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Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
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Dear Chair and Committee Members

Submission of Cboe Australia to the Parliamentary Joint Committee on Corporations and Financial Services

Cboe Australia is grateful for the opportunity to provide a submission to the Parliamentary Joint Committee on Corporations and Financial Services (**Committee**) Inquiry into the delayed implementation of the ASX CHESS Replacement Project (**Inquiry**).

The Inquiry comes at a crucial time for Australia and its financial markets. As has been identified by a wide range of investors, users, commentators and regulators, the provision of cash equity clearing and settlement in Australia is broken, with CHESS Replacement being the latest and largest in a series of escalating failures that have highlighted the high cost-zero competition paradigm that exists in Australia.

It is critical that Government and regulators, in this pivotal moment when the future of CHESS is being determined, are relentless in identifying and addressing the root cause of this failure and ensuring that Australia has a fit-for-purpose clearing and settlement model for the future.

In this regard, Cboe makes the following critical points to the Inquiry:

1. The current market structure in Australia does not provide a clear pathway for a competitor in equity clearing and/or settlement to emerge. The CHESS replacement project's poor execution is symptomatic of a protected monopoly.
2. In these circumstances, there is significant and ongoing evidence that suggests the root cause of the failure is the 'protected monopoly' of ASX's clearing and settlement services combined with the extreme vertical integration of the ASX Group, characterised by the almost total integration of commercial ASX Group entities at a systems, operations, and even, on occasion, governance level. The anti-competitive outcomes delivered by ASX actions in this environment, irrespective of whether those outcomes are intended by ASX actors or not, results in negative outcomes for Australian markets and investors. The evidence suggests that vertical integration is not of itself a cause of these failures and outcomes, but that they stem from the ASX integration model and ASX actions in that environment. This results in the ASX



Group, in its current structure, being unable to appropriately manage the conflict of interests that arise between providing critical market infrastructure in the best interests of wider Australian market and using its monopoly in some infrastructure services to advance the wider commercial interests of the ASX Group.

3. There are numerous examples of this conflict playing out to the detriment of the Australian financial system, with CHES Replacement being the latest and largest. CHES Replacement failed because the ASX Group did not prioritise the public interest purpose, to provide the most reliable clearing and settlement system for the Australian financial system, and instead prioritised securing future ASX Group revenue sources by attempting to take control of the entire post-trade ecosystem. This included seeking to control market data and reference data, further expand its vertically integrated model into new areas, and entrench the use of its bespoke systems. This expansionism resulted in a technology solution that was not what Australia needed or wanted, with industry, and ultimately the Australian investing public, paying the price for the ASX Group's misplaced priorities.
4. Cboe has previously warned Government, regulators, and the ASX Group, including through formal submissions in 2012, 2014, 2015, 2016, 2017 and 2023, that it is not possible to have clearing and settlement delivered in the best interests of investors, users, and the financial system while this extreme vertical integration model, and its resulting conflicts of interests, persists within the ASX Group. This included warnings that the ASX Group's structure meant it had insufficient incentive to prioritise the interests of Australia's financial system over those of ASX shareholders when replacing CHES. We expect further failures in the provision of clearing and settlement, including the delivery of CHES Replacement Mark II, are likely while this model persists.
5. Accordingly, Government and regulators must be relentless in addressing the root cause. Any solution that does not address the extreme vertical integration model will risk the repetition of past failures. Fortunately, this is not an unsolvable problem. Other jurisdictions that have dealt with similar issues provide clear examples of solutions for Australia and for Government and regulators to consider.
6. Ultimately, the best outcome for Australian investors, users of infrastructure, and the financial system is effective competition in the provision of clearing and settlement. Unfortunately, one significant effect of the extreme vertical integration model is that it allows the ASX Group to place significant barriers in the way of competition. Fixing the extreme vertical integration model, in addition to delivering the benefits of fair and competent service delivery from the ASX Group, will help enable competition, with the Australian investing public being the ultimate beneficiaries.

