

**27 June 2018**

Regulatory Policy Unit  
Office of General Counsel and Company Secretary  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

By email

Email: [regulatorypolicy@asx.com.au](mailto:regulatorypolicy@asx.com.au)

Dear Sirs,

## **CHES Replacement: New Scope and Implementation Plan: Consultation paper**

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility in listed companies for dealing with the Australian Securities Exchange (ASX) and interpreting and implementing the listing rules.

Our members acknowledge ASX has attempted to engage as many stakeholders as possible and encourages it to continue to consult broadly on this important project. Governance Institute was a member of the CHES Replacement Working Group on corporate actions. Our members have significant interaction with ASX and wish to be involved in any further decision-making and any relevant CHES Working Groups. We also note that the CHES Replacement Project will require a number of consequential Corporations Act and Listing Rules changes and our members wish to be actively involved in these consultations.

We have confined our submission to high-level comments on the proposals, rather than on the specifics of the business requirements. There are a number of references in the Consultation Paper to the need for more work on regulation, privacy or the legislative framework. Without more detail, it is difficult to assess some of the proposals. Our members would be happy to be involved in further consultation once this material is available. Governance Institute would be happy to assist in facilitating this consultation.

The Council of Financial Regulators (COFR) *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia*<sup>1</sup> sets out three elements for the provision by ASX of services to and users of its monopoly cash equity clearing and settlement services for both ASX-listed and non-ASX-listed securities:

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<sup>1</sup> *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia*, Council of Financial Regulators, September 2017.

- User input to governance;
- Transparent, non-discriminatory and fair and reasonable pricing of clearing and settlement (CS) services; and
- Commercial, transparent and non-discriminatory access to CS services – service levels, information handling and confidentiality.

ASX has also publicly committed to eight guiding principles for the new CHES system, including operating for the benefit of issuers and end investors, accessibility, privacy and security and compliance. Together these documents provide an appropriate framework for the CHES replacement project. Our members have considered the proposals in the Consultation Paper with the Regulatory Expectations and the Guiding Principles in mind.

The ASX Business Committee has carried out an oversight role for the CHES replacement project and has responsibility for reporting on the Project to the ASX Settlement and ASX Clear boards for some time. It also plays a critical role as a mechanism for input into ASX's governance framework and for meeting the COFR Regulatory Expectation in relation to user input to governance. Our members consider the Business Committee may benefit by expanding its membership to include issuer and investor representatives. This would enhance ASX's commitment in the Guiding Principles for the CHES project to operate for the benefit of issuers and end investors. Our members would be happy to discuss this aspect of our submission further.

Our members were disappointed that the consultation paper did not provide a business case for the proposed changes or any cost/benefit analysis of the various new functions and the benefits to stakeholders. The three consultation questions: important new business requirements not captured, the testing and release management strategy and transition planning are quite narrow in scope and, without the additional detail referred to above, make it difficult to assess some of the proposals. Our members also ask for greater articulation of how the proposals sit within the framework of the COFR Regulatory Expectations and the Guiding Principles.

### **Costs of the CHES replacement system and benefits to issuers**

An area of concern for our members are the potential costs to issuers of the CHES replacement system. The Consultation Paper does not provide sufficient transparency on issuers' potential costs in transitioning to the new platform, the ongoing costs of the system and whether issuers will share in the efficiencies and cost savings generated by the new CHES system.

By way of example:

- The introduction of ISO 20022 messages to replace CHES messages will impose costs on registries, which may be passed on to issuers. The transition to ISO 20022 messaging will provide benefits to ASX but the benefits to issuers are less clear.
- The introduction of a Common Investor Number (CIN) as an investor identifier, which can link to CHES and issuer sponsored holdings, is potentially useful for security holders who hold products through more than one broker or both individually and jointly and will enable them to receive a consolidated portfolio view of their holdings. It is unclear from the Consultation Paper how much work will need to be done to link a CIN with a holder's SRN and what benefit will flow to issuers and the estimated number of investors who will benefit from this new feature. Our members would also welcome further detail about how the CIN will interact with TFNs and the New Payments Platform (NPP) Payment ID. It is also unclear from the Consultation Paper who will be managing the maintenance and shareholder queries regarding the CIN.

- The creation of a single access point for settlement participants to be able to validate the security holder reference number (SRN) for issuer sponsored holdings will require a copy of the issuer sponsored register to be provided by issuers via their share registry to ASX on a daily basis. We agree with ASX that further consideration of the privacy considerations of the collection, use or disclosure of personal information associated with the SRN is required to support this requirement. Our members are concerned that the requirement will involve the daily transfer of millions of shareholder records for the purpose of facilitating what we understand is a relatively small number of enquiries. We would also recommend that ASX consider the cost implications for issuers and their share registries of this new requirement.

There are many functionalities of the new CHES system, which may potentially benefit issuers, security holders and market participants. However, it is difficult to assess these benefits when there is no business case included by ASX in the consultation paper and no indication as to who will be bearing the costs. We consider that the introduction of many functionalities will also require significant work by a number of parties and issuers are concerned that they will bear these costs.

