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Office of General Counsel
ASX Limited
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Attention: Ms Diane Lewis

By email: regulatorypolicy@asx.com.au

Dear Ms Lewis,

Submission - CHESS Replacement Tranche 1 Rule Amendments Consultation Paper

Computershare appreciates the opportunity to provide our comments on the CHESS Replacement Tranche 1 Rule Amendments Consultation Paper. We continue to be an engaged and proactive participant in the ongoing market-wide efforts to develop and implement the CHESS replacement system and support the adoption of innovative technology to improve the efficiency, effectiveness and competitiveness of the Australian market.

We have committed substantial operational, technical, legal/regulatory and management resources to this once-in-a-generation development. As a result, and for the avoidance of doubt, Computershare is and will continue to be on-target for implementation in accordance with ASX's current timetable. However, orderly implementation is not without considerable risk to us, and possibly other stakeholders may be in the same position. We hold a serious concern with the viability of the overall project being delivered per the timetable in a manner that adequately ensures the continued orderly and proper functioning of the settlement system overall. This further raises the possibility that, by continuing to pursue the current aggressive implementation timeline, some of the tens of millions of investment dollars committed to the technical development requirements by all stakeholders, including Computershare, may be put at risk if any part of the industry fails to meet its obligations, or if the system fails to properly connect the different industry segments. In our view, **ASX should consider a deferral of 9 to 12 months in the project implementation, to allow consideration and implementation of a better managed process for communication and coordination of the technical, procedural and regulatory project streams**.

Stakeholders still lack clarity and certainty regarding project-critical technical and procedural aspects of the project. In parallel, we will not have a comprehensive view of the regulatory changes and their impact until at least mid-2020. Such uncertainty creates substantial risk at this stage in the project, with stakeholders unable still to properly understand the full technical, legal and operational impact and requirements. We are very concerned therefore with the viability of this project being delivered on the current timetable in a manner that preserves an orderly market. The potential for market disruption due to stakeholder uncertainty in their obligations and requirements is a real risk and we would be remiss in our responsibilities to our clients and our own business if we were to fail to raise this concern.

Transition into the rule-making phase of the project is a key milestone and should crystallise both the authority and need for market regulators to take a more active role in overseeing the project. We urge the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) to more directly participate in ensuring the effectiveness of coordination and communication of the technical, procedural and regulatory strands of the project, to ensure delivery in a fair and effective manner and which protects Users. We accordingly suggest that ASX establish a pause in the project to facilitate this review and engagement.

A. Summary of recommended actions

We have provided in sections B and C our specific responses on the rule amendments included in Tranche 1, and our comments regarding the overarching management of the regulatory change process.
We are particularly concerned to see the following rule amendments proposed by ASX addressed:

Proposed rule amendment	Recommended action	Basis for action
Rule 2.13: Holder Record definition. Rule 8.6.3A: ASX discretion to record additional holder information.	Delete provisions allowing future capture of currently-undefined information in Holder Record. Require any new holder information requirements to be clearly defined and subject to specific disclosure of purpose of collection, uses to which the information will be put, costs of access and how the information will be controlled.	Investor data protection risk Lack of regulatory certainty - Issuers and Participants
Rule 2.13: 'Entity Type' & 'Ownership Type' Rules 8.18.12 – 8.18.14: change of other Holder Record details	Amend rules to address the introduction of new Holder Record information, including specifying responsibility to update the information to ensure accuracy and reliability of the information. This will apply in the first instance to the new fields Entity Type & Ownership Type. Clarify purpose(s) of the new Entity Type and Ownership Type information fields. Include indemnity from Participant to Issuer to address risk of loss or damage arising from new holder information fields that have not been accurately updated following introduction.	Issuer liability risk Accuracy and usability of data
Rules 8.11.1 & 8.11.2: disclosure of UUID	Delete UUID from Rules 8.11.1 & 8.11.2. This internal system identifier should not be subject to disclosure rules.	Regulatory certainty for Users
Rules 9.8.3 – 9.8.6, 9.12.2 – 9.12.7: Issuer Sponsored to CHESS transfers & conversions	Delete proposed rule amendments. Confirm continuance of rule amendment package 'Transfers to the CHESS Subregister' that took effect December 20th, 2019.	Regulatory certainty and protection of Issuers from liability risk
Rule 8.15: Holding Locks etc. Rules 15.17.1 & 8.10.1: joint holders. Rule 8.14.2: closure of CHESS sub registers. Rule 8.14A: unknown.	Amend various rules to clarify impact on Issuer obligations and to mitigate unnecessary cost impacts for Issuers. ASX to issue proposed Rule 8.14A which was referenced but not included in Tranche 1.	Regulatory certainty for Users

B. General Comments

Before addressing the specific proposed rule amendments, we would like to share our comments on the approach adopted by ASX to the rule amendments, which are a critical building block in the successful implementation of the replacement system.

