REPORT 808

Response to submissions on CP 379 ASIC CS Services Rules

February 2025

About this report

This report highlights the key issues that arose out of the submissions received on Consultation Paper 379 *ASIC CS Services Rules* (CP 379) and details our responses to those issues.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

This report does not contain ASIC policy. Please see Regulatory Guide 211 *Clearing and settlement facilities: Australian and overseas operators* (RG 211).

Contents

A Overview and consultation process

1 In Consultation Paper 379 *ASIC CS Services Rules* (CP 379), we consulted on a proposal to make rules to facilitate competitive outcomes in the provision of clearing and settlement (CS) services for Australia's financial markets, where ASX Group is a monopoly provider of cash equity CS services.

2 The proposal was intended to implement the Council of Financial Regulators' policy statement, *Regulatory expectations for conduct in operating cash equity clearing and settlement services in Australia* (Regulatory Expectations) (PDF 210 KB, September 2017) as enforceable obligations. In particular, the proposed rules are intended to ensure that ASX remains responsive to users' evolving needs and provides access to its monopoly cash equity CS services on a transparent and non-discriminatory basis with terms and conditions (including pricing) that are fair and reasonable. We also consulted on proposals to implement additional obligations that are not expressly covered in the Regulatory Expectations.

3 The proposed rules would apply to CS service providers, defined as:

(a) ASX Clear and ASX Settlement (the covered licensees);

(b) a direct or ultimate holding company of a covered licensee that makes, or participates in making, decisions that relate to the provision of CS services; or

(c) an associated entity of the covered licensee that provides a CS service, in its capacity as such a provider.

4 The proposed rules that we consulted on would require CS service providers to:

(a) have governance frameworks with transparent formal mechanisms for users to provide input into strategy setting, operational arrangements and system design;

(b) have transparent, non-discriminatory, fair and reasonable pricing arrangements;

(c) provide access to services on commercial, transparent and non-discriminatory terms;

(d) ensure that core information technology systems used to provide CS services facilitate foundational technical interoperability with users' systems;

(e) publish reports including an international pricing comparison report, cost allocation model report, and annual external audit report.

5 The proposed rules would also require the covered licensees to:

(a) ensure at least 50% of their board comprises independent non-executive directors;

(b) publish management accounts in relation to CS services they provide;

(c) have arrangements in place to manage intragroup conflicts of interest; and

(d) provide independent assurance that changes to core systems do not give rise to barriers to access for unaffiliated entities, including in relation to interoperability.

6 This report highlights the key issues that arose out of the submissions received on CP 379 and our responses to those issues.

7 This report is not meant to be a comprehensive summary of all responses received. It is also not meant to be a detailed report on every question from CP 379. We have limited this report to the key issues.

8 We received nine responses to CP 379 from a range of interested parties, two of which were confidential. We received a supplementary confidential submission at ASIC's request following further bilateral engagement with stakeholders after consultation. We are grateful to respondents for taking the time to send us their comments.

9 For a list of the non-confidential respondents to CP 379, see the appendix. Copies of these submissions are currently on the CP 379 page on the ASIC website.

Responses to consultation

10 Generally, the respondents recognised the importance of facilitating competitive outcomes in the monopoly provision of cash equity CS services. They were broadly supportive of the proposed rules. General feedback provided by respondents about the emergence of competition in cash equity CS services noted the current barriers to entry, including the current monopoly market structure in the provision of cash equity CS services.

11 The main issues raised by respondents related to:

(a) the effectiveness of ASX's user input and governance arrangements;

(b) suggested changes to ASX's governance arrangements; and

(c) the proposed reporting requirements—respondents considered the reporting requirements would need to be sufficiently targeted and provide value, as ASX would likely pass on costs to users.

12 Other issues raised by respondents related to drafting suggestions to:

(a) strengthen the obligations imposed in the rules;

(b) futureproof the rules in relation to messaging protocols and standards; and

(c) limit the scope of certain definitions to reduce the compliance burden and provide regulatory clarity.

13 In addition to receiving submissions, we engaged in bilateral discussions with stakeholders to give them the opportunity to raise questions and share their feedback on specific areas of concern. We are grateful to stakeholders for taking the time to provide their feedback.

14 During our consultation, we also sought information from stakeholders about the regulatory costs of our proposals. Feedback on regulatory costs likely to be incurred was generally high-level and non-specific in terms of dollar amounts.