While it has already been brought to the attention of the Committee, it is important to reiterate that the cash equity clearing and settlement services delivered by the ASX Group have come at great cost:

- to Australian investors, who pay some of the highest clearing fees among developed economies in the world;
- to the members of Australian financial services industry, who have collectively lost hundreds of millions of dollars due to the ASX Group's actions; and



- to the reputation and attractiveness of Australia as a global financial centre, which has been tarnished by the ASX Group failing to provide critical services fairly and effectively while simultaneously using its market power to inhibit the emergence of any competitors.

This submission:

1. Provides background regarding the provision of clearing and settlement services to Cboe by ASX, including what Cboe means by the *extreme vertical integration model*;
2. Provides evidence of ASX's failure to manage the conflicts of interest raised by the existing model for clearing, settlement and issuer administration services;
3. Puts forward what Cboe believes is the fundamental cause of ASX's failure to manage these conflicts of interest, and how it has not been addressed by the existing regulatory framework;
4. Outlines models that have been used in other jurisdictions to address similar issues; and
5. Stresses the importance of Government and regulators acting at this seminal moment.

1. BACKGROUND

Cboe Australia is the holder of a Tier 1 Australian market license. Cboe Australia has operated a marketplace for the trading of listed cash equity products (e.g. shares in companies listed on ASX) since 2011 and its own uniquely quoted investment products (e.g. ETFs) since 2015. In successfully providing markets for over 10 years, Cboe is one of the rare examples in the Australian marketplace of an entity successfully challenging what was an ASX Group monopoly service.

Cboe is required to have clearing and settlement arrangements for transactions effected through its market. Currently, Cboe has no option to obtain these services other than ASX Clear and ASX Settlement. Cboe accesses CHES through the Trade Acceptance Service (**TAS**), which is the connectivity service offered by ASX to non-ASX market operators for transmitting trades to ASX's CHES system for clearing and settlement. It is a fundamentally different service to that provided to ASX market operators. In July 2014 ASIC stated: "*If the TAS service grows significantly in the future, we believe that ASX Group will be put under increasing customer pressure to consider an autonomous service unit for this offering*"¹. The TAS service has grown significantly, but there is no autonomous service unit for this offering.

The provision of clearing and settlement services by ASX Clear and ASX Settlement to non-ASX market operators is framed by several key concepts:

1. ASX Clear and ASX Settlement are members of a for profit publicly listed corporate group that has a monopoly over the clearing and settlement of all Australia's exchange traded markets,

¹ See ASIC Report 401 Market Assessment Report: ASX Group, retrieve don 9 May 2023 from <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-401-market-assessment-report-asx-group/>



as well as monopolies or dominant positions in many adjacent services, such as a monopoly in issuer administration.

2. There is almost total integration of the ASX Group's technology and operational systems. The ASX Group has used the opportunity of being, over many years, the sole infrastructure provider in almost all aspects of Australia's regulated financial market infrastructure, to interconnect and extend its reach over as much of that infrastructure as possible, including by enforcing technology standards and protocols that are proprietary to the ASX Group and have the effect of 'locking in' users via bespoke development requirements, and by closing off access to ASX Group systems and interfaces that could be used by third parties to provide competition. This has had the effect of stifling innovation, because it means the financial system can only innovate within the parameters allowed by the ASX Group, and inhibiting competition, because of the barriers to entry that ASX's proprietary, integrated systems present to any prospective competitor.
3. There is very little transparency to users on how these systems operate and interact with each other. The ASX Group does not provide clear information to users on which entities or people are responsible for providing different services, or which entities or people are responsible for different systems. This includes there being no clear line between clearing and settlement services and non-clearing and settlement services.

This leads to what Cboe considers to be the extreme vertical integration model of the ASX Group, whereby critical monopoly infrastructure is provided by the same people, processes, systems, governance, and culture that is tasked with competing against users of that infrastructure and delivering the highest possible returns for its shareholders.