The ASX Settlement Operating Rules establish the regulatory and operating environment for all CHESS (and its replacement) Users, apportioning roles, responsibilities and accountabilities amongst and between ASX and its system's Users. Achieving and maintaining the appropriate balance is critical to ensuring fairness in the system for all parties, the protection of investors and Users, and the effective delivery of the system's services. The original introduction of CHESS was subject to a substantial market-wide cooperative effort, with significant focus on achieving this balance and extensive documentation of the impact of regulatory changes on various User groups. Likewise, it is essential that this major effort to replace CHESS with a new system achieves and thereafter maintains the same level of fair and effective balance of roles, responsibilities, and accountability between ASX and all Users.

With this in mind, we are considering the impact of the proposed changes to the regulatory environment within the context of the role and responsibilities of ASX as a clearing and settlement facility (CSF). ASIC's Regulatory Guide 211 lays out the purposes for regulating CSFs, and ASIC's expected regulatory outcomes. These are a relevant guide to the impact of regulatory changes on CHESS Users, assessing whether the regulatory environment:

1. Maintains financial system stability;
2. Reduces systemic risk;
3. Ensures that clearing and settlement services are provided in a fair and effective way; and
4. Protects investors and Users of CSFs.

Considerations in assessing the impact of Rule amendments include whether the clearing and settlement process is transparent so that participants understand their obligations and the operation of the facility; whether participants in the facility can identify, understand and evaluate the financial risks and costs associated with their participation; and that facility supervision is not compromised by conflicts between the facility operator's duties and its commercial interests. Our comments below are therefore approached within the parameters of ASIC's guidance on the supervision of CSFs.

1. Lack of regulatory certainty without comprehensive amendment package

The rule-making process is not structured in a manner that provides full transparency of the regulatory changes to Users and other stakeholders, to enable them to understand their obligations and the operation of the CHESS replacement facility in a timely manner. Stakeholders are unable to adequately understand the impact of the proposed changes due to:

- The tranche structure of proposed rule amendments;
- Tranche release of User technical documentation, which appears to be uncoordinated with associated rule amendments; and
- The interaction between the structure of the operating system and the Rules.

Accordingly, we are as yet still unable to adequately analyse the impact of the regulatory and technical changes for us and our Issuer clients.

1.1 Tranches of rule amendment

As we have communicated separately, we are concerned that the tranche structure is detrimental to our and our clients' ability to establish a comprehensive view of the changes to the regulatory environment. As we will only obtain a full view of the total rule changes to support Day 1 implementation of the CHESS replacement system on release of the Tranche 3 rule amendments, **our comments below on the specifics of Tranche 1 are contingent and subject to our further consideration of the interaction of these Tranche 1 rules with rules included in the subsequent tranches**. We cannot adequately assess the impact of the rule amendments until we have visibility of the full package of amendments.

ASX's approach is inconsistent with practice for previous major ASX developments and contrary to common practice for major market changes internationally. By contrast to the current approach, the major phases of CHESS implementation included provision of comprehensive rule packages and extensive supporting and explanatory material were made available, including tailored communications to address the impact for specific User groups such as Issuers and Participants.

We also note that any ongoing rule amendments undertaken by ASX, not directly related to the CHESS replacement system, may impact the rules included in the tranches and will require consideration. This has already created regulatory uncertainty in the application of rules relating to Transfers to the CHESS Subregister, where a recent rule release amends Rules 9.8 and 9.12 so that amendments to those same rules in Tranche 1 are marked against now-obsolete versions, and it is not possible to adequately analyse the regulatory position. ASX needs to take steps to ensure such a situation is not repeated, and to resolve this instance.