15 For detailed summaries of feedback provided and our response to specific topics, see the relevant sections of this report.

16 We also consulted the Australian Competition and Consumer Commission (ACCC) and the Reserve Bank of Australia (RBA) on the proposed rules in accordance with the requirements of s828J of the *Corporations Act 2001* (Corporations Act).

B Implementing the Regulatory Expectations

Key points

This section outlines the key issues raised in the submissions to CP 379 on our proposal to implement the Regulatory Expectations as enforceable obligations in the CS services rules. Specifically, our proposed rules would impose obligations in relation to:

- governance requirements, including user input to governance;
- transparent, non-discriminatory, and fair and reasonable pricing of CS services; and
- commercial, transparent and non-discriminatory access to CS services.

This section also includes our responses to the feedback received.

Regulatory Expectations as mandatory obligations

17 In CP 379, we sought feedback on proposed CS services rules to implement the Regulatory Expectations as enforceable obligations.

18 We received eight submissions on this proposal. The majority of these submissions provided full or in-principle support to the proposed rules implementing the Regulatory Expectations, recognising the importance of supporting competitive outcomes in the provision of cash equity CS services in the absence of a competitor.

19 Two respondents were not in full support of the proposal and suggested changes to the current market structure, on the basis that the proposed rules:

(a) were unlikely to elicit a competitor in the provision of cash equity CS services; and

(b) were drafted in a manner to regulate ASX in the current market structure and hence would not achieve competition or competitive outcomes. The respondent who provided this feedback considered that a set of rules separate from the Regulatory Expectations addressing clearing as a distinct function from settlement would result in better outcomes.

20 One respondent strongly supported the proposal and suggested that competitive outcomes could be better achieved by regulating the facilities through which monopoly CS services are provided as public utilities. The respondent suggested strengthening the proposed rules by removing qualifying language (e.g. reasonable steps) for principles-based obligations, on the basis that these obligations already incorporate flexibility in their application.

21 One respondent requested changes to the definition of 'Core Systems' in the proposed rules as it could capture ancillary information systems that are not core to the delivery of CS services. This respondent also sought amendments to the definition of 'User' on the basis that the proposed drafting was overly broad, as capturing users that propose to use CS services could make it difficult to identify the class of stakeholders, and would increase the compliance burden.

22 Several respondents provided feedback that they did not expect to incur any significant or additional costs as a result of the proposal to implement the Regulatory Expectations. One respondent also submitted that any costs this proposal may impose on other industry participants were likely to be outweighed by the benefits accruing to the financial services industry as a whole and the economy at large.

ASIC's response

We have proceeded with the proposal to implement the Regulatory Expectations in the CS services rules as enforceable obligations. We consider that these requirements are necessary based on industry feedback around the need for competitive outcomes in the current monopoly environment.

We have carefully considered the feedback from respondents that were not in full support of the proposed rules. The suggested changes to current market structure are out of scope of the proposed rules. We consider that the purpose of these rules is to achieve competitive outcomes in the current monopoly environment—hence it is necessary to draft rules that impose obligations on ASX Group. A set of rules separate from the Regulatory Expectations would be considered if and when a committed competitor emerges, in which case we would consider the implementation of the *Minimum conditions for safe and effective competition in cash equity settlement in Australia* (Minimum Conditions) as enforceable obligations.

We consider that ASX Group should already be substantially compliant with the obligations imposed by this proposal, as the *ASX cash equities clearing and settlement code of practice* (Code of Practice) sets out ASX's commitments to comply with the Regulatory Expectations. The latest external audit of ASX's compliance with the Regulatory Expectations conducted by PricewaterhouseCoopers (PwC) in September 2024 provided the opinion that ASX has complied, in all material respects, with the Regulatory Expectations as evaluated against the Code of Practice and other related ASX policies.

In response to feedback about the broad definition of 'Users', we have removed 'or proposes to use' from this definition to make it clear which stakeholders are users. To prevent this change from restricting the scope of other rules around pricing and access arrangements, we have amended the definition of 'Unaffiliated Entity' to include reference to a 'potential User'.

We will address concerns raised by respondents in relation to the breadth of 'Core Systems' by providing clarity on the definition in the Explanatory Statement that the definition is not intended to capture ancillary information systems that are not material to the provision of covered services.

We have carefully considered feedback about the removal of the 'reasonable steps' qualifier for principles-based obligations, and we have decided to retain the qualifiers. Our reason for this decision is that doing so would increase the regulatory and compliance burden as well as introducing uncertainty about what steps would need to be undertaken to comply with the rules.