By way of example: standardising registration details for account information will require a transition of existing holder registration details to the new standardised format. Integrating a new format across all impacted systems and processes is a significant task. Migration of millions of 'live' accounts to the new format and standards will involve significant work for share registries on behalf of issuers. The issuers will be required to bear the costs of this project. There is no indication in the consultation paper of these costs or the basis on which they will be determined.

### **Provision of other services by CHES**

The introduction of the CHES replacement system represents a major change to market infrastructure and will potentially have a profound impact on how issuers pay for services. Issuers are legally required to maintain a share register under the Corporations Act and many of them outsource this function to registry providers. They are currently free to choose their preferred provider for a range of commercial reasons. According to the Consultation Paper, the CHES replacement system will provide new business functionalities, which go beyond clearing and settlement. This will include issuer services, which issuers currently access through a range of providers. The Consultation Paper contemplates that ASX would provide via CHES, services such as proxy voting and DRP elections, currently provided by registries.

Given the COFR's Regulatory Expectations and the commitment by ASX to accessibility as one of the Guiding Principles for the CHES replacement project, issuers are concerned to ensure that services they currently access in a competitive market continue to be available to them on a contestable basis. If additional services, such as proxy voting and some corporate actions will be available in the new system, more clarity is needed to understand the basis on which issuers will be able to access these services. For example, will issuers be able to elect which services they wish to use from among the range of new services offered by CHES? Under what circumstances, if any, will issuers be required to take those services? What is the case if issuers currently access these services through their registry provider – will there be a duplication of costs and services?

An example of a post Day 1 implementation feature referred to in the Consultation Paper is electronic proxy voting (paragraph 2.2.19). It is unclear whether issuers could access the proposed CHES electronic proxy voting service on an 'opt in' basis or whether it will duplicate electronic proxy services currently provided by registries. A duplicate electronic proxy voting system could create a split tabulation system leading to increased costs and inefficiencies for issuers.

These questions raise important issues about how ASX will ensure a competitive market for these services, what the costs to CHESS users will be and how those costs will be determined. It is difficult to provide a considered response to these aspects of the CHESS replacement project until there is additional information and stakeholder discussion. Again, our members request more clarity about the basis upon which these additional services will be provided and how they meet the Guiding Principles and the COFR Regulatory Expectations. Given the Guiding Principles for the CHESS project, they expect that the pricing and nature of these services will be transparent and communicated to users in a similar manner way to clearing and settlement pricing.

## **Data**

We note that ASX acknowledges in its Consultation Paper that further consideration of the privacy implications of the collection, storage, use or disclosure of personal information associated with a CIN or collected as part of additional investor information is required to support these additional functionalities. We request further consultation on this aspect of the project as we also have concerns about the security and privacy of additional investor information held on the new system.

Our members have a number of other specific questions in relation to some of the new data proposals:

- Will issuers, as the 'owners' of the relationship with shareholders and therefore the stewards of that data on their behalf, be free to access and/or analyse and/or add additional information to the data separate from their existing registries or will they be required to access it direct through ASX or another exchange?
- The Consultation Paper contemplates that the CHESS platform can facilitate the capture of more data than currently, for example, Tax File Numbers, bank account details, DRP elections, investors' email addresses and other contact information such as mobile telephone numbers. Some of this information is typically currently held on the register by share registries. Our members support moves to increase the collection and use of this information and would be keen to share the economic and efficiency benefits of doing so. However, some of our members advise that this may not be straightforward, particularly for issuers with large groups of elderly investors. The Consultation Paper does not provide any detail about the underlying commercial model but presumably, given that ASX is itself a commercial entity, there will be some form of charge to issuers for passing the data to them. What additional data will be available and on what terms and how will this be coordinated and reconciled against data already held on registers (given the risks of duplicated records and reconciliation concerns)?
- What is the process for third party service providers to build applications to use the information on the ASX systems? One potential concern is privacy given that issuers are the 'owners' of this data. Has there been any analysis of the privacy implications of third party providers having access to this information? In addition, has there been any analysis of what is available from what is currently provided?
- Will issuers be able to require that registries, ASX or another party collect extra information that issuers would find useful? For example, at one point there was a proposal that there would be real-time ultimate beneficial ownership information. Is it contemplated that the new information to be collected might include mobile numbers and NPP PayIDs (for Australian holders only)? What would be the framework if issuers wanted to collect more information?
- How will the 'value added' data be stored? Will it be locked to the entity sourcing it or will issuers be able to layer their information or connect their information to the network? While the new system will save significant costs for the back-offices of custodians and nominees through a shared database – are there services or shared databases available for issuers?

Our members welcome ASX's commitment to engaging with issuers and other stakeholders throughout the development, testing and implementation phases leading up to the commencement of the new CHESS system and look forward to continued involvement in the process of engagement on this important project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Burrell', with a horizontal line extending to the right.

Steven Burrell  
Chief Executive  
Governance Institute of Australia