2. EVIDENCE OF THE FUNDAMENTAL AND ONGOING FAILURE TO ADDRESS THE CONFLICTS OF INTEREST AT THE CORE OF THE ASX MODEL

A. CHES Replacement

ASX's persistent failure to address the conflicts of interest in its business model is most evident by its conduct throughout the CHES Replacement Project. This includes:

(i) Using the Clearing and Settlement Monopoly to Enter/Dominate Other Markets

In 2015, Cboe Australia provided a submission to Treasury noting that *"ASX's investment in modernising its core clearing and settlement infrastructure has been low over a period of many years and so the systems are now dated, inefficient and in need of a technology overhaul"*.

In March 2020, those very ASX systems suffered a massive technology outage which caused significant disruption to the fair and orderly operation of Australia's financial markets.

Between 2015 and 2020, ASX repeatedly announced that its model for the CHES Replacement was not based on prioritising the replacement of dated public utility clearing and settlement services with proven and understood systems and processes, but rather with the use of an untried cutting-edge



technology that would seek to use ASX's monopoly clearing and settlement position to move into other business areas and establish itself as the "single source of truth" for the entire post-trade ecosystem².

For example, it was reported in 2018 that *"The Australian Securities Exchange has revealed ambitions to become a platform-as-a-service play after it completes the upgrade of its new blockchain based clearing and settlement system replacement, with superannuation, insurance and healthcare all potentially in the mix"*³.

ASX itself stated, in relation to the CHES Replacement project:

*"[it is a] a **new post-trade solution** for the Australian equity market...that demonstrates the benefits that Distributed Ledger Technology could bring to a broad range of users – including investors, listed companies and intermediaries."*

*"Rather than replace CHES with a new version that is based on the same legacy processes that operate in the market today, we should aim to **re-engineer** and simplify those processes."*

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*'[it has] significant operational efficiencies and **new service offerings** for the entire industry'*⁵.

*"[the proposed CHES Replacement DLT] system leverages and builds upon our position as a **trusted market operator**" [the ASX's market operator business is the business with which Cboe Australia competes and is different to the clearing and settlement businesses].*

ASX stated that it was *"taking the opportunity to upgrade the peripheral technology that sits around CHES. We are also thinking about what other 'DLT solutions' we can provide to customers"*.

At a presentation to a trade association in 2019, the ASX CEO emphasised that in addition to carrying through the *"existing functionality of CHES to ensure that the new system can do what the old system did...**we will add 35 new functional specifications**"*⁶.

This is a small selection of the considerable objective evidence that we believe demonstrates that the CHES replacement project undertaken by the ASX Group sought to use its clearing, settlement and

² See pages 60 and 62 of ASX Consultation Paper "CHES Replacement: New Scope and Implementation Plan", retrieved 9 May 2023 from [ches-replacement-new-scope-and-implementation-plan.pdf \(asx.com.au\)](https://www.asx.com.au/about/media-centre/ches-replacement-new-scope-and-implementation-plan.pdf)

³ See "ASX positions to become a PaaS vendor", retrieved on 9 May 2023 from <https://www.itnews.com.au/news/asx-positions-to-become-a-paas-vendor-514385>

⁴ See ASX Press release "ASX SELECTS DIGITAL ASSET TO DEVELOP DISTRIBUTED LEDGER TECHNOLOGY FOR THE AUSTRALIAN EQUITY MARKET" 22 January 2021, retrieved on 9 May 2023 from <https://www2.asx.com.au/about/media-centre>

⁵ Page 12 of the ASX 2017 AGM Chairmen and CEO Speeches, retrieved on 9 May 2023 from <https://www2.asx.com.au/about/media-centre>

⁶ See the Address by Domonic Stevens, Managing Director and CEO, ASX Limited to the Stockbrokers and Financial Advisers Conference – 22 May 2019, retrieved on 9 May 2023 from <https://www2.asx.com.au/about/media-centre>



issuer administration monopolies to advance its commercial interests in other business areas, including those in which it faced competitors using those same monopoly services. This was done at the expense of the interests of investors, its users, and the broader public interest.