Taking into account the feedback to CP 379, we concluded that there are clear regulatory benefits in proceeding with the proposal, with negligible additional compliance costs incurred by industry.

User input into governance

23 Our proposal to implement the Regulatory Expectations as enforceable obligations in CP 379 included requirements around user input to ASX's governance framework, which were intended to ensure that ASX remains responsive to users' evolving needs.

24 We received feedback from three respondents in relation to this proposal. These submissions agreed in principle with the proposed rules and suggested additional changes to improve the effectiveness of user input arrangements and user representation to ASX's governance framework. These suggested changes included:

(a) a review of the effectiveness of the user representative bodies;

(b) formal arrangements to enable user representative bodies to challenge decisions and/or have a mediation process;

(c) embedding the CS Advisory Group as a permanent body; and

(d) restructuring user representative bodies to be independent of ASX and for more limited but senior representation at these groups to enable efficient decision making.

25 We also received feedback from one respondent that there is a lack of user representation at the board level for the covered licensees. This respondent submitted that it is appropriate for users to have some representation at the board level, given the centrality to users of Australian financial markets and the view that they should be run as for-profit public utilities. On this basis, the respondent recommended that the rules be amended to require the covered licensees to:

(a) have at least 25% of their directors appointed from nominees made by the user representative groups (i.e. half of the independent directors required under the proposed rules); and

(b) convene a board subcommittee composed of an equal number of industry-nominated and other directors to assume responsibility for responding to the independent and external reviews required under the proposed rules.

26 Respondents that provided feedback on costs of this proposal indicated that they did not expect to incur costs as a result of this proposal.

ASIC's response

We have proceeded with implementing the user input arrangements as set out in our proposed rules.

We have carefully considered the feedback about the effectiveness of user input arrangements, and we have decided not to make changes to these rules. This is on the basis that the rules as drafted are sufficiently principles-based to allow ASX to make changes to their user input arrangements following stakeholder feedback, making it unnecessary to change the rules to embed these changes as prescriptive requirements.

We have considered the feedback provided around the lack of user representation at the board level and the suggestion to have directors appointed from nominees made by the user representative groups and to convene a board subcommittee with responsibility for the various reviews required under the rules. The feedback we received raises complex issues that require additional consideration and analysis, which we will consider as part of our broader work on financial market infrastructure in 2025.

As to the feedback to embed the CS Advisory Group as a permanent body, we consider that this is an operational matter that we would prefer not to embed in the rules. We understand the current intention is for the Advisory Group to continue for some time.

Transparent, non-discriminatory, and fair and reasonable pricing

27 In CP 379, we proposed rules to give effect to the obligations in the Regulatory Expectations that are intended to ensure the fees charged by ASX for its cash equity CS services are transparent, non-discriminatory, fair and reasonable.

28 Specifically, we proposed the obligation for a CS service provider to negotiate commercially and in good faith with users regarding fees and other financial contributions charged for changes to covered services provided to a user.

29 One respondent sought to clarify the scope of the proposed rule, noting the practical difficulties with having to potentially negotiate with a large cohort of users. The respondent also noted the scope of this obligation in the Regulatory Expectations is limited to unaffiliated market operators and CS facilities.

30 Separately, one respondent also expressed specific concern around the qualifiers in the proposed rules implementing the Regulatory Expectations for pricing and non-discriminatory access and asserted that the qualifiers would allow for price discrimination against unaffiliated users and differential treatment in relation to service provision and commercial terms.

ASIC's response

With respect to the scope of the negotiation requirement, we have decided to change the scope from Users to Unaffiliated market operators, Unaffiliated CS facility operators and Data accessing entities. It is not our intention for a CS service provider to negotiate fees for standard services with each individual User.

While we acknowledge this obligation applies to only unaffiliated market operators and unaffiliated CS facilities in the Regulatory Expectations, we have included Data accessing entities because the definition of CS service makes reference to 'data used in the operation of a clearing and settlement facility' and the Regulatory Expectations also include reference to the provision of access to data. We have also amended the drafting of the proposed rule to align more closely with the wording in the Regulatory Expectations to clarify that it is not our intention that a CS service provider renegotiate fees for existing services.

We have also considered respondent feedback about the removal of qualifiers for pricing and non-discriminatory access. We have decided to retain the qualifier around the efficient costs of providing the same service to another party, on the basis that this is included specifically in the Regulatory Expectations.

