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5 May 2023

Dr Sean Turner
Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Dr Turner,

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation – CHESS Replacement

Governance Institute of Australia

Who we are

Governance Institute of Australia (Governance Institute) is a national professional association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, not-for-profit and charity sectors.

As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

In listed companies our members have primary responsibility for dealing with the Australian Securities Exchange (ASX) and interpreting and implementing the listing rules. They have a thorough working knowledge of the operations of the markets and the needs of investors. We regularly contribute to the formation of public policy through our interactions with Treasury, the Attorney General's Department, the Department of Home Affairs, ASIC, APRA, ACCC, ASX, ACNC and the ATO.

Governance Institute thanks the Committee for the opportunity to make a submission on matters related to the delayed implementation of the ASX CHESS Replacement Project, including the relevant oversight arrangements.

Preliminary comments

Many of our members are secretaries of listed companies and Governance Institute has a long history of engaging with ASX on a range of issues affecting listed companies. We are also a founding member of the ASX Corporate Governance Council. **ASX was keen to involve Governance Institute** in the CHESS Replacement Project because of its impact on issuers. Since 2017 we have represented our members at a

number of Project Working Groups and other Project related groups. Organisations such as Governance Institute take on this type of role frequently to assist members understand the potential ramifications of change, be that legislative, regulatory or otherwise and advocate on their behalf. We have also facilitated meetings between ASX and our members on a number of occasions on various aspects of the Project.

Our members acknowledge the ongoing challenges of the Project which led to the second pause of the Project in 2022.¹ Following this pause our members consider there is an opportunity to 'start fresh' with the benefit of lessons learned and advances in technology since the Project first started in 2016.

It is also important to note many of ASX's clients and other key Project stakeholders are not technical experts. It will be fundamental to the Project's future success that ASX communicates clearly and engages with its stakeholders about the Project so that issuers and other stakeholders understand what is planned and how it will impact them.

Issuers and CHES Replacement

As noted above, while our members have been following the Project for some years many of the early consultation meetings were extremely technical. While Governance Institute attended many of these meetings on our members' behalf at ASX's request, our members' knowledge of, and appetite to engage with these issues was limited due to their technical nature. While listed companies have a legal obligation to maintain share registers, they typically outsource this function to specialist share registry providers such as Link Market Services, Computershare and Boardroom Limited and rely on their technical expertise.

Our members' concerns about the Project were practical including: wanting to understand the potential costs to issuers of the new CHES system, the potential costs in transitioning to a new platform, the ongoing costs of the system and whether issuers would share in any efficiencies and cost savings generated by the new System. These and other questions and concerns were raised in our Submission to ASX in June 2018.² In that Submission we also expressed the view that the ASX Business Committee which then had oversight of the Project, should be expanded to include issuer and investor representatives which occurred in 2019.³ We also raised the issue of how ASX would ensure a competitive market for the additional services ASX planned at that stage to offer as part of the Replacement Project. We also raised two further concerns: the impact of COVID-19, then at its height, on the Project and whether the ASX Business Committee was the most suitable model to provide input to ASX's governance and decision-making process about CHES Replacement. We encouraged ASX to consider a new governance model for ASX that would better enable issues to be discussed and aired in a purpose-designed forum. Further information about the history of our concerns is set out in **Attachment 1**.

In her evidence to the Committee on 23 February 2023 the ASX CEO referred to 'further governance improvements' then in progress.⁴ She also advised the Committee that ASX had formed a CHES Replacement Technical Committee (Technical Committee), an industry forum intended to facilitate direct industry feedback to the Project which met for the first time on 22 February 2023.⁵ Governance Institute attends this Forum as an observer. The Technical Committee is a Sub-Committee of the ASX Business Committee and consists of approximately 40 members (including Observers) representing key market stakeholders: Clearing and Settlement Participants, third party Software Vendors, other market operators

¹ The Project was also paused in 2020 when ASX conducted a public consultation about the Project timeline.

² See Submission [CHES Replacement: New Scope and Implementation Plan](#), Governance Institute of Australia, 27 June 2018.

³ Governance Institute became a member of the ASX Business Committee in 2019.

⁴ [Evidence 23 February 2023 Ms Lofthouse](#) at page 52.

⁵ [Evidence 23 February 2023 Ms Lofthouse](#) at page 51.

and share registries. Regulators and some industry associations, including Governance Institute, attend as observers. The Project Director for the CHES Replacement Project chairs the Technical Committee. While we understand the Technical Committee's role in providing a forum for industry engagement to review, debate and provide input in relation to Project planning, and design assumptions and scope, and industry benefits, our members consider it is not well designed to provide governance oversight of the Project.

Our members commend ASX's willingness to be more consultative and seek input into the planning and scope of the Project, but remain concerned that the size of the Technical Committee while appropriate for the technical aspects of this stage of the Project, is still too large for it to hold two-way discussion and debate of the issues. If it is to serve as an industry forum then it is appropriate for the ASX Project Director to chair this body, if however, it is intended to play any sort of governance oversight role then the chair should be independent of ASX management. Our members consider there remains a role for a governance oversight body for the Project which can make recommendations to the boards of the ASX Group companies responsible for clearing and settlement as was suggested in 2020.

While our members remain fully supportive of the need for the CHES Replacement Project, they want to ensure that once it restarts it can be successfully completed.

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this submission.