(ii) A Lack of Transparency and input – CHES Replacement Mark II

Insufficient transparency from ASX to its users was a recurring criticism of the failed, initial CHES Replacement project. For the subsequent project, ASX has already conducted a request for information (RFI) process and is currently conducting a more specific request for proposal (RFP) process with selected software vendors regarding its design and functionality. Cboe was not given any meaningful opportunity to contribute to these processes and ASX has refused to provide the RFI or RFP document or summaries to its user stakeholders. This is clear evidence of ASX failing to change its approach after the initial project's failure. ASX continues to carry out the CHES replacement according to its own priorities, is not appropriately transparent with its users, and does not allow users to contribute to the future CHES design. This failure is notable given the clear expectation of the regulators that ASX provide users with the opportunity to give genuine input and because of the track record of ASX in seeking to embed a bespoke and proprietary technology paradigm into monopoly services as a means to enhance other vertically integrated ASX businesses. Specific examples of how ASX does this to inherently favour its businesses with which Cboe and others seek to compete against, are:

- I. *Open Interfaces are not in scope* – ASX's proposed CHES Replacement model does not have any regard for using industry standard APIs and ensuring open access to interfaces to ease barriers and enable effective competition. For example, the problems posed by Cboe Australia having to use ASX issuer administration services (see (iii) on anti-competitive outcomes below) , may be resolved if Cboe was given the same access to the relevant CHES interfaces that the ASX market is given. However, ASX have refused to allow this, and it appears this will continue under CHES Replacement Mark II.
- II. *Interoperability not in scope* – our understanding is that ASX is proceeding with a CHES Replacement model that does not have any regard for ensuring there can be interoperability with any future clearing and settlement facility that emerges. This is despite what we see as the clear intent of Government and the regulators, as well as the clear view of industry, that interoperability is essential for a competitive marketplace in clearing and settlement.
- III. *Insufficient sharing of information* – By failing to provide sufficient information and transparency regarding how CHES works, users of CHES are not able to meaningfully contribute to the development of fair, safe and effective clearing and settlement services. This also has the effect of preventing users from having sufficient knowledge of the existing system to be able to effectively contribute to what may be required to operate a fair, safe and effective clearing and settlement system in the event of competition. For example, the entry of Cboe Australia (formerly Chi-X Australia) to compete in the provision of secondary trading in financial markets was dependent on ASX providing sufficient information and access to its processes and systems to enable



the development of safe, reliable and effective secondary markets in a competitive environment.

(iii) The Anticompetitive Outcomes of the Extreme Integration of ASX Technology Systems

A direct result of the extreme integration of ASX technology systems, the lack of clarity on where ASX clearing and settlement services begin and end, and the doubling-down on this approach with CHES Replacement, is the suppression of innovation and competition.

The need for users to expend significant development resources to connect to bespoke and extremely integrated ASX systems and the refusal of ASX to allow open access to interfaces results in those users being 'captive' to ASX, which frustrates competition and stifles innovation.

There is clear evidence of the benefits of competition in the provision of financial market infrastructure. Chi-X Australia's (now Cboe Australia) entry to the market led to the rapid improvement in the Australian marketplace, delivering investors more efficient trade execution outcomes and greater investment product selection.

However, Cboe is unable to compete on a level playing field against the ASX due to the extreme vertical integration model. For example, when seeking to compete with the ASX market in the listing and quoting of securities and derivatives cleared and settled by ASX, ASX requires Cboe to also use ASX issuer administration services for any Cboe listed and quoted products.

Cboe is not aware of any other jurisdiction where issuer administration services cannot be handled by each market operator in respect of their own products as these services have instead been captured by the clearing and settlement services provider.

This is a clear example of the integration of clearing and settlement services with non-clearing and settlement services to frustrate competition.