However, we have decided to remove the qualifier for 'substantially' equivalent service provision for non-discriminatory access. We consider that this addresses stakeholder feedback that ASX could seek to provide differential terms of access.

Commercial, transparent and non-discriminatory access to CS services

31 In CP 379, we proposed to implement the obligations in the Regulatory Expectations to ensure that ASX provides access to its cash equity CS services (including data) on commercial, transparent and non-discriminatory terms.

32 One respondent submitted that these provisions could conflict with a covered licensee's other regulatory obligations under Pt 7.3 of the Corporations Act, including the obligation to comply with the RBA's Financial Stability Standards. Specifically, the respondent sought clarification as to the hierarchy of regulatory requirements given s 822B(2) of the Corporations Act states that if there is inconsistency between the CS services rules and the operating rules of a CS facility, the CS services rules prevail.

33 In relation to the obligation for a CS service provider to ensure that its core systems do not raise barriers to access, two respondents provided feedback that it may be appropriate that core systems also do not 'create' barriers to access to mitigate the possibility for stakeholders to assume that it is acceptable for barriers to be in place as long as they are not increased.

ASIC's response

Under Pt 7.3 of the Corporations Act, a licensed CS facility has broad obligations to ensure that they identify and properly control risks associated with the operation of its CS facility in order to promote overall stability of the Australian financial system. This includes compliance with the RBA's Financial Stability Standards made under s827D of the Corporations Act.

The operating rules of a CS facility may impose risk-based requirements on users of the facility, in relation to the safety and stability of the CS facility. Therefore, we consider that a CS service provider's compliance with draft Rule 2.3.1 will be subject to the risk-based considerations required under the operating rules of its CS facility. We note that under s827D(2A) of the Corporations Act, the RBA's Financial Stability Standards will prevail over the CS services rules to the extent of the inconsistency.

To reflect this, we have added qualifying language 'take all reasonable steps' to Rule 2.3.1(1) and Rule 2.3.1(3)(b). We will also provide further clarity in the Explanatory Statement that compliance with these obligations will be subject to risk-based considerations required under the CS facility's operating rules.

Should there be any concerns about compliance, a CS service provider may apply to ASIC for an exemption from the requirements of this rule under s828R of the Corporations Act.

Separately, it is our intention that a CS service provider does not create or raise barriers to access by unaffiliated entities. For clarity, we have amended the relevant rules to refer to both the creation and raising of existing barriers to access.

External review of arrangements

34 Our proposals in CP 379 included implementing the requirement in the Regulatory Expectations for a CS service provider to engage an independent external expert to conduct an annual review of the CS service provider's compliance with the proposed rules. We also consulted on expanding the scope of this requirement to include technology, governance and delivery issues in relation to the CHESS replacement program.

35 We received mixed feedback from eight respondents about the proposal to expand the scope of this requirement to include issues in relation to the CHESS replacement program. Four respondents did not support the proposal on the basis that there is sufficient oversight of the CHESS replacement and that expanding the scope of this requirement would lead to increased costs that would be passed on to users. However, we also received feedback from three respondents that supported expanding the scope of this requirement given the importance of the CHESS replacement.

36 We also received feedback from three respondents questioning the value of requiring ASX to engage an independent expert to conduct an ongoing external review of their compliance with the proposed rules and the proposed annual frequency of the review. These respondents disagreed with the proposal on the basis that costs would be passed on to users.

ASIC's response

We have decided not to proceed with proposal B2 in CP 379 at this time, in response to feedback questioning the value of engaging an independent expert to conduct an audit on the CS service provider's compliance with the rules.

While we acknowledge that this is an obligation under the Regulatory Expectations which ASX has committed to under its Code of Practice, we consider that further work is needed to ensure that the benefits of requiring this review on an ongoing basis outweigh the costs.

We will consider this further as part of our broader work on financial market infrastructure in 2025, noting our recently expanded regulatory toolkit following the passage of the financial market infrastructure reforms. It is our expectation that the annual external audit be undertaken by ASX in 2025. If required, ASIC intends to use powers granted to us under the recent financial market infrastructure reforms to appoint an expert to provide ASIC with a report on ASX's compliance with the rules. We intend to assess the value of requiring this report as an ongoing reporting requirement.