1.2 Separate release of User Technical Documentation

The newly-defined User Technical Documentation (UTD) is a further component that must be considered for all stakeholders to fully understand their obligations and responsibilities under the Rules, as it details information on the communications between Users and the system and is cross-referenced to the Tranche 1 Rule amendments. We would appreciate confirmation if the 'Functional Specification' that ASX has been issuing via wiki is in fact the UTD referenced in the Rules, despite the differing title? We also note that the Functional Specification is, like the Rules, being released in tranches; however, those tranches do not appear to be aligned with the relevant Rule tranches on common processes. This further reduces our ability to comprehensively understand our and our clients' obligations until all tranches are made fully available.

1.3 Rule structure reflecting operating environment

The Settlement Operating Rules were designed in a manner that reflects the current operating structure of CHESS, with a linear structure of complete messages being passed between Users and ASX Settlement, mirrored by the Rules specifying obligations at each step of the message flow. For example, there are common references to 'Transmitting a Message' as the initiating element in establishing the interaction of Users' and ASX's obligations for a transaction.

The new system environment will operate differently, with certain transactions being compiled from several linked messages rather than one complete message per transaction, and Users may elect to interface and communicate via nodes on the distributed ledger. The Rule amendments however seek to fit the new 'multi-message' transaction structure and node access, and associated User interactions, within the existing Rule structure. The initiating element for Users' and ASX's obligations may, for example, be more than one message transmission. We have reviewed the Tranche 1 Rules in light of this difference, however as noted above the need to also consider the interactions with the UTD with

respect to the structure of the communications (which is no longer apparent on the face of the Rules) impedes our ability to make a full assessment until all technical details and Rule amendments are available.

2. Investor data protection and usage

In our response to ASX's 2018 consultation on the scope and implementation plan for the CHESS replacement system ('the 2018 consultation'), we highlighted a number of concerns with ASX's intent to significantly increase investor data collection, and its uses and management. Our key concerns included:

- The centralisation of shareholder data on ASX's systems;
- The lack of specification of the uses to which such data may be put, including to which parties it may be communicated;
- The controls that will be applied to such data; and
- The costs of accessing it.

We noted that ASX is an agent for Issuers in administering shareholder data, as stated in ASX Settlement Operating Rule 5.2.1. ASX's role in respect of shareholder data under the Rules is narrowly circumscribed, with the clear intent to facilitate its responsibilities with respect to clearing and settlement, per ASX Settlement Operating Rule 3.1.1.

Despite the concerns that we and others expressed regarding protection of investor data that ASX seeks to either collate or at least transmit between Users, Tranche 1 would provide a very broad remit to ASX to include new data elements within CHESS Holder Records, without addressing any aspects of purpose of collection, use, access, cost and control of such data. The Executive Summary to the Rule amendments states that this is: *'Creating the framework for additional non-mandatory data fields to be populated in a Holder Record. ASX is continuing to identify the additional non-mandatory data fields that may be populated…'*. It asserts that privacy and data protection are addressed by ensuring that provision of such data is not mandatory for Users, and that Users only receive information if they are party to a transaction or business purpose that the information relates to. To the latter point, the only discernible control on provision of information is the insertion of the word 'relevant' into certain Rules relating to notification of Holder Record details.

In our view, this is a wholly inadequate control over data communication, providing no parameters around 'relevance' other than presumably ASX's discretion. Indeed, in communications with ASX staff we have been advised that ASX will not filter such data to determine if it is 'relevant' to a particular Issuer, for example with regard to FATCA/CRS certifications, and will expect the Issuer (or their agent) to undertake their own assessment of relevance and usability of the data. While our detailed comments on the specific Rules affected are included below, we wish to express our position that this indifferent approach to data management and protection is unacceptable. The amendments create a 'catch-all' in the Rules to allow ASX to subsequently define data fields that will be gathered and transmitted, without any substantive guidance or position on content, purpose, use, cost or control.

Without further clarity as to the purpose of centralised data capture and storage and the use to which any such data may be put, ASX is seemingly taking an approach to data privacy issues that also runs counter to recent global regulatory, legal and industry developments that have underscored the importance of protecting data and personal information in a worldwide digital economy. We query for example how ASX is reconciling their approach with the regulatory push for data minimisation and privacy by design both in Australia and abroad (such as the European Union's General Data Protection Regulation or the recent California Consumer Privacy Act).

