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Competition in the provision of clearing and settlement services

We refer to the recently issued exposure draft legislation amending the *Corporations Act 2001*, the *Competition and Consumer Act 2010* and the *ASIC Act 2001* to facilitate competitive outcomes in the provision of clearing and settlement (CS) services for Australia's financial markets. Computershare appreciates the opportunity to provide our comments on this important legislative initiative, following our continuing engagement with Treasury and the Regulators – ASIC, RBA & ACCC – on critical governance issues in the provision of clearing and settlement services in Australia.

We support the Government's goal of facilitating competitive market outcomes in the provision of CS services by:

a. Providing ASIC with the authority to make CS services rules that deal with the activities, conduct and governance of CS facility licensees. We understand that the purpose of these new powers is to establish and enforce requirements so that ASX, as the current monopoly provider of CS services, must operate in a manner that achieves competitive outcomes, while ensuring safe and effective competition in clearing and/or settlement should a viable competitor subsequently emerge.
b. Establishing a framework for parties to seek access to CS services and providing ACCC with the capacity to make binding arbitration decisions to resolve access disputes.

In our view, these proposals are an appropriate step towards an enhanced regulatory environment that ensures provision of CS services in a manner that supports the interests of the Australian economy as a whole and provides fair and effective outcomes for all market stakeholders.

Computershare has raised concerns with the Regulators about the current governance and management of CS services, particularly regarding the CHESS Replacement Project (CRP). This was most recently discussed at the Parliamentary Joint Committee on Corporations and Financial Services (PJC). Stakeholders have incurred significant costs during the course of the CRP – both realised and opportunity costs. Our submission is attached.

While Computershare welcomes the proposal, we note it will not provide near-term resolution of the ongoing concerns with ASX's governance of the CRP. Further, the full potential impact of these proposals will not emerge until ASIC's draft CS service rules become available, after passage of this legislation.

Accordingly, while we support in principle the proposed new regulatory framework, we wish to highlight the following concerns, which in our view require additional governmental action:

1. The urgent action to immediately remedy governance of CRP, and
2. Remaining barriers to effective competition in CS services.

1. Expedite improvements to governance of CRP

Immediate action is needed to implement proper governance of the CRP by ASX, recognising the impact of the success of the project on the national economy and on the large number of stakeholders, external to the ASX, who are instrumental in its delivery.

The Exposure Draft proposes a structure for ASIC to issue rules regarding the activities, conduct or governance of CS facility licensees in relation to CS services (as defined). This would provide ASIC with the powers that it said were necessary during the development of the Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services, published in 2017. Exercise of these new powers is of course contingent on completion of the necessary legislative and administrative processes; passage of the proposed legislation; the issuance of certain declarations by the Minister; the processes of drafting, public consultation, finalisation, and publication of the CS services rules by ASIC; and presumably some implementation period to facilitate new compliance processes.

Accordingly, while we welcome the proposals, they will not be a timely mechanism to address the specific pressures facing the Australian market today. While valuable in the medium-term to establish an over-arching environment that facilitates competitive outcomes, the proposals will not provide the immediate action the market needs to resolve the continuing deficiencies in ASX management and governance of the CRP, which have been most recently documented in representations to the PJC.

The legislative framework for licensing and regulation of CS facility operators:

- places a duty on the licensee to provide the CS facility in a fair and effective way; and
- requires the licensee to have adequate arrangements in place for handling conflicts between its commercial interests and its discharge of that duty.

The RBA's Financial Stability Standards also require governance arrangements which ensure the design, rules, strategy and major decisions of a settlement facility appropriately reflect legitimate interests of its participants and stakeholders.

There are grounds for serious concern that ASX may be unfairly using its monopoly position by developing the CRP in a way that would facilitate the expansion of the ASX business into the provision of services related to securities administration, at the expense of the service providers who currently conduct business in that space. Such securities administration services include registration of ownership, aspects of administration of various securities processes such as IPOs, corporate actions and proxy voting, not directly related to settlement of securities trades, and could be collectively referred to as 'post-settlement' services.

In our view, the Regulators should have regard to the legislative framework and the RBA standards and:

- establish clear, immediate expectations that ASX reform its management and governance, in a verifiable manner, to balance the interests of all stakeholders in the conduct of the CRP, and
- ensure that conflicts of interest of ASX, as the CS facility operator, are handled in compliance with its statutory duty.

