the power to arbitrate access disputes between parties for cash equity clearing and settlement services.

In March 2016, the Government announced its commitment to implement these legislative changes. As of December 2019, these legislative changes had not passed.

The Stakeholder Group's recent engagement with Government suggests it is relying on CFR to re-address the legislative changes and establish them as a priority. The regulatory inertia can only be overcome if CFR reiterate to Government the pressing need to pass the legislation before the CHES replacement program is even further advanced. Failure to do so could result in severe disruption to the services provided by FMI's and severe consequences for the Australian financial system, including the businesses, investors and thousands of jobs that rely on its stability.

Recommendations

While we recognise that competition issues are beyond the scope of this Consultation Paper, we recommend that:

1. CFR approve recommendations for new rules to set minimum standards for clearing and settlement competition in relation to the CHES replacement project.
2. CFR confirm a timetable for the introduction and legislative approval of these rules before the 2021 go-live date.
3. CFR urgently advise Government on the need to pass these rules, in accordance with previous advice in 2016.

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Conclusion

Thank you for the opportunity to provide this submission to CFR's Consultation Paper. Should CFR require any further information or clarification, please do not hesitate to contact the Stakeholder Group's representatives Megan Motto, CEO of the Governance Institute of Australia, Judith Fox, CEO of the Stockbrokers and Financial Advisers Association, or Ian Matheson, CEO of the Australasian Investor Relations Association. Their details are provided below.

Yours sincerely

CHES Replacement Stakeholder Group



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CEO, Governance Institute of Australia



Judith Fox

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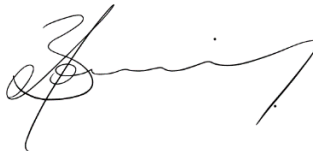
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