

Friday, 20 December 2019

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Ms Lauren Hogan
FMI Regulatory Reforms Consultation Submissions, Payments Policy Department
Reserve Bank of Australia
GPO Box 3947
Sydney, NSW, 2001

Computershare Limited
ABN 71 005 485 825
Yarra Falls, 452 Johnston Street Abbotsford
Victoria 3067 Australia
PO Box 103 Abbotsford
Victoria 3067 Australia
Telephone 61 3 9415 5000
Facsimile 61 3 9473 2500
www.computershare.com

By email: FMIconsultation@cfr.gov.au

Dear Ms. Hogan,

Response to Consultation Paper on Financial Market Infrastructure Regulatory Reforms

Computershare appreciates the opportunity to respond to the Council of Financial Regulators' (CoFR) Consultation Paper on Financial Market Infrastructure Regulatory Reforms.

About Computershare Limited (CPU)

Computershare (ASX: CPU) is a global market leader in transfer agency and share registration, employee equity plans, mortgage servicing, proxy solicitation and stakeholder communications. We also specialise in corporate trust, bankruptcy, class action and a range of other diversified financial and governance services.

Founded in 1978, Computershare is renowned for its expertise in high integrity data management, high volume transaction processing and reconciliations, payments and stakeholder engagement. Many of the world's leading organisations use us to streamline and maximise the value of relationships with their investors, employees, creditors and customers.

Computershare is represented in all major financial markets and has over 12,000 employees worldwide.

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Support for Reform Proposals

We support the overall reform proposals in the Consultation Paper to align and enhance the roles of the Minister and the Regulators (ASIC and RBA) in strategic policy-making and operational regulation of the FMI licensing regimes, the supervision of Financial Market Infrastructures (FMIs) and the introduction of a resolution regime for clearing and settlement facilities. We consider that these reforms are a logical development to streamline the regulatory environment and improve the Regulators' rule-making capacity.

We specifically support the proposal to provide ASIC with the authority to make rules for clearing and settlement facility licensees (CSFLs) to promote "fair and effective provision of clearing and settlement facility services". This presents an important enhancement to ASIC's capacity to intervene directly, where appropriate, in the conduct of clearing and settlement facility services.

Regulatory oversight of CSFLs & our concerns

This consultation occurs at a critical time during the Australian Securities Exchange (ASX) group's years-long CHES replacement project. ASX is the only CSFL in the Australian market at present. The rule-making and regulatory changes to underpin the CHES replacement service are only now starting to emerge, against a back-drop of concerns raised by a range of stakeholders, including Computershare, that the project risks producing unfair, monopolistic or inefficient service and market outcomes, if not appropriately constrained by the Regulators. The ability of stakeholders to comprehensively understand the changes to the CSF regulatory structure is seriously inhibited by the release of the proposed ASX Settlement Operating Rule amendments in a series of tranches over the course of several months, while the necessary User Technical Documentation, which are given force by the Rules, are being separately released in tranches not coordinated with the related Rules. Stakeholders therefore lack full visibility of key interactions between Rules across the tranches as well as not being able to comprehend the full import of various Rules due to the uncorrelated release of relevant User Technical Documentation.

We are fully supportive of the goal of driving further innovation in the Australian financial market and support the concept of a distributed ledger technology (DLT) platform, in principle, on which the CHES replacement project is based. However, a DLT platform of this complexity, scale and criticality (to a diverse range of market stakeholders) has yet to be introduced to replace core market infrastructure in any major equity market anywhere around the world. Any platform needs to strike a sensible balance between risk, commercial viability and innovation.

We are therefore very supportive of CoFR being given more defined and specific powers to enforce appropriate parameters around the ASX's use of its monopoly position and rule-making powers, which should be utilised to ensure competitive markets are maintained for the best outcomes for all Australians. Such powers would provide the tools to ensure that this sensible balance is maintained and made accountable. These parameters are already outlined in the Council's Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia. In the meantime, we suggest that CoFR should consider how its current regulatory capacities can be best deployed in oversight of the CHES replacement project and ASX rule-making, prior to implementation of such specific powers, to give effect to the principles espoused in the Regulatory Expectations so far as possible. This would, in our view, provide stakeholders with greater confidence that the new platform will continue to balance off the different interests in the market.

We note that prior consultations around the competition in clearing and settlement have occurred and that CoFR is not seeking additional feedback on this issue. The Consultation Paper states, however, that:

"A lack of competition in the provision of clearing and settlement services could result in higher prices for users than would be the case in a competitive market. It could also result in barriers to transparent and non-discriminatory access to those services and/or limited responsiveness to users' evolving needs. This would be contrary to the objectives of maintaining competitive and efficient financial markets... If competition does not emerge, then it is important that regulators have appropriate powers to address the potential for anticompetitive conduct of any incumbent."

CoFR and the ACCC's 2015 advice to the Federal Government proposed the introduction of rule-making and arbitration powers through which:

1. ASIC would be given the power to enforce the regulatory expectations and set minimum conditions for competition in clearing and settlement services for cash equities.
2. The ACCC would be given the power to arbitrate access disputes between parties for cash equity clearing and settlement services.

While the Government announced its commitment to implement these legislative changes in March 2016, these legislative changes have not yet passed. Meanwhile the CHES replacement service is expected to go live in April 2021, and ASX anticipates finalising comprehensive rules to support the

replacement service mid-2020. Industry-wide testing is also expected to commence at the same time. In our view, it is vitally important for Australia's peak regulators to take a more proactive and visible public role in overseeing the governance of the project (and the transitional arrangements) that will effect this critical change in Australia's market infrastructure.

Recommendations

We urge CoFR therefore to take the following steps:

1. Prioritise passage of new legislative powers

CoFR should re-address the above-mentioned legislative changes as an urgent priority with the Government and establish a timetable for passage.

2. Effective use of existing powers

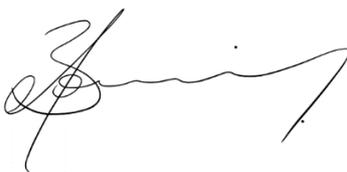
CoFR should determine how its current regulatory capacities could be most effectively exercised, prior to passage of new legislation, to ensure that it is positioned to undertake adequate oversight of ASX's CHESS replacement project and associated ASX rule-making (that is establishing the regulatory environment for the replacement service).

Regarding point 2, we suggest one key avenue that ASIC should address is utilising its role in the non-disallowance of ASX Group's rule amendments to ensure that ASX is required to act in a manner that ensures its clearing and settlement services (as well as its related sub-register activities) continue to be provided in a fair and effective way, and in a manner that is responsive to user needs and protects market and CSF users. This should include ensuring that the basis for major CSF developments such as the CHESS replacement project are clearly communicated, including providing a clear statement of rationale for the change and the related business case to users, and requiring adequate user consultation (and feedback) on all proposed rule amendments, before allowing new ASX rules facilitating such developments to become effective. As noted above, the process for communication of relevant rule amendments and related User Technical Documentation is seriously inhibiting stakeholder's ability to comprehensively understand the regulatory changes in this critical project. We urge CoFR to consider the fairness of this approach to introducing such significant regulatory change.

Conclusion

We appreciate the opportunity to make this submission to the Consultation Paper on Financial Market Infrastructure Regulatory Reforms. Please feel free to contact the undersigned with any questions on our comments.

Yours sincerely,



Ann Bowering

CEO Issuer Services, Australia and New Zealand
Computershare Investor Services

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