We are accordingly strongly of the view that ASX should not include amended Rules that are preparatory for the collection of additional holder data, in the absence of clear definition of the data to be collected, its purpose of collection, uses to which it may be put, parties with whom it may be shared, costs and associated controls over the data. Instead, ASX must adopt a robust framework addressing these concerns. As and when new data elements are defined, they should be subject to specific updates that allow appropriate User review and feedback.

C. Comments on Amendments to ASX Settlement Operating Rules and Procedures

1. Account and holder creation

Rule(s)

2.13 – "Holder Record"
8.6.3A – ASX can record additional holder information

Regulatory policy concerns

Protection of Users – investor data protection
Provision of clearing and settlement services in fair and effective way – regulatory certainty for Users

Detailed comments

The open-ended scope of the amended definition of Holder Record and the new Rule 8.6.3A should be revised. As discussed in our comments at A2 above, the lack of definition of the data elements to be collected, the purpose of collection, the uses to which the data may be put, the costs of access and the controls over data protection is unacceptable. The roles and responsibilities of Participants, ASX and Issuers with respect to all data must be clearly identified. This approach of 'carving out space' for ASX's future data initiatives lacks transparency, prevents Users from understanding their obligations under the Rules, and is potentially detrimental to investors' rights under law to know the purpose for which any data is collected. It creates at least the perception that ASX is using its supervisory authority to develop scope for its future commercial opportunities based on use of such data. It also highlights the risks associated with ASX moving into a data repository/holder role (potentially with a view to commercialising such data), given that is not a role it has traditionally performed (i.e. to date it's role has been supervisory and functional, not commercial). Market stakeholders require assurance that the operator of what has, until now, largely been a functional system is ready to deal with the significant customer privacy implications of collecting, handling, using and safeguarding a range of new data and data points.

These Rule amendments should be deleted, and ASX should circulate new proposed Rule amendments specific to any proposed data elements that are to be recorded and maintained about a Holder, addressing the data protection aspects relevant to such data and the Holder.

In proposing capture of new data elements, ASX should address the following data protection issues:

- How ASX proposes to achieve compliance with the Australian Privacy Principles (APP). This includes:
    - how and when will they provide privacy collection statements that notify individuals about the collection, purpose, use and disclosure of their personal information as derived from new, centralised and consolidated data sets?
    - Separately, will ASX require Participants or Issuers to provide additional representations as to what those organisations will do with the data, as we consider it must?

- How does ASX plan to adequately disclose the purposes of collection of data (and other requirements under APP 5)?

- How is ASX reconciling their approach of continuously overwriting data with the requirements of accuracy or quality (APP 10)?

- To whom will the data ultimately be disclosed? At para 1.2 of the section entitled 'Functionality covered in Tranche 1', the ASX refers generally to the distribution of 'certain data to permissioned users'. This is vague and ambiguous, and clarification is essential. For instance, what is meant by 'certain data' and will 'permissioned users' include any third parties beyond Issuers, their registries and other Participants? If so, who are these parties likely to be and how will Holder consent to release personal information be obtained?

- If multiple 'permissioned users' can access Holder and other data via nodes on distributed ledgers, what certainty is there in relation to which jurisdictions' data privacy laws may apply in any given situation – is this a concern for the ASX or is it otherwise of the view that it can adequately control this risk in a private, permissioned DLT system? If the latter, ASX should provide detailed information as to what that risk control framework is or will be.

- Is ASX of the view that if it or other industry stakeholders don't store the data, privacy compliance obligations are somehow reduced?

- What is ASX's approach to record retention? Will data be kept for the typical timeframes for financial data (including retention requirements under the Corporations Act), and how does the ASX plan to reconcile statutory requirements around the need to erase or delete data that is no longer required for the purposes for which it has been collected, when that data resides in a distributed ledger/blockchain, one of the hallmarks of which is immutability?

Our concerns are exemplified by recent communications with ASX staff regarding the future inclusion of FATCA/CRS certification as a new dataset under the Holder Record. We queried the intended controls over data content, Participant responsibilities and Issuer indemnification if relying on a FATCA/CRS certification communicated via messaging in the CHESS replacement system. In response, we were advised that the ASX is merely enabling the non-mandatory provision of investor data and that ASX expects an Issuer to determine the usability of such data elements provided.