C Additional obligations

Key points

This section outlines the key issues raised in the submissions to CP 379 on our proposal to include additional obligations not expressly covered in the Regulatory Expectations. These include:

- interoperability of core systems;
- management of intragroup conflicts of interest;
- coverage of associated entities;
- commitments with respect to CHESS replacement; and
- reporting requirements (including an international pricing comparison, publication of management accounts, cost allocation model report and annual external audit report).

Interoperability of core systems

37 In CP 379, we proposed to implement requirements to ensure that the core information technology systems used to provide CS services facilitate foundational technical interoperability with users' systems.

38 We received feedback from eight respondents in relation to this proposal. These submissions were broadly supportive of the proposal and recognised the importance of interoperable technology systems and non-proprietary standards and interfaces.

39 Several submissions suggested changes to the definition of 'International Open Communication Procedures and Standards' to avoid mandating specific versions of standards in the rules, due to the potential for successors to the procedures and standards to emerge over time. However, a respondent considered ISO 20022 and FIX 5.0 were respected and mature standards and supported mandating them if prescription of the standards in the rules was required.

40 Three submissions providing feedback on the costs of this proposal indicated that they did not expect to incur costs as a result of the proposal, with one respondent providing feedback that the CHESS replacement was already moving to implement these standards. One respondent also provided feedback that the proposal would reduce costs to the respondent and other users if implemented fully (i.e. application to peripheral systems).

ASIC's response

We have proceeded with the proposal to implement requirements for interoperability of core systems.

We have carefully considered the feedback provided around the definition of 'International Open Communication Procedures and Standards' in terms of supporting future versions of the standards. We have decided not to amend the definition at this time and will instead consider updating the rules to reflect future versions as and when they are adopted by industry.

International pricing comparison

41 In CP 379, we consulted on rules that will require CS service providers to engage an independent person with the appropriate skills, knowledge and experience to prepare a report comparing the pricing of their CS services against the price of similar services in other comparable international markets within a year after the proposed rules are made, and at least every five years thereafter, and to publish the results of the review.

42 We received feedback from eight respondents in relation to this proposal. These submissions were broadly supportive of the intent of the proposal but noted that the cost and effort imposed on CS service providers would likely be passed on to users. However, several respondents also questioned the effectiveness and value of the report, including whether the report would have any material impact on providing favourable outcomes for users in relation to altering costs and pricing for ASX's provision of CS services. Two respondents also noted that the report should be published, as opposed to a summary proposed in the draft rules.

43 Two respondents also questioned the independence of a review commissioned by ASX and suggested that:

(a) ASIC should commission the review instead of ASX as there was the potential for a reviewer to deliver supportive findings in the interests of seeking future review work from ASX; or

(b) user representative bodies and ASIC should agree on the scope of the review.

ASIC's response

We have decided to proceed with the proposal to implement requirements for an international pricing comparison. We reached this decision following careful consideration of the feedback provided on the effectiveness and value of the international pricing comparison review. We have also amended the obligation to require the report to be published to maximise the value of the report to stakeholders.

We consider that it is appropriate that the review is commissioned by ASX rather than ASIC, on the basis that the obligation to undertake a review is infrequent (occurring on a five-yearly basis after the first review). Therefore, any structural conflicts of interest resulting from an independent expert seeking to gain recurring review work are unlikely. Further, ASIC will have oversight of the engagement process for the independent expert and we will implement protocols and safeguards.

We have also considered the feedback provided on ASIC and user representative bodies agreeing on the scope of the review. We have amended Rule 2.1.2(1)(e)(i) to enable user representative bodies to review and provide feedback on the proposed terms of reference for the review.

Coverage of associated entities

44 In CP 379, we consulted on the scope of the CS services rules applying to ASX Group entities that are not covered licensees, as provided for in Pt 7.3A of the Corporations Act. We proposed to impose certain obligations on CS service providers, defined as:

(a) ASX Clear and ASX Settlement (the covered licensees); or

(b) a direct or ultimate holding company of a covered licensee that makes, or participates in making, decisions that relate to the provision of CS services; or

(c) an associated entity of the covered licensee that provides a CS service, in its capacity as such a provider.

45 We received feedback from six respondents in relation to this proposal. These submissions were strongly supportive of the proposed scope of the rules and recognised that ASX Limited has a key role in controlling the operations of ASX Clear and ASX Settlement. One respondent suggested broadening the definition of CS service providers to capture all related parties to prevent avoidance measures. Similarly, another respondent suggested that the definition should be amended to replace the 'or' statements with 'and' statements to have the scope of the rules for CS service providers apply to both ASX Clear and ASX Settlement as well as ASX Limited.