We are currently finalising specific recommendations for reform of ASX's governance structure for CS services, designed to avoid the conflicts of interest demonstrated during the CRP, that will be provided in our written submission to the PJC, due early May. We would be pleased to share those recommendations with you once made available through the PJC process. The original CHESS project in the 1990s adopted a strongly representative Board and governance model that acknowledged the impact of the project on the national interest and a wide range of market stakeholders, and is a useful reference point for what is now needed for the CRP.

The CRP is at a critical juncture, with considerable costs incurred by all stakeholders to date. The current ASIC investigation into potential breaches of provisions of the ASIC Act & Corporations Act by ASX entities, and/or directors and officers with respect to oversight of the CRP, and statements and disclosures made by or on behalf of ASX as to the status of the CRP, highlights the criticality of management and governance of this project. Australia risks falling behind global market standards and suffering further damage. For example, as major markets look to gain efficiencies and cost savings from reducing the settlement period to T+1 and even T+0 in the next several years, the ASX's path forward on CRP remains opaque. Australia faces further economic costs and lost opportunities unless urgent action is taken to require ASX to progress the CRP in a manner that clearly and directly reflects the interests of the market as a whole.

We respectfully suggest that Treasury consider consulting with ASIC to determine whether the Regulator's existing powers under Part 7.3, and other provisions of the Corporations Act and the ASIC Act, are sufficient to enable it to prescribe and monitor the governance arrangements that, in our opinion, are essential for the sound and successful development of the CRP. If there is a deficiency in the existing powers, it may appropriate to amend those powers by legislative instrument.

2. Review remaining barriers to effective competition in CS services

While we appreciate that the proposed framework will allow issuance of CS service rules by ASIC and resolution of service access disputes by ACCC, there remain certain arrangements in the over-arching regulatory environment that we anticipate will continue to impact competitive outcomes, deriving from ASX's historical monopoly over CS services. These include various provisions in the Corporations Regulations on title transfer by electronic messages that specify application to ASX Settlement, as well as ASX's monopoly rulemaking control over many aspects of the operation of dematerialised (uncertificated) securities holdings.

We recommend that Government and the Regulators consider these within the context of developing ASIC's CS services rules, as well as any separate action required to balance the advantages that ASX has from its historical position. These areas were highlights in our recent comments to the PJC and our prior submission to the Regulators on the 2017 consultation on Safe and Effective Competition in Cash Equity Settlement (attached).

a. Dematerialised securities record-keeping

At present, the ASX Group entities (ASX and ASX Settlement) control most aspects of rulemaking for the structure and administration of all dematerialised (uncertificated) securities registers in Australia. Under the ASX Settlement Operating Rules, ASX Settlement prescribes the structure and operation of the CHESS subregister as well as many aspects of the administration of securities holdings on the issuer sponsored subregister, where issuer sponsored holdings interface with the operation of the CHESS environment (eg transfers between the two subregisters). In addition, ASX Listing Rules Chapter 8 prescribe the operation of many aspects of issuer sponsored holdings, unrelated to interaction with the CHESS subregister or operating environment. This is derived from ASX's historical role as the defined and only operator of a CS facility, prior to the policy-shift to support competition.

This gives the ASX Group significant power over the operations of securities recordkeeping. The Corporations Act and Regulations do not make any direct provision for registration and transfer of dematerialised securities – this is governed primarily by the various ASX rulebooks. In our view, this creates a real risk of ASX inhibiting fair and effective competition by controlling the requirements for operation of the subregisters, as well as access to them. Throughout the CRP, ASX has sought to leverage this rulemaking authority to require centralisation of data unrelated to operation of the settlement facility, to its commercial advantage. For example, compelling issuers (through their registrars) to provide ASX with a daily download of the full issuer sponsored subregister.

We appreciate that the proposed legislation seeks to address any issues of interoperability and access, and the Explanatory Memorandum states that ASIC's CS services rules would deal with matters including the coordination and cooperation between CS facilities, registries and issuers in respect of transfer and administration of holdings. However, we question the continued appropriateness of the ASX Group exerting such extensive control particularly over the operation of the issuer sponsored subregister. This creates a significant conflict of interest risk, which has been evident during the CRP.