B. Other Examples of the Inherent Discrimination in Favour of ASX Products Delivered by the ASX Model

ASX's persistent failure to address the conflicts of interest in its business model has led to harms to the Australian financial system beyond CHES Replacement, particularly in terms of actions taken by ASX Clear and/or ASX Settlement to favour the ASX market over non-ASX markets, for example:

- (i) *Discriminatory access* – ASX Clear and ASX Settlement have not allowed Cboe to access clearing and settlement services on the same terms as the ASX market. This is the case both at a contractual level and on a systems level. The legal terms by which the TAS is provided make clear that ASX Clear and ASX Settlement are only required to provide 'a service of a comparable quality' [to what is provided to the ASX market]. This language enables unequal treatment to favour the ASX market, including for example the ASX Group structuring its operations and systems such that Cboe cannot have the same access to issuer administration services.



- (ii) *Discriminatory margining requirements* – ASX Clear have structured margin criteria in investment products in a way that advantages investment products quoted on the ASX market over investment products quoted on the Cboe market. Currently, all crypto-asset investment products quoted on the Cboe market are subject to significantly more onerous margin and stress test requirements than crypto-asset investment products quoted on the ASX market, despite the Cboe quoted products, by some metrics, having lower volatility than the ASX quoted products.
- (iii) *Discriminatory Liquidity requirements* – When the National Stock Exchange (**NSX**) sought to use ASX Group services to clear and settle transactions in respect of NSX listed securities, ASX Clear attempted to impose unique liquidity and other requirements on those securities as a precondition to being accepted for clearing. Such requirements had never been imposed by ASX Clear in respect of ASX listed securities and clearly encroached on listing standards, which are the responsibility of market operators and not the clearing house. Regulatory intervention was ultimately necessary to prevent ASX Clear from using clearing requirements in a discriminatory manner to advantage the ASX market over the NSX market, with CFR publishing *Open Access Principles*⁷ that, among other things, required ASX Clear to recognise that:
 - I. Each listing market is responsible for maintaining and enforcing its own listing standards;
 - II. Liquidity thresholds for securities should not be a consideration in exercising a discretion not to clear contracts; and
 - III. If ASX Clear declines to clear certain securities due to a legitimate consideration, then any ASX-listed securities affected by the same consideration should be removed from clearing at the same time.
- (iv) *Taking ownership of other's innovations* – When Cboe attempted to compete against the ASX market by seeking to launch a market in DFC warrants, ASX Clear stated that they would need to undertake system development to support this and that Cboe would have to pay for this development. However, ASX Clear further stated that once this development was completed, decisions around the use and control of those systems would remain exclusively with ASX Clear, and that those systems could freely be used by the ASX market if they ever sought to launch similar products. A similar outcome occurred in relation to the 'non-clearing of crosses' innovation introduced by Cboe Australia shortly after it launched its trade reporting product.

In our view, for as long as ASX Clear and ASX Settlement can continue to use their monopoly position in critical market infrastructure areas to advance the commercial interests of the ASX Group in other business areas, failures such as CHES Replacement are inevitable and will continue to occur. The failures will persist until the ASX model is structured to prioritise the best interest of the wider Australian market in those critical infrastructure areas.

3. THE ROOT CAUSE

⁷ See Council of Financial Regulators, [Application of the Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia – Council of Financial Regulators \(cfr.gov.au\)](https://www.cfr.gov.au/publications/operating-cash-equity-clearing-and-settlement-services-in-australia), retrieved 9 May 2023



There is significant objective evidence that the fundamental and ongoing cause of the CHES Replacement failure, and the broader failures around the provision of clearing and settlement services in Australia, is:

- (a) the extreme vertical integration of the ASX group at a systems, operational and, on occasions, governance level; and
- (b) the lack of a clear pathway for competition in clearing and/or settlement services to emerge, and which has resulted in a 'protected monopoly'.

The evidence strongly suggests that this integration, in a 'protected monopoly' environment, results in irreconcilable conflicts of interests for the ASX clearing and settlement function with respect to providing services fairly, safely, and effectively.

Due to how they are positioned within the ASX Group, ASX Clear and ASX Settlement may be incapable of placing the public interest in the public utility functions of clearing and settlement, ahead of the commercial interests of the ASX Group.