46 Three submissions providing feedback on costs indicated that they did not expect to incur any costs as a result of the proposal.

ASIC's response

We have proceeded with the proposal on the scope of the CS services rules for the definition of CS service providers.

We have carefully considered the feedback on expanding the definition of CS service providers. It is our view that the

current definition is sufficient to capture circumstances where CS services may be provided by other entities in ASX Group and to impose obligations on ASX Limited as the parent company.

Management of intragroup conflicts of interest

47 In CP 379, we consulted on rules that will require the covered licensees to have appropriately documented policies and procedures in place to identify and mitigate any actual or perceived conflicts between the interests of the covered licensee or an associated entity and an unaffiliated entity.

48 We received feedback from seven respondents in relation to this proposal. These submissions were strongly supportive of the proposal and agreed with the policy rationale for the proposal as set out in CP 379. Several respondents suggested expanding the scope of the proposal to apply to CS service providers as opposed to covered licensees, on the basis that it may be necessary to capture associated entities involved in the provision of a CS service. One respondent provided feedback that the vertically integrated monopoly structure of ASX Group results in an actual conflict of interest and that the rules should therefore apply to ASX Limited as the parent company, in addition to the covered licensees.

49 Several respondents provided submissions that they did not expect to incur direct costs as a result of the proposal, with any costs expected to be borne by ASX.

ASIC's response

We have proceeded with the proposal to implement obligations for managing intragroup conflicts of interest.

In response to the feedback received around expanding the scope of the proposal to capture associated entities involved in the provision of a CS service, we have amended the rules to apply to CS service providers. We consider that this expanded scope is appropriate so that requirements around conflicts of interest apply to ASX Limited as the parent company of the covered licensees.

Commitments with respect to CHESS replacement

50 In CP 379, we consulted on rules that would impose an obligation on the covered licensees to publicly provide independent assurance that changes to core systems (including the CHESS replacement) do not give rise to barriers to access for unaffiliated entities, including in relation to interoperability.

51 We received feedback from seven respondents in relation to this proposal. Most of the submissions were broadly supportive of the proposal and recognised the importance of interoperability and ensuring that the CHESS replacement does not create barriers for potential competitors. This included feedback that it was imperative that legacy barriers (e.g. non-standard encryption standards and bespoke messaging protocols) are not replicated in the CHESS replacement system.

52 One respondent was concerned that the obligation created multiple triggers for an external assurance report ahead of readiness for go-live of material changes to its core systems. The respondent also noted that there may not necessarily be a board decision at this point, and that this requirement should be delinked from board decision making.

53 Several respondents also submitted that the proposal needed to be rebalanced to reduce associated costs to ensure these requirements do not discourage innovation and development. One respondent suggested amending the qualifiers from 'all reasonable steps' to a 'reasonable steps' qualifier for the obligations in relation to core systems.

54 Two submissions provided feedback that they did not expect to incur any direct costs as a result of the proposal, but that costs incurred by ASX could be passed on to users. These submissions also noted concerns that increasing the costs for ASX to make changes to their core systems could discourage innovation.

ASIC's response

We have decided to proceed with our proposal to impose obligations to ensure that the implementation of the CHESS replacement and any other investments in relation to core systems do not raise barriers to potential competitors, including in relation to interoperability and access arrangements.

In response to feedback, we have amended the drafting of this rule to clarify the timing of when such external assurance would be required, and that this obligation is intended for material changes to core systems.

Our intention is for a covered licensee to prepare an external assurance report before the go-live implementation of material changes to its core systems. This report should be completed no more than 120 days, and no less than 90 days, before each final decision by the board of the covered licensee to implement the material changes to its core system. This will ensure the report is current and considers potential barriers to access that may be created or raised in the implementation and cutover approach of changes to its core systems before it is provided to the board and subsequently the user representative body for feedback.

We are of the view that the link to the board decision-making process is appropriate, as it allows the assurance report to be considered by the boards of the covered licensees and feeds into the board's decision-making processes.

To reduce compliance burden, we have also amended the qualifier from an 'all reasonable steps' to a 'reasonable steps' qualifier in relation to our proposed obligations for core systems. We note that a covered licensee may also apply to ASIC for an exemption from the requirements of this obligation under s828R of the Corporations Act.