If a competitor CS facility is established, further unnecessary uncertainty will be created where that facility may provide differing terms for operation of aspects of the issuer sponsored subregister. This has the potential to not only create interoperability issues between competing CS facilities, which the new framework contemplates, but also places issuers and their registrars in the middle of potentially conflicting expectations and requirements for securities administration from the CS facilities' rule-making.

We appreciate that this control of dematerialised securities administration derives from the historical development of CS services in Australia. It may require some time to agree and establish updated principles regarding where ASX should and should not be able to make rules with regard to these aspects of securities administration. In our view, ASX rules relating to operation of the issuer sponsored subregister should be limited to matters necessary for the interaction with the CHESS subregister (eg transfers between the subregisters).

We recommend that Government and the Regulators consider the appropriate principles and whether, for example, the operational requirements for administration of the issuer sponsored subregister and the complete register of members should be governed by ASIC rulemaking. In our view, this issue should be considered in parallel with the implementation of the proposed legislation and subsequent ASIC rulemaking on CS services but should not become a dependency for progression of that broader effort.

b. Corporations Regulations relating to title and transfer

Given the evolution of the electronic settlement system with the introduction of CHESS, the provisions of Part 7.11 of the Corporations Regulations, which govern title and transfer of securities by electronic messages, refer specifically to 'ASTC', meaning ASX Settlement & Transfer Corporation, a predecessor entity to the current ASX Settlement. This is the case even if the framework of Division 4 of Part 7.11 contemplates a "prescribed CS facility" which should have been agnostic as to the operating legal entity. If a competitor operator of a CS facility emerges, it is unclear if the intent would be to amend these Regulations to become neutral to any prescribed CS facility, or if bespoke Regulations would be issued for the new CS facility.

We therefore recommend the Government and Regulators consider and communicate their intended approach to remove this current barrier to competing CS facilities, including the potential for other CS facilities to offer services with respect to the same asset classes as ASX (eg listed cash equities) or for different asset classes (e.g. unlisted securities). Computershare would welcome the opportunity to provide a more detailed submission on these matters.

Computershare supports the Government's goal of facilitating competitive market outcomes and considers that the proposed legislation will provide the Regulators with important additional tools to achieve this. The full scope of the new regulatory environment will only be evident once ASIC has the capacity to issue the draft CS service rules, and therefore the urgent need to address the ASX governance deficiencies for the CRP remain the highest priority.

We appreciate the opportunity to provide our comments on the Exposure Draft. If you have questions, please contact: Scott Hudson, General Manager Market Liaison at scott.hudson@computershare.com.au or 0448 526 827.

Yours sincerely

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Attachments:
1. *Computershare PJC Opening Statement 23 February 2023*
2. *CoFR Safe and Effective Competition in Cash Equity Settlement 20 April 2017*

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23 February 2023

Parliamentary Joint Committee on Corporations and Financial Services
Computershare Opening Statement, Marnie Reid

We thank the committee for its interest in this matter and for inviting us today.

Founded in 1978, Computershare is Australia's original fintech start-up success. In Australia alone, we employ 1300 staff, service over 800 listed companies and manage 13.4 million investor accounts. Operating in 20 other countries we are deeply experienced with financial market infrastructure around the globe.

We believe the Australian market model remains one of the best in the world and we support the fundamental need to modernise the underlying technology.

ASX's principal focus on the technological aspects of the project may have distracted it from appropriately resolving other important aspects of the overall business model and the governance framework required to successfully deliver a project of this scale.

It should also be noted, ASX did not publish a Business Case defining the scope of requirements, business impacts or commercial benefits that would flow from the changes it proposed for the upgrade of CHESS. During consultations on scope and subsequent rule changes, we believe ASX may have been using its powers to extend its monopoly into post-settlement activities, that are beyond the clearing & settlement remit of its licence.

The CHESS Replacement project raises questions regarding ASX's governance arrangements. ASX has statutory obligations to manage conflicts-of-interest and to consider the interests of all users and stakeholders, providing its clearing and settlement services in a fair and effective way. There are questions around whether these obligations have been discharged by ASX under its current governance model.