In the context of CHES Replacement, this led to a project that lost sight of what should have been its main priority: to provide a reliable clearing and settlement system for the Australian financial system, and instead attempted to secure future ASX Group revenue sources by seeking to control the post trade ecosystem, further expand its vertically integrated model into new areas, and entrench the use of its bespoke systems.

In the context of the other examples provided above, this led to a consistent pattern of conduct by the ASX Group to use its clearing and settlement monopoly to advantage the ASX market over non-ASX markets.

In our view, regulators have not been able to adequately address this issue with their current toolkit. While there has been recognition that the integrated governance of ASX clearing and settlement functions with the rest of the group is not appropriate, we do not believe the actions taken by regulators to date have been sufficient to fix this issue. For example, CFR has required the board of ASX Clear and ASX Settlement to retain at least 50 per cent non-executive directors who are not directors of the ASX Limited Board (**non-ASX Limited directors**). This should have theoretically helped control the fundamental conflict of interest. However subsequent annual reviews by the Reserve Bank found that non-ASX Limited directors were not sufficiently included in certain matters affecting the clearing facility⁸, thereby undermining this regulatory intervention.

Cboe also considers there has not yet been sufficient recognition of role played by the integration operations and systems between the ASX clearing and settlement functions and the rest of the group. The tight integration of systems and operations means that any governance reforms by themselves may be compromised by the fact that the clearing and settlement entities are 'locked' into the ASX group. Any solutions in this area must address integration across all levels.

⁸ See Reserve Bank of Australia, [Assessment of ASX Clearing and Settlement Facilities - September 2021](https://www.rba.gov.au/publications/assessments/2021/assessment-of-asx-clearing-and-settlement-facilities-september-2021) ([rba.gov.au](https://www.rba.gov.au)), page 47, retrieved 9 May 2023.



4. OVERSEAS SOLUTIONS

Other jurisdictions have recognised the harm caused by allowing the extreme integration model within their financial systems. Two prominent examples of how this harm can be addressed can be found in Canada, which focused on forcing the monopoly provider to act in the public interest, and the European Union, which focused on providing a framework for facilitating effective competition among multiple clearing houses. In both cases, Government and regulators took strong and decisive action to ensure they have the right framework for their markets to deliver the best outcomes for their investing public.

Europe - Government and Regulator Supported Competition

The European model developed because of considered and deliberate policy to increase the efficiency and access to the European market. Specifically, the EU sought to improve market access by enabling competing central counterparties (**CCPs**) to clear products on a competitive and interoperable basis. Market operators are required to offer fully interoperable clearing arrangements (see LSE, Nasdaq Nordics, Cboe Europe and SIX) or a less effective but still competitive ‘preferred’ clearing model (see Euronext and Deutsche Börse).

Regardless of the competition model for clearing, these structures are further supported by interoperable national Central Securities Depositories (**CSD**) that undertake settlement and safekeeping services for investors. These tend to be independent of exchanges and clearing houses and are maintained as national infrastructure. European regulators additionally support competition among these entities with fungibility of securities holdings between CSDs and the ability to cross CSD DvP settle transactions leveraging the European Central Bank managed TARGET2-Securities (**T2S**) settlement platform.

In addition, the European Market Infrastructure Regulation (**EMIR**) has specific requirements regarding the management of conflicts of interest of CCP a within a group structure. EMIR also requires CCPs to form a risk committee made up of representatives of its clearing participants, independent members of the board and representatives of its clients. EMIR provides an explicit recognition that ***“clearing members and clients need to be adequately represented as decisions taken by the CCP may have an impact on them”***. In Europe, the Cboe Group operates a CCP in compliance with the EMIR requirements.

Canada – Forcing the Monopoly to Act in the Public Interest

Canadian regulators were confronted with the prospect of the extreme vertical integration model when the Maple Consortium sought to acquire the TSX group in 2012. Without regulatory intervention, the outcome of that transaction would have been a financial market infrastructure group (**TMX Group**) with a similar structure and incentives to the ASX Group. The Ontario Securities Commission (**OSC**) responded to this by imposing strict requirements⁹ on the Canadian Depository for Securities (**CSD**)

⁹ See Ontario Securities Commission, [Notice of Commission Approval: Maple Group Acquisition Corporation | OSC](#), July 2012, retrieved 9 May 2023.



and the TMX Group to ensure there was appropriate governance, management of conflicts of interest, and independence of clearing and settlement within the group. The conditions essentially forced the monopoly or dominant clearing and settlement services to be provided in a way that advanced the public interest.