Yours sincerely,

Megan Motto

CEO

Attachment 1 – History of governance concerns around CHESS Replacement Project

In late 2018 Governance Institute was approached to participate in an industry initiative to lobby on various issues related to the CHESS Replacement Project. This initiative known as the CHESS Replacement Stakeholder Group (CRSG) was a diverse group of capital markets stakeholders and share registry representatives. The other industry associations involved in this group; the Australasian Investor Relations Association, Australian Shareholders' Association and the Stockbrokers and Financial Advisers Association are also members of the ASX Corporate Governance Council. The members of the group were fully supportive of the goal of driving further innovation in the Australian financial markets through upgrades to the CHESS system and were also supportive in principle of the concept of a distributed ledger technology platform. Members of this Group met ASX representatives on several occasions to discuss concerns around the Project, particularly the governance oversight of the Project.

Many of the concerns outlined in our June 2018 Submission remained concerns two years later and were raised again in our August 2020 Submission on the revised implementation timeline.⁶ As noted above, we also raised two further concerns: the impact of COVID-19, on the Project and whether the ASX Business Committee was the most suitable model to provide input to ASX's governance and decision-making process about CHESS Replacement.

In our June 2018 Submission to ASX Governance Institute expressed our members' view that the Business Committee, then charged with oversight of the Project would benefit from including issuer and investor representatives.⁷ While its membership was expanded in 2019, this did not, in the view of members of the CRSG, assist in increasing stakeholder collaboration in decision-making for the Project.

In 2020 given the pause in the Project the CRSG suggested to ASX in mid-2020 that it consider a new governance model for the Project. The reasons were that: the size of the Business Committee (upwards of 40 members), the frequency of meetings, the retrospective nature of reports to the Committee and its size and structure which worked against it acting as a forum for market participants to collaborate on the Project. The CRSG's proposed enhanced governance model for the Project involved the formation of a smaller committee, led by an independent chair and reporting to the Boards of ASX Clear Pty Ltd and ASX Settlement Pty Ltd. The CRSG considered that this would enable better governance oversight, two-way discussion, debate and decision making on issues that the Business Committee was not able to do effectively.

As noted above, Governance Institute also encouraged ASX in our August 2020 Submission to reset the governance structure in place for the Project and for clearing and cash equity clearing and settlement (CS) services more generally.⁸ Governance Institute and the other members of the CRSG were not alone in their concerns around the governance oversight for the Project.

In its September 2021 Assessment of ASX's Clearing and Settlement facilities the RBA raised concerns around the governance oversight of the CHESS Replacement Project.⁹ The Report commented that 'It is clear from our interviews with directors that there were periods during 2019 and/or 2020 when the ASX Boards were not fully informed of the progress and status of the CHESS replacement program'.¹⁰ In its Assessment Report a year later the RBA commented: 'The Bank expects ASX to make demonstrable

⁶ See Submission [CHESS Replacement: Revised Implementation Timeline](#), Governance Institute of Australia, 6 August 2020.

⁷ See our Submission referred to in Note 2 above.

⁸ See our Submission referred to in Note 4 above.

⁹ See Section 4 of [Assessment of ASX Clearing and Settlement Facilities](#), RBA, September 2021 at page 36ff.

¹⁰ See Assessment Report at page 44ff.

progress in strengthening its governance arrangements over the coming year. Insufficient progress will result in a ratings downgrade on this standard'.¹¹ In November 2022 ASX announced it would pause the CHES Replacement Project following receipt of Accenture's Report commissioned by the new ASX CEO.

The ASIC Chair indicated concern about whether there was a 'sufficient level of governance oversight' for the Project in his evidence to the Committee on 5 December 2022.¹² These and other concerns were explored by Committee members with Mr Longo during his evidence.¹³

On 15 December 2022 ASIC and the RBA issued a Joint Letter of Expectations directing ASX, amongst other things, to publish its governance oversight arrangements for both the existing CHES System and its replacement, including oversight from the ASX Board, the management structure and the relevant Board committees.¹⁴ On 21 February 2023 ASIC issued a Notice to ASX requiring it to provide special reports to ASIC on issues related to how the frameworks for the Replacement Project 'are aligned with, and integrated into, ASX Group's corporate governance framework'.¹⁵ Concerns around the governance oversight for the Project were also referred to in the evidence of other witnesses before the Committee.¹⁶

¹¹ See Assessment of [ASX Clearing and Settlement Facilities](#), RBA, September 2022 at page 2.

¹² See [Evidence 5 December 2022](#) Mr Longo at page 37.

¹³ See [Evidence 5 December 2022](#) Mr Longo at pages 39 45 and 48

¹⁴ See [Joint ASIC/RBA Letter of Expectations](#), 15 December 2022 at page 2.

¹⁵ See ASIC [Notices issued pursuant to s 749B and s 823B of the Corporations Act, 2001](#) Attachment D Paragraph 2(2), 21 February 2023.

¹⁶ This was extensively explored by Committee members with Ms Lofthouse on [5 December 2022](#) See the [Evidence 23 February 2023](#) of Mr Longo at pages 5, 6, 7 and 8, Ms Reid at pages 35, 36, Mr Tregunna at page 39, Mr Conn (referred to as 'Ms Connell') at pages 41, 43 and 44, Mr Ferrall at page 48, Ms Huckel at page 50, Dr Cagliarini at page 74.