This approach effectively leaves the Issuer (and their agent share registry) with the entire burden of assessing whether the data is relevant to that Issuer i.e. ASX will not filter the data element to only send to Issuers based on relevance, despite the amendment to Rule 5.3.2(d)(ii) that ASX will notify the Issuer of "relevant" Holder Record details for each CHESS Holding. This is an unacceptable outcome. There is no sound premise or rationale to support a reallocation of risk to the Issuer (and its registry) in order to accommodate the ASX's unilateral expansion of data sets.

Further, the lack of a defined legal structure around the roles and responsibilities of respective Users with respect to the accuracy of the data potentially exposes Issuers to the risk of loss and/or penalties if relied upon, as ASX advises it would impose no obligation on Participants to indemnify the Issuer for the accuracy of the certification. This risk would make the dataset unusable for Issuers.

It is therefore imperative that ASX give due consideration to defining the specific regulatory structure that should attend any new data elements to be included in the Holder Record and allow proper discussion of the risks and controls with Users. ASX should not be authorised under a 'catch-all' rule to later incorporate new data elements without a transparent review process and appropriate data controls.

Rule(s)

2.13 – "Entity Type" and "Ownership Type"
8.18.12, 8.18.13 & 8.18.14 – Change of other Holder Record details

Regulatory policy concerns

Provision of clearing and settlement services in fair and effective way – usability of data
Protection of Users – Issuer risk

Detailed comments

We note the creation of the new fields, Entity Type and Ownership Type, for CHESS Holder Records. However, the Rules do not make provision for administration of these fields, including how the new fields will be updated for existing Holder Records. Through discussions with ASX staff, we understand that the intent is for each field to default to "other" at the commencement of the new system, and that Participants will thereafter be expected to update the fields appropriately per Holder whenever the Holder Record is next updated. However, in the absence of any specific requirement for Participants to do so, we query the reliability of the details thus provided regarding a Holder, and in consequence the effectiveness or usability of the data. Yet, despite this lack of clarity and likely inability to rely on the data, we are required to undertake system modifications to incorporate these fields.

In our view, the Rules should address the process by which Participants will be required to update these fields for existing Holder Records on migration to the new system. For non-mandatory fields, there should be a means to identify that the field is not completed, without a potentially misleading default option. ASX should also clarify the purposes for which these fields are expected to be used, to allow better assessment of the risk of any error in them.

While Rule 8.18 regarding Change of Holder Record Details has been amended in Tranche 1, it does not address any responsibility for updating these new Holder Record details. New Rules 8.18.12, 8.18.13 & 8.18.14 establish arrangements for a Participant to amend 'new' Holder Record details, other than those already addressed by the existing provisions of 8.18, applying to any details that are modifiable per the UTD. This Rule should also address an obligation on Participants to update such details that have been set to a default such as "other" as part of the migration to the new system or as a result of the introduction of the new data field. With respect to the Entity Type and Ownership Type specified in the Tranche 1 Rules, such an obligation must be clarified to ensure certainty. While we appreciate that certain fields may be non-mandatory for Holders and Participants to complete, in the absence of provisions addressing how to determine which fields have been updated per Holder and for what purpose, the entirety of the data is not usable. Consistent with our concerns above at B1, the ambiguity and broad scope of Rule 8.18.12 regarding 'any' data field that may be introduced via the UTD should be removed.

We are concerned that Issuers may be exposed to risk of loss or damage if Participants do not appropriately update new Holder Record details from their default setting on migration. Existing Rule 8.7.4 requires Participants that *establish* a Holder Record using incorrect Holder Record details to indemnify Issuers; Rule 8.18.5 indemnifies Issuers for incorrect *changes* to Holder Record details (and we appreciate the small but pertinent amendment within this Rule); and new Rule 8.18.14 indemnifies Issuers for incorrect *changes* to the *new* Holder Record details. However, Issuers are not protected from any risk of loss or damage arising from new Holder Record details that are not updated accurately from a default setting. It is not possible to fully assess the risk thus posed to Issuers with respect to accuracy of Entity Type and Ownership Type as it remains unclear what purposes these fields are intended to serve under the CHESS replacement system. However, as ASX considers it appropriate to establish these fields, Issuers must be protected from any possible loss arising as a result of inaccuracy.