The regulator's order included:

1. *Public Interest* – CDS was required to act in the public interest. This included requiring that the that the stated responsibilities of the board of directors of CDS includes the fulfilment of the public interest responsibility of CDS and requiring the board to report at least annually to the regulator on how it has fulfilled its public interest responsibility.
2. *Governance and operational independence*: the TMX Group was required to maintain CDS as a separate business unit with its own management team and board of directors. The CDS board was required to be represented by 33% independent directors, and 33% participant representatives based on specific qualifying criteria to ensure the broadest coverage of perspectives. CDS was also required to maintain its own Risk Management and Audit Committee that carried a mandate to:
 - a. advise the board of directors on the fairness, reasonableness and competitiveness of its pricing and fees in the context of the Canadian capital market and trends relating to comparable services offered by clearing houses worldwide; and
 - b. ensure fair and equitable resources are dedicated to development projects for unaffiliated marketplaces.
3. *Fair access*: TMX was required to provide fair access to its markets for all participants, including clearers that compete with CDS. This means that TMX must not discriminate against or disadvantage other clearers that are competing with CDS for clearing and settlement services. TMX must provide these competitors with the same access to its markets and services as it provides to CDS. This includes access to trading platforms, data services, and other market infrastructure. Additionally, as per the above, access to resources is overseen by a Risk Management and Audit Committee.
4. *Fee setting conditions*: TMX was prohibited from using its dominant market power to increase the fees it charges CDS for clearing and settlement services. In addition to the mandate of the Risk Management and Audit Committee of the board, OSC awarded itself the right to final approval of fee decisions. Policies and procedures were required to be implemented to ensure that fee decisions were merit based on objective criteria and are subject to appropriate oversight and review. These are transparent to the marketplace and published on the OSC website.

5. IMMEDIATE ACTION NEEDED

In our view, it is critical that Government and regulators act decisively at this seminal moment, while the future model of CHESS is being determined, to ensure that Australia has a fit-for-purpose clearing and settlement model for the future.



This model should be focused on delivering the greatest benefit to Australian investors and the Australian financial system. It should facilitate competition, treat all users equally, and advance the national interest.

The evidence we have provided demonstrates that this will not occur while ASX clearing and settlement services are a 'protected monopoly' and the ASX integration model persists.

The proposed *Financial Sector Reform (Competition in Clearing and Settlement) Bill 2023* seeks to provide regulators with powers to control a monopoly provider and to facilitate competition. If the bill passes, regulators must be willing to use their powers as their peers have in other jurisdictions and take decisive actions to align the ASX Group's structure and incentives with the public interest and facilitate competition.

If ASX is allowed to continue CHES Replacement in its current manner, it will once again lock the financial services industry into the high cost-zero competition paradigm and the resulting negative consequences for Australian investors.

Cboe Australia acknowledges its position as a genuine competitor of the ASX. However, it is not that fact, but the evidence and outcomes outlined in this submission that provide the basis for the Cboe Australia position that there is a clear and compelling case for the Committee to include among its findings at the conclusion of the Inquiry:

1. Support for the passage of the *Financial Sector Reform (Competition in Clearing and Settlement) Bill 2023*;
2. A clear recommendation for regulators to use their powers to address the extreme vertical integration of the ASX Group and the resulting conflicts of interest, which is the root cause of the failures around the provision of clearing and settlement services in Australia; and
3. A clear recommendation for regulators to promote and enable competition in the provision of clearing and settlement services.

Cboe once again thanks the Committee for the opportunity to make this submission. We would welcome the opportunity to maintain an ongoing dialogue with Government on this issue and assist the Inquiry.

Yours sincerely

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