We consider ASX's governance weaknesses contributed to the failure of the project. Consultants have pointed out significant issues with the technology chosen by ASX, but it was further complicated by its attempts to change the market structure and rules to ASX's commercial benefit adding unnecessary complexity.

We ask ASX's regulators to commission a new high-level industry steering group to confirm the core guiding principles for the next phase of CHESS Replacement Project.

We also ask ASX's regulators to commission a detailed independent report that specifically addresses whether ASX complied with its statutory obligations, including its obligations to have adequate arrangements for managing conflicts-of-interest and to conduct itself in a fair and effective way.

These recommendations should be implemented without delay.

We do not believe the actions announced at ASX's half year results, notably a new technical sub-committee and partnership program, acknowledge the wider governance and business model concerns we have outlined.

Computershare will continue to actively contribute to support the resilience of the existing CHESS platform and the evolution of our world class market infrastructure to underpin the Australian economy and for the benefit of public companies and their investors.

END

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Computershare

Thursday, 20 Apr 2017

Market Infrastructure
Australian Securities & Investments Commission
GPO Box 9827
Sydney NSW 2001

By email: Competition.Settlement@asic.gov.au

Dear [redacted]

Consultation Paper on Safe and Effective Competition in Cash Equity Settlement in Australia

Thank you for the opportunity to respond to the Council of Financial Regulators' consultation on Safe and Effective Competition in Cash Equity Settlement in Australia.

Our confidential comments on the consultation paper are offered from our particular perspective as share registrar. We have accordingly not addressed a number of the broader themes in the paper regarding settlement infrastructure and models, but have confined our comments to areas that impact securities registration, administration and transfer. We address these issues in response to questions 1, 2, 3, 4, 18 & 19 only.

We appreciate the Agencies' engagement on these topics and look forward to continuing to provide input on relevant aspects, as this initiative progresses. If you have any questions in relation to our comments, please contact Claire Corney at claire.corney@computershare.com or myself at paul.conn@computershare.com or Greg Dooley locally at greg.dooley@computershare.com.au

Yours sincerely,

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1. **Has the emergence of competition in cash equities settlement become more likely than it was considered during the 2015 Review? Please elaborate on your answer.**

Yes, we now consider targeted competition, e.g. for specific market segments, more likely than we did during the 2015 review; however we do not anticipate a wholesale replication of the market settlement infrastructure in a single step or in the near to medium term. This view of the changed competitive environment is predominantly due to the emergence of distributed ledger technology, which has the potential to offer alternate approaches to competitive equities settlement and to reduce the barriers to entry for competitive settlement operators. A very profitable vertically integrated exchange group is also a contributing factor and another catalyst for users to seek contestability in settlement and related services. Combined, these separate factors reinforce the position that previous perspectives concerning the viability of competition in settlement are appropriate to be reviewed.

2. **What, if any, are the existing barriers to entry for a competing SSF in Australia? For example, are settlement services contestable without the additional provision of ancillary services? Are there other factors or particular market features that increase barriers to entry for a competing SSF?**

Computershare's comments on the issue of barriers to settlement are offered within the context of our role as share registrar, and focus on aspects related to securities recordkeeping.

Under Australian law and current market structure, the settlement process, on the one hand, and securities registration and administration, on the other, are closely entwined. From an operational and technology perspective, ASX operates the Clearing House Electronic Subregister System ('CHESS') as both the cash equities settlement system and as a system to record securities ownership on the CHESS subregister. Equally, from a regulatory perspective the ASX Settlement Operating Rules provide both for the regulation of settlement operations and also securities administration and transfer. The ASX is empowered to make such rules pursuant to its authorization as a Securities Settlement Facility ('SSF') under the Corporations Act. Additionally, the ASX Listing Rules contain certain provisions governing aspects of securities registration.

A competitive cash equities settlement provider that is also approved as a SSF is likely to seek to introduce equivalent rules regarding aspects of securities registration, administration and transfer to support their particular settlement model. We are concerned however that the current regulatory framework risks creating legal uncertainty in a competitive SSF environment. We therefore suggest that this issue of securities registration, administration and transfer needs to be considered in parallel with the broader discussions on facilitating a competitive settlement environment.