Rule(s)
15.17.1 – Number of joint holders

Regulatory policy concerns
Protect Users – regulatory certainty for Users

Detailed comments
We note the change to Rule 15.17.1, which makes it consistent with existing Rule 8.10.1 by referencing an Issuer's constitution. We understand this is prompted by the new system permitting up to four joint holders, rather than the current market standard of a maximum of three joint holders. We have separately expressed our view that this is forcing an unnecessary market change, which is not justifiable on a cost-benefit basis given very low incidence of holdings with even three joint holders.

In one sense, it may therefore be said that the change to allow up to four joint holders does not have significance, as few if any holdings may be affected. However, our larger concern with this issue is the change to the market norm without any provision for management of the new standard. The drafting of the amended Rule 15.17.1, along with the wording of existing Rule 8.10.1, likely create an affirmative obligation to ensure that an Issuer's constitution permits more than three joint holders before a Participant is permitted to establish such a holding. Yet there is no established mechanism in the market for Participants to assure themselves of this, nor is there any provision in the Rules for how to monitor establishment of holdings, contrary to Rules 15.17.1 and 8.10.1, or what corrective action must be taken for any such holdings.

In short, the system change to allow up to four joint holders, technically, while legally referencing the common market limitation of no more than three joint holders, creates a vacuum in the respective responsibilities of Users. Will Issuers be expected to proactively monitor holdings to ensure their constitutions are not contravened, and if so, what action does ASX expect Issuers to take? Could ASX please clarify what it means by 'unless an Issuer's constitution permits', for example if this requires an express provision in the constitution to allow more than three joint holders? Further, if such a provision exists but the constitution also permits the Issuer to disregard any holders exceeding limit of three, either entirely or for particular activities, which provision of the constitution does ASX consider would apply in the context of these Rules? Additionally, does ASX expect Participants will have a direct responsibility to manage this? We note the statement in section 1.2 in the 'Functionality covered in Tranche 1' that '*…settlement participants will continue to be subject to rules-based restrictions on establishing a Holder Record with more than three holders unless permitted by the Issuer's constitution*'. It is simply unclear how ASX proposes to assign responsibility and accountability for managing this provision among Users. Such regulatory uncertainty is unacceptable, and clarity is necessary before these Rules can be effectively applied.

Rule(s)
8.11.1 and 8.11.2 – Confidentiality: disclosure of UUID

Regulatory policy concerns
Protect Users

Detailed comments
Rule 8.11.1 establishes certain information regarding a Holder that Issuers and Participants are not permitted to communicate, other than to specified parties. Rule 8.11.2 allows a Participant to request an Issuer to provide certain Holder information and includes certain warranties and indemnities from the Participant. Amendments to Rules 8.11.1 and 8.11.2 includes the new field UUID in this context.

Throughout the working group dialogue regarding the establishment of the UUID, ASX did not communicate that the UUID would be a disclosable field. From our understanding, it is a system identifier that will provide internal system administrative functions. We therefore query what purpose is served by making it a disclosable field? In our view, it should not be required to be disclosed by Issuers. Requiring disclosure, within the permitted circumstances, will require additional system development for registries, as this is not a field currently in the scope of Issuers' disclosure obligations. As a purely internal system identifier, we can see no benefit in disclosure of it.

We are also concerned that inclusion of the UUID as a disclosable field is a precursor to an extended use of the identifier as an external reference. We note that in the 2018 Consultation, ASX proposed adoption of the Common Investor Number (CIN), however this was thereafter de-scoped from Day 1 services. The CIN prompted stakeholder concerns, including those documented in our submission to the 2018 Consultation. We therefore seek ASX's affirmation that the UUID is not intended to serve as launching point for later adoption of an identifier similar to the CIN. It is critical that ASX is fully transparent regarding the purposes of all data fields and identifiers, and their intended uses.

2. Changes to Holder details

Please see our comments above in B2 with respect to Rule 8.18.12.

3. Locking and unlocking

Rule(s)
8.15 – Holding Locks, Holder Record Locks, Demand Locks and Settlement Locks

Regulatory policy concerns
Protect Users – Issuer risk

Detailed comments
We note the amendments to the provisions on application of Holding Locks, including creation of a partial lock and the introduction of Demand Locks and Settlement Locks. We would appreciate ASX's confirmation that, unless specifically stated, the overall structure for application and administration of locks remains the same i.e. that ASX will apply and administer the locks to CHESS Holdings. It is not apparent on the face of the Rules whether the ASX proposes any action by the Issuer with respect to locked Holdings. We would therefore appreciate confirmation whether ASX anticipates that locks will impact handling of various corporate actions (except with respect to the provisions of Rules 8.15.19 and 8.15.20, see below at B6) such as payment of dividends or the handling of refund monies after completion of renounceable rights offerings. For example, would an Issuer be under any obligation to withhold proceeds against a locked holding, or even to split payment for a partial lock?

