Link Market Services
ABN 54 083 214 537
Level 12, 680 George Street
Sydney NSW 2000
T +61 2 8280 7100
info@linkmarketservices.com.au
linkmarketservices.com.au

14 July 2020

The Secretariat
Senate Select Committee on Financial Technology & Regulatory Technology
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fintech.sen@aph.gov.au

Responses to Senate Select Committee on Financial Technology and Regulatory Technology following attendance at the Senate hearing on 30 June 2020

Link Market Services (**Link**) welcomes the opportunity provide responses to the questions on notice raised at the Senate Select Committee hearing on 30 June 2020.

A. Senator Bragg and the Senate Select Committee requested that Link provide detail about what is the best way to progress a practical rewrite of the Corporations Act so that it is technology neutral.

Link Group recommend the following specific amendments to the *Corporations Act 2001 (Cth)* (**Act**):

1. Sections 249J (3) and (3A)

   Amend sections 249J (3) and (3A) of the Act to provide that a company is to distribute meeting notices and materials to its members:

   - using a universal or near-universal channel of communication, and
   - a shareholder could opt in to receive them in hard copy.

   If a shareholder does not provide a preferred communication method (for example, an email address) nor opts to receive hard copy meeting materials, they are deemed to receive the materials, subject to the company making the meeting material:

   - available in the public domain; and
   - accessible; and
   - utilising a universal or near-universal channel of communication, and
   - issuing an ASX announcement (if listed).

   Any explanatory memorandum should recognise that the description of a universal or near-universal channel of communication may change over time.

   We recommend that notification to shareholders should be a one-off obligation on the company in the first year only— the company should not be required to notify any shareholder again if no response is received from the shareholder. It should be a matter for each company to decide if it wishes to follow up with such shareholders.

2. Sections 249J (4) and (5)

   Amend sections 249J (4) and (5) of the Act to provide that a notice of meeting sent by electronic means, is taken to be given on the same business day as it is sent or made accessible in the public domain. This is because electronic communications can be disseminated quickly and reliably and it is unnecessary for a Company to factor in an additional day when providing notice to members. Reference to a notice of meeting being sent by post in section 249J (4) can be removed if the amendments set out in 1) above are adopted.

3. Section 249HA

   Amend sections 249HA of the Act to provide for 21 days' notice of a meeting of a company's members if that company is included in an official list of the Exchange. Given that other jurisdictions have substantially reduced periods in which meetings can be conducted (for example 14 or 21 days' notice) and electronic communications can be disseminated quickly and reliably, the requirement for at least 28 days' notice (plus additional days for deemed postage/distribution) to listed company shareholders in today's world is redundant. It is often our clients' desire to convene shareholder meetings as quickly as possible to determine important matters and for shareholders to consider these resolutions and issues promptly. 21 days' notice strikes an appropriate balance between shareholders' rights and the requirements of listed companies.

4. Section 249R

   Amend section 249R of the Act to provide that a meeting of a company's members may be held virtually (at a reasonable time and place). Link Group refers to its previous submission dated 1 June 2020 in this regard.

5. Section 127(1)

   Amend section 127(1) in accordance with the amendments set out in the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* on a permanent basis.

6. General observations

   In addition, Link Group makes the following general observations about the Act:

   - Currently, the *Privacy Act 1988 (Commonwealth)* (**Privacy Act**) prohibits Link Group from sharing and matching data it holds in relation to Company A's register and Company B's register, even if Link Group is the registry that provides services to both companies. It would be useful to consider any amendments to the Act in conjunction with potential amendments to the Privacy Act to ensure that in certain circumstances that this data can be shared to enable the efficient operation of registries and communications with shareholders. Where company A demerges part of its business to set up company B, the fact that there is some data (primarily TFNs) that Company A can then not pass on to Company B, which then requires that Company B, through its registry, has to seek TFN details for all of those shareholders of Company A who elected to take shares in Company B as a result of the demerger, notwithstanding that this information it already held by the registry. This often causes confusion with shareholders and results in withheld tax as they assume that the details are already provided.
   - The more efficient review of shareholder data, within privacy constraints is critical and will deliver genuine savings to clients and shareholders.
   - We strongly recommend that the technology changes be adopted as wide as possible to promote consistency and efficiency. This could be achieved by providing an overriding "technology neutral" clause in the Act.