Our primary concern is to ensure certainty and integrity of legal title to securities within the current 'name on register' market model: that transfer arrangements are properly authorized and provide valid instructions to transfer title, and correspondingly that we have certainty in the rules relating to administration of securities entitlements. Figures 2 & 3 in the consultation paper demonstrate that, as share registrar, we will be required to interface our clients' securities registers with one (or more) new SSFs, additional to our current role interfacing with CHESS. We anticipate that a number of issues regarding securities administration and transfer will need to be considered operationally, technically and legally to effectively support a competitive SSF future state. This should include fundamental securities transfer and registration issues as well as the handling securities administration activities such as corporate actions.

As the most fundamental example, and purely for illustrative purposes, it is conceivable that a registrar may receive transfer instructions from competing SSFs, and also off-market transfers, in

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relation to a particular parcel of securities on the issuer sponsored subregister. In addition to needing to determine processing protocols for such transfer instructions (which is an existing albeit uncommon risk between market transfers and CHESS-initiated movements), this creates a risk of the share registrar or its issuer clients being in breach of one of more SSF rule regarding transfer processing, in the absence of protocols for determining priority.

Accordingly, while we do not take a particular view as to whether the current regulatory environment for securities registration poses a barrier to entry for a competing SSF per se, we are of the opinion that these issues need to be addressed as part of the Agencies' efforts to facilitate a competitive settlement environment. While we appreciate how deeply embedded this is in the existing market architecture and ASX Rules, consideration could be given to 'unbundling' rules relating to settlement operations of a SSF from rules relating to securities administration and transfer.

We suggest that one possible approach to address this would be for the Corporations Regulations to prescribe a set of common principles for SSF rule-making, to ensure the fair and non-discriminatory ability for all competing SSFs to effect (or at least instruct) securities transfers on the electronic subregisters, and for the establishment of common protocols for securities transfer and registration. Formation of the issuer sponsored subregister could also be addressed at the level of the Regulations rather than SSF rules to remove uncertainty regarding access by competing SSFs .

We suggest that the current hierarchy of regulation for securities registration, administration and transfer could deliver this outcome with some reconfiguration of the balance between prescriptive provisions in the Corporations Regulations and the remit of SSF rule-making, as follows:

1. *Continuation of (i.e. no change to) the current enabling provisions in the Corporations Act allowing approved SSFs to make rules for securities settlement, administration and transfer, subject to the specification of Regulations;*

2. *The establishment of new provisions under the Corporations Regulations to set common principles for fair and non-discriminatory rights of access to the subregister system by all SSFs, including provision for the formation of issuer sponsored subregisters for issuers whose securities are settled through any SSF; and common protocols for securities administration and transfer to reflect the existence of multiple sources of transfer instruction; and*

3. *Continuing SSF rule-making to establish processes to support each SSF's settlement model, subject to the principles established under the Regulations. As part of this, we would expect that ASX Settlement would continue to make rules in respect of the CHESS subregister, subject to the fair access principles established under the Corporations Regulations.*

We note that aspects of the Corporations Regulations require reconsideration in any event, as specific references to ASX Settlement and Transfer Corporation Pty Ltd (forerunner to ASX Settlement) are included. We would also suggest that as part of a review of the regulatory structure, consideration should be given to facilitating a move to electronic off-market transfers for the issuer sponsored subregister, in addition to the current paper-based off-market transfer process, to improve overall efficiency in securities transfer.

The current structure is an understandable outcome of the historical development of CHESS and the longstanding centrality of ASX in the marketplace. However as the market structure evolves and in the light of potential competition for settlement activity, we suggest that it is timely and necessary to re-consider these arrangements and to future-proof the regulatory infrastructure.

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3. What, if any, are the existing barriers to competition in the provision of ancillary services? How would competition in settlement impact upon the provision of ancillary services? For example, would you expect this to increase the prospect of competition in ancillary services?

The Agencies note a range of ancillary services in the Consultation Paper, specifically asset registration, safekeeping, issuer services (e.g. corporate actions) and investor services. Overall we consider that a very competitive environment exists in Australia for these varying services. However discrete subsets of services are not currently contestable. This includes securities administration and transfer on the CHESS subregister, and certain communications to investors registered through CHESS. The structure of the CHESS subregister and ASX's rule-making capability results in ASX control of such activities.