Our comments on Settlement Locks are provided below at B6.

4. Security state and settlement instructions

Rule(s)
8.14.2 – closure of CHESS subregisters

Regulatory policy concerns
Provision of clearing and settlement services in fair and effective way
Protection of investors and Users

Detailed comments

As expressed in the working group discussions, we remain concerned that the changes to Rule 8.14.2 will impose additional costs and burdens on Issuers. While we appreciate the preference to close the CHESS subregisters of lapsed, expired etc securities, the cost consequences for Issuers must be addressed, particularly where the closure otherwise prompts issuance of CHESS holding statements to holders of the lapsed etc securities. Issuance of statements is an unnecessary cost that does not serve a relevant investor protection function in this scenario, as the securities are not capable of being transacted on further.

Rule(s)

8.14A - unknown

Regulatory policy concerns

Protect Users – regulatory certainty

Detailed comments

We note that amendments to Rule 8.14 reference a new Rule 8.14A. However, we cannot locate this new Rule in the Tranche 1 amendment package and therefore are unable to currently assess the impact of its provisions and its cross-impact with Rule 8.14. We request ASX to circulate this proposed new Rule and note that our comments on this section remain contingent on analysis of it.

5. Issuer sponsored subregister to CHESS subregister transfers and conversions

Rule(s)

9.8.3, 9.8.5, 9.8.6, 9.12.2, 9.12.3, 9.12.4, 9.12.5, 9.12.6 and 9.12.7 – Issuer sponsored to CHESS transfers and conversions, validation of source and target holdings and requirement for registrable transfer documents. Participant warranties.

Regulatory policy concerns

Provision of clearing and settlement services in fair and effective way
Protect Users – regulatory certainty and Issuer liability

Detailed comments

We are very concerned with the proposed amendments to this subset of Rules on two grounds:

1. Conflicting amendments to the same Rules:
   - These Rules were subject to separate consultation earlier in 2019, and after the issuance of Tranche 1 Rules these Rules were also subject of a separate Rule amendment package. This conflict is not referenced or reflected in the Tranche 1 proposed amendments, creating substantial regulatory uncertainty;
2. New Issuer risk:
   - Consistent with our feedback to the 2019 consultation on these rules, they create a new and unfair liability risk for Issuers.

Conflicting amendments to same rules

The Rules regarding transfers from the Issuer Sponsored subregister to the CHESS subregister were subject of a consultation in early 2019. In December 2019, after issuance of the Tranche 1 Rules, ASX issued a 'Transfers to the CHESS Subregister' rule amendment package in response to its earlier consultation, with effect from December 20th. The Tranche 1 proposed amendments are however drafted against the pre-existing rules that had effect prior to December 20th.

There was no reference in either the Tranche 1 rule package or the Transfers to the CHESS Subregister package to indicate how the two sets of amendments to the same rules are related or what the final obligation for all Users will be. We cannot even attempt to infer the position from the fact that the Tranche 1 rules take effect later in time from the Transfers to the CHESS Subregister package, since the Tranche 1 proposed amendments are marked up against the version of the rules that these newer amendments now change (without public consultation). As a result, we are asked to review changes to rules in the Tranche 1 consultation that are marked against what is now an obsolete version of those rules. We also lack clarity regarding the fate of the other rule changes introduced in the Transfers to the CHESS Subregister package, which are not visible in the Tranche 1 rules.

ASX must clarify this position for Users. Our further comments on the amendments to these Rules in Tranche 1 are conditional upon such clarity of the actual final proposed Rules to be introduced on Day 1. Notwithstanding this, as noted below we urge ASX to not proceed with the Tranche 1 amendments to these Rules but rather to preserve the rules effective December 20th.