We consider this addresses stakeholder concerns around the potential for this obligation to limit innovation, design and development decisions.

Publication of management accounts

55 In CP 379, we consulted on rules that would require a covered licensee to publish management accounts on an annual basis in relation to cash equity CS services. This was intended to codify ASX's current practice of publishing management accounts in their Code of Practice.

56 We received feedback from seven respondents in relation to this proposal. These submissions were strongly supportive of the proposal, including the requirement for the audited management accounts to include a cost allocation and transfer pricing policy that describes the methodology used for allocating revenue and costs.

57 Three respondents provided feedback that they did not expect to incur any direct costs as a result of the proposal.

ASIC's response

We have decided to proceed with the proposal to introduce rules that will require a covered licensee to publish management accounts. We consider that this is an important measure to provide transparency around ASX's pricing arrangements. The strong level of agreement from respondents also supports implementing this proposal as an ongoing obligation in the rules.

External review of cost allocation model

58 In CP 379, we consulted on rules that would require a CS service provider to engage an appropriately qualified independent expert to conduct a review and prepare a written report on the CS service provider's model for the internal allocation of costs, including the policies to govern the transfer of prices between ASX Group entities.

59 We received feedback from seven respondents in relation to this proposal. There was broad support for the proposal from the majority of respondents, on the basis that a cost allocation model review would enable industry to

gain a better understanding of whether the profits generated by ASX as a result of the vertically integrated monopoly structure for providing cash equity CS services are excessive.

60 One respondent provided feedback that the review should be commissioned by ASIC to prevent potential structural conflicts of interest whereby the independent expert may seek to provide a favourable report to ASX to attract further review work.

61 Another respondent agreed in principle with the proposal but suggested the inclusion of a materiality threshold. This respondent proposed that the inclusion of this threshold would mean that the external review requirement would not be triggered in the event of minor and inconsequential changes to the internal model for allocation of costs (e.g. amending typos, updating cross-references).

62 Three respondents provided feedback that they did not expect to incur direct costs as a result of the proposal.

ASIC's response

We have proceeded with the proposal to introduce rules that will require a CS service provider to conduct an external review of their cost allocation model.

We have carefully considered the feedback provided in relation to ASIC commissioning the report as opposed to ASX. We have decided not to make any changes as a result of this feedback, on the basis that the rules will not require reviews to be conducted on an ongoing basis (e.g. an annual basis). Therefore, any structural conflicts of interest resulting from an independent expert seeking to gain recurring review work are unlikely.

We will clarify in the explanatory statement that minor changes are not intended to trigger the external review requirement.

D Implementation of obligations

Key points

This section outlines the key issues raised in submissions to CP 379 on our proposed three-month transition period for the commencement of the *ASIC CS Services Rules 2024*.

Transition period

63 In CP 379, we proposed a transition period of three months on the basis that ASX has had a longstanding commitment to comply with the Regulatory Expectations. The transition period would allow ASX to undertake a review of their existing arrangements to determine their adequacy for ensuring compliance with the proposed rules.

64 We received five submissions on this proposal. There was broad support from respondents who agreed with our reasoning for a three-month transition period, and most did not have any concerns with the proposed duration. One respondent argued that we should allow six months for compliance mapping and uplift activities as the rules included additional obligations not expressly covered in the Regulatory Expectations and one respondent supported a shorter transition period on the basis that ASX should already be complying with the requirements. The balance of respondents supported or did not have any concerns with a transition period of three months.

ASIC's response

We have decided to proceed with a three-month transition period for implementation of the rules as we consider these obligations to be broadly consistent with the Regulatory Expectations and fundamental to ensuring competitive outcomes in the current monopoly environment.

However, we will allow an additional three months for CS service providers to comply with the organisational requirements set out in draft Rule 2.1.3 and policies and procedures requirements set out in draft Rule 2.4.5. We consider that it is appropriate to give CS service providers time to prepare for compliance with organisational requirements that are more specific than the Regulatory Expectations, and to enable adequate governance arrangements in relation to the policies and procedures in place to manage conflicts of interest.

Appendix: List of non-confidential respondents

- Australian Financial Markets Association.
- Australian Securities Exchange Limited.
- Cboe Australia Pty Ltd.
- Cboe Clear Europe N.V.
- Computershare Investor Services Pty Ltd.
- National Stock Exchange of Australia
- Stockbrokers and Investment Advisers Association