For example, ASX issues holding statements to holders on the CHESS subregister, for which it charges issuers a prescribed fee that is not negotiable by the issuer. The ASX's 2016 Annual Report stated that it produced 14m holding statements in the year. This investor communication is not a contestable service, unlike the majority of shareholders communications. By comparison, the issuance of holding statements to investors on the issuer sponsored subregister is a competitive service provided to issuers by a range of providers, subject to tender and negotiation on pricing. We also note that the CHESS holding statements are currently issued in paper form only and this is a substantial contributor to the high cost imposed on issuers and a significant revenue contributor to ASX (approximately A$17M per annum at current fees).

In addition to allowing competition in the provision of this investor communication service to issuers, we suggest consideration be given to mechanisms to facilitate electronic delivery (via email or other form) while still ensuring investor protection. Further, under the rules as currently drafted, issuers would be required to pay for dual statement processing where a party moves securities between the CHESS subregister and the issuer sponsored subregister (and vice versa). We do not believe issuers should incur increased costs as a result of a competitive settlement system that delivers lower costs to market participants and investors. We believe this double impost issue can be resolved through removal of the duplicative triggers and greater use of electronic statement production processes.

Similarly, issuers' agents are very limited in the range of functions that can be undertaken in respect of holders on the CHESS subregister. For example, registrars are unable to update holder registration details on the CHESS subregister, despite common requests for this from securityholders (Note: At Computershare, we receive more than 1 million address change requests annually. We estimate that 10-15% of these are received from Broker Sponsored holders, and we are unable to therefore administer the address change for the investor and must redirect them to their sponsoring broker).

We also note that ASX is contemplating further service structures as part of its replacement of CHESS. While details of ASX's intended future service model are not yet available, ASX's comments on the topic have included mention of enhanced issuer services and changes to handling of corporate actions. It is possible that the CHESS replacement project will therefore give rise to further areas where ASX seeks to extend its control over ancillary services, utilizing its rule-making authority. While we fully appreciate that the current consultation relates to competition in settlement and not to ASX's planned replacement of CHESS, we consider it impossible to entirely separate these two substantive and potentially transformative events in the cash equities market infrastructure. Additionally, we believe that ASX should not be able to use advent of distributed ledger technology to extend its monopoly position.

In view of these considerations, we suggest that the Agencies consider mechanisms to allow access to competitive delivery of this subset of ancillary services.

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4. Would the entry of a competing SSF have an impact on Australia's electronic sub-register system (i.e. the broker-sponsored and issuer-sponsored model)?

In our view, the advent of competition in settlement (to augment the competitive trading environment in Australia) should prompt a parallel discussion around the appropriate future structure of access to the electronic subregister system. Under the Australian 'name on register' securities holding model and subregister system, investors can elect to be directly registered through either the issuer sponsored or broker sponsored model and thus obtain direct legal title to their securities, or to hold indirectly via a nominee on either subregister and receive only beneficial ownership. This system has been highly effective for the Australian market, delivering high levels of market efficiency while preserving investor choice regarding the administration of their securities, and it is critical that these benefits should be preserved and – where feasible – enhanced in a competitive SSF environment.

However, as discussed above, the structure that supported the implementation of CHESS and the introduction of fully dematerialised securities registers for ASX-listed companies embeds ASX rule-making control over substantial elements of the register structure. This should be reconsidered in a competitive SSF environment. Rules regarding securities registration, administration and transfer should be unbundled from rules relating to settlement operations, and consideration given to establishing common principles for the SSF rule-making on securities registration, administration and transfer at the level of Corporations Regulations.

The CHESS and issuer sponsored subregisters are prescribed under ASX Settlement and Listing Rules. For example, the ASX rules determine when an issuer must establish each subregister, or indeed in some circumstances create the ability for ASX to waive establishment of an issuer sponsored subregister option for investors. The ASX rules also prescribe many aspects of the ongoing administration of the issuer sponsored subregister. Where an issuer is not ASX-listed, its securities register is required to be certificated, under the Corporations Act, and the issuer cannot currently provide an issuer sponsored subregister.