New Issuer Risk

The proposed amendments remove the requirement for certain categories of Participant to send a registrable transfer document to the Issuer prior to authorization of an Issuer Sponsored to CHESS Transfer; and transfers the onus of validation of Source Holding details for such Transfers from Participants to Issuers. We remain concerned that these changes create new and inappropriate liability risk for Issuers.

As expressed in our response to the consultation on Transfers to the CHESS Subregister, we are supportive of the overarching policy of increasing 'straight through' electronic messaging and reducing the need for paperwork. However, this is contingent on the establishment of appropriate protections for Issuers and their investors. Despite the provision of Participant warranties and indemnities, we remain concerned that investors who suffer loss may look to the Issuer to rectify their position in the first instance rather than to the Participant, particularly in the event that the investor does not have an established relationship with the Participant or is not in a position to take action under the Corporations Regulations in their own right (e.g. due to financial constraints). The onus in many cases may therefore be placed on the Issuer to rectify the register in the event of unauthorised transfer.

The indemnities and warranties offered by the Corporations Regulations and the proposed Rule changes would provide an acceptable level of 'after the fact' protection for issuers (and transferors, should they pursue directly under the Regulations) in the event of an unauthorised transfer, *subject to the capacity of the participant to 'stand behind' its obligation to indemnify*. Issuers are therefore exposed to a form of credit risk with regard to the settlement-only Participants. On this basis, in our 2019 consultation response we recommended that ASX establish qualifying criteria to its proposed removal of the registrable transfer document, for example based on the regulatory status of the Participant, or the provision of some additional form of adequate insurance for the benefit of Issuers and transferors.

The ASX response to the Transfers to the CHESS Subregister consultation and the subsequent December rule amendment package included such an approach, establishing the new category of Custodial Settlement Participants. **The risk to Issuers addressed in our 2019 submission and acknowledged in the formulation of the rule amendments effective December 20th will remain after Day 1 implementation of the CHESS replacement system. We therefore strongly recommend that the December 20th rules continue in force after implementation of the CHESS replacement system.**

6. Settlement locks for CHESS holdings

Rule(s)

2.13 – 'Demand Lock' and 'Settlement Lock'
8.15.20 and 8.15.24 – Issuer processing on demand locks and settlement locks; Participant indemnity.

Regulatory policy concerns

Protect Users – Issuer risk

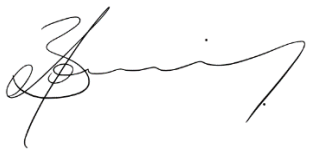
Detailed comments

New Rule 8.15.20 introduces a requirement that ASX cannot give effect to Issuer Holding Adjustments or Transformations in respect of Holdings subject to a Demand Lock or Settlement Lock, unless it relates to a Reconstruction. It is not apparent however whether ASX intends to give notice to the Issuer that it has not given effect to such an Adjustment or Transformation on a locked holding. Failure to notify the Issuer that the Adjustment or Transformation has not been applied to a particular Holding creates a risk for administration of the corporate action, impacting reconciliation and management of the entitlements of individual shareholders. It is not clear how ASX proposes that Issuers will administer the benefit of the corporate action for the Locked Holdings, and ultimately reconcile and adjust entitlements. We therefore request clarification in the Rules that the ASX will notify Issuers of non-applied Adjustments or Transformations for locked holdings; and suggest that further discussion on appropriate protocols for handling the position of locked holdings is necessary.

Additionally, new Rule 8.15.24 should be amended to include the Issuer as a party indemnified by the Participant, if the inability to apply a Holding Adjustment or Transformation to a Holding subject of a Settlement Lock causes an Issuer losses, damages, costs and expenses, e.g. for an options exercise or takeover acceptance. We also query why this indemnity in Rule 8.15.24 is not provided in respect of both Demand Locks and Settlement Locks. In our view, in addition to being added to the indemnified parties in respect of Settlement Locks, Issuers should also be similarly indemnified in respect of Demand Locks due to the risks presented by the restriction on Issuer corporate action processing.

Should you have any questions in relation to the above comments, please contact the undersigned. Given the serious nature of the concerns we have raised and our recommended actions, we also suggest that a tri-party meeting between Computershare, ASX and ASIC to discuss these matters would be beneficial and we would be pleased to contact you and ASIC to facilitate this discussion.

Yours sincerely,



Ann Bowering
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cc: Ms Dodie Green, Senior Manager, Market Infrastructure, Clearing and Settlement Facilities, ASIC

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