B. Senator Scarr and the Senate Select Committee requested that Link provide detail around what the government needs to do or what government agencies should be looking to do, whether or not it's through administrative action or through legislation, to ensure that the CHESS replacement project doesn't result in risks occurring to the detriment of the market.

Link is fully supportive of the goal of driving further innovation in the Australian financial markets through upgrades to the current CHESS system and we share in principle support of the concept of a distributed ledger technology (DLT). However, any platform needs to strike a sensible balance between risk, commercial viability and innovation.

It is Link's view that the manner in which the CHESS replacement project is being managed is resulting in confusion in the market about what the project will deliver to industry participants and what it will cost for participants to implement and therefore how it may alter the structure of the market and possibly extend ASX's market position.

Our primary concerns with the approach taken by ASX to date centre around four key areas;

1. A lack of effective consultation with Industry

The consultation to date has been fragmented and ineffective with no visibility as to ASX's view of how the market operates post-implementation. It is Link's view that there has been insufficient consultation with industry stakeholders in relation to the new functional elements of the new system and that stakeholders are not yet in the position to fully understand their obligations, the financial risks and costs associated; and most importantly the benefits of the potential new features.

Link questions whether the presentation material, the time allocated to the focus groups, and disjointed engagement with the CHESS user community has been extensive enough to create a foundation for the new functions for our market. Link recommends that the Council of Financial Regulators (CFR) review the approach taken by ASX to industry consultation.

2. A lack of transparency in relation to the benefits of the rule changes

The consultation and rule making process has not been structured in a way that provides full transparency to stakeholders and did not allow for adequate feedback to be provided by those stakeholders likely to be most impacted by the changes. The approach by the ASX is not consistent with previous functional development undertaken, which included comprehensive explanatory material and supporting documentation which highlighted the impacts and benefits to consumers, providers and other participants.

ASX has mentioned that the proposed new rules and proposed rule amendments are required to support the operation of the system. However, there are key sections in these rules, particularly 5.19A and 5.21A and in 11, which oblige issuers and their service providers to undertake new responsibilities beyond the workings of settlement and safekeeping and without the expected benefits ASX describes will flow from CHESS Replacement. Link recommends that CFR and ASIC review the rule changes that ASX is proposing to determine whether the changes pose risks to the market.

3. A lack of transparency in relation to pricing and concerns about competition

The implementation of new rules and their associated obligations will result in potentially significant expenditure by issuers and share registry providers.

If the ASX was able to outline the benefits of delivery of the new system including, costs and outcomes for consumers, providers, and other participants; and outline the savings and quality improvements, it would allow the industry to evaluate the value of these new functions and making appropriate investment in upgrading their systems, processes and operating models.

Left unchecked, the potential vertical integration by ASX could lead to a substantial lessening of competition in key market segments adjacent to ASX existing monopoly. This could include hampering, damaging or even threatening the long-term survival of brokers, share registries and other stakeholders. Link recommends Australian Competition and Consumer Commission (ACCC) reviews the pricing model that ASX devises to ensure participants understand the impacts of any new pricing structures on their own business models.

4. A lack of governance of the project

A paper1 prepared by the Governance Institute of Australia and supported by the CHESS Replacement Stakeholder Group, which Link is a member outlines the disadvantages of the current governance model set up to address ASX's obligations under the Council of Financial Regulators (CFR) in its 2016 Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia (Regulatory Expectations) for ASX's provision of its monopoly cash equity clearing and settlement (CS) services. The paper sets out some solutions which the CHESS Replacement Stakeholder Group (Stakeholder Group) considers would assist ASX in better meeting the COFR's Regulatory Expectations and would also support the long-term interests of the Australian market.

The government or its agencies may wish to engage or have ASX engage an external expert to examine readiness of ASX to meet the revised deadlines.

Yours sincerely,

Lysa McKenna
Co CEO Corporate Markets
Link Group

---

[1] Cash Equity Clearing and Settlement Services in Australia – Governance, produced by the Governance Institute of Australia