With the advent of a competitive SSF with equivalent rule-making capability for securities registration, administration and transfer under the Corporations Act, it would be possible for the new SSF to establish rules for the creation of a new subregister structure to mirror the existing ASX structure. In our view, this is a less likely approach and would be detrimental for the market, issuers and investors. It also needs to be established beyond doubt that the new SSF would have the ability to prescribe rules in relation to transfer and registration on the issuer sponsored subregister, which is currently only capable of being established under the ASX rules.

We also note that issuers are currently required to have a CHESS subregister to access the settlement environment – in a competitive SSF environment it is possible that some issuers listed on non-ASX Australian Market Operators may prefer to operate only an issuer sponsored subregister. This may for example suit some small to mid-cap issuers.

For these varying reasons, we urge the Agencies to consider the most effective future 'home' and approach for rules relating to securities registration, administration and transfer. We do not advocate substantive change to the existing electronic subregister structure itself. As noted above, these have delivered substantial benefits to Australian investors, issuers and market efficiency. However, as discussed in our response to questions 2 and 3, the anticipated advent of settlement competition must prompt consideration of fair and effective means for the competing SSFs to access securities registration as part of the settlement process, without impacting the efficiency of the subregister structure or creating legal uncertainty.

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[Please note that we have not responded to questions 5 to 17]

18. Do you agree that the controls and safeguards described above, in combination with the Minimum Conditions (Clearing), are adequate to mitigate the risks that may emerge with competition in settlement, and to ensure such competition is safe and effective? a) If not, please describe any additional controls or safeguards that you believe are necessary and explain why? b) Are any of the proposed controls unnecessary? If so, please explain.

Please refer to our comments in response to Q19 below, where we discuss our view that interoperability should be addressed by fair and non-discriminatory access by each SSF to the securities register.

19. Do you agree that securities should be able to be moved between competing SSFs (e.g. via a link or a bridge between the SSFs, or possibly at the registry level) or do you envisage other ways for efficient settlement to be achieved?

We appreciate the importance of ensuring an effective capability for all competing SSFs to be able to access securities and initiate movement of securities. As discussed in our comments above, we recommend that the Agencies consider fair and efficient access to securities registration in conjunction with establishing the protocols for a competitive settlement environment. In our view it would not be efficient for all competing SSFs to establish and administer separate subregisters as part of the competitive settlement environment, which would be necessary if securities were required to be able to move directly between SSFs. Creation of additional subregisters would add to market complexity and costs to all stakeholders, including issuers.

The CHESS and Issuer Sponsored subregisters are overall very efficiently interoperable. We do however advocate review of turnaround times and fees/costs for all parties to a transaction in light of a competitive environment. There are a number of points of friction in current inter-subregister movements of securities that need to be addressed, to prevent either an increase in costs for certain stakeholders or a detrimental impact on timeliness of movements which could potentially impact settlement processes. These include:

- *While various parties to transfers and conversions are subject to turnaround times for processing, the ASX is not, creating a risk of potential delays;*
- *Issuers are charged a fee by ASX for each inter-subregister transfer and conversion, which has the potential to increase their costs if transactions increase in a competitive environment, and*
- *As noted earlier, under current rules regarding statements, these movements will result in duplicate statement issuance costs for issuers for the changes to both the CHESS and issuer sponsored securities holding.*

With regard to the above-mentioned costs to issuers, we suggest that these fees should be reviewed to ensure that they do not create barriers to the free movement of securities between subregisters

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and do not increase costs to issuers if the advent of competition results in a substantial increase in such movements.

We also note that other Market Operators should not be required in a competitive SSF environment to implement access to CHESS in order to have effective settlement through the entrant SSF. Such access would not be necessary if the security did not trade on competing markets.

The establishment of fair and non-discriminatory rules regarding access to the existing registration system, mandating response times on all parties including each SSF, would facilitate and support competition and interoperability. As discussed above, we envisage that this could be achieved by establishing core principles at the level of the Corporations Regulations to facilitate an even playing field between SSFs and, critically, to ensure legal certainty in securities registration, administration and transfer, while minimising overall changes required to the current regulatory environment. However we appreciate that there may be alternate mechanisms that could deliver this outcome, and we welcome an ongoing dialogue with the Agencies and other stakeholders to explore the most effective approach to achieve this.

-- END OF SUBMISSION --

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