

Terms of reference

- 1) ASIC is conducting an assessment under section 794C and section 823C of the *Corporations Act 2001* (Cth) (**Corporations Act**) of how well the ASX Licensees are complying with their obligations under Chapter 7 of the Corporations Act. ASIC is requesting the panel contribute to ASIC's assessment by examining the frameworks and practices of (a) the ASX Licensees and (b) other companies within the ASX Group (to the extent they assist the ASX Licensees in relation to the operation of the relevant markets/facilities and compliance by the ASX Licensees with their obligations under Chapter 7) (collectively, the **ASX group** or **group**).
- 2) For the purpose of the assessment, the panel is asked to examine the frameworks and practices in relation to governance, capability, and risk management within the ASX group, so as:
 - a) to identify, in light of a number of incidents in recent years (see Schedule 2) that have raised compliance concerns with respect to the ASX Licensees:
 - i) any core organisational and cultural drivers within the ASX group that have contributed to these incidents; and
 - ii) whether the ASX group has the right organisational capabilities for the ASX Licensees to provide a stable, secure, and resilient market infrastructure and to meet the evolving needs of the Australian market;
 - b) to assess, at a minimum, whether any of the following areas of operation, or their implementation, conflict with sound risk management and/or compliance outcomes in relation to the ASX Licensees:
 - i) the group's organisational structure, board structures and governance framework;
 - ii) the group's framework for managing and delegating risk management and compliance responsibilities;
 - iii) the group's financial objectives;
 - iv) the group's accountability framework;
 - v) the group's framework for identification, escalation and addressing matters of concern raised by ASX staff, regulators, members or customers; and
 - vi) the mix of monopoly and competitive services offered by the group;
 - c) to consider, where the ASX Licensees have initiatives underway to enhance the areas reviewed under (a) and (b) above, whether these initiatives will be sufficient to respond to any shortcomings identified and, if not, to recommend what other initiatives or remedial actions need to be undertaken; and

- d) to recommend, to the extent that there are other shortcomings or deficiencies identified under (a) and (b) above that are not already being addressed, how such issues should be rectified.
- 3) ASIC requests the panel provide a report to ASIC by a date to be agreed with ASIC.
- 4) The panel should not make specific determinations regarding matters currently the subject of legal proceedings or regarding individual stakeholder issues.

Schedule 1—Definitions

In these Terms of Reference:

ASX Group means ASX Limited and its related bodies corporate.

The **ASX Licensees** are:

- (a) ASX Limited, holder of an Australian market licence issued under s 795B(1) of the Corporations Act;
- (b) Australian Securities Exchange Limited, holder of an Australian market licence issued under s 795B(1) of the Corporations Act;
- (c) ASX Clear Pty Limited, holder of an Australian CS facility licence issued under s 824B(1) of the Corporations Act;
- (d) ASX Settlement Pty Limited, holder of an Australian CS facility licence issued under s 824B(1) of the Corporations Act;
- (e) ASX Clear (Futures) Pty Limited, holder of an Australian CS facility licence issued under s 824B(1) of the Corporations Act; and
- (f) Austraclear Limited, holder of an Australian CS facility licence issued under s 824B(1) of the Corporations Act.

Schedule 2—Examples of incidents involving the ASX Licensees

Examples of incidents involving the ASX Licensees in recent years include:

- (a) the 2016 hardware failure in ASX's equity trading system, which delayed the opening of the ASX market and caused it to close early;
- (b) the capacity issue with the CHES Settlement system at the onset of the COVID-19 pandemic in March 2020 that required ASIC to direct market participants to reduce trading volumes;
- (c) the November 2020 full day outage of the ASX equity market due to a failed software upgrade;
- (d) the decision in 2022 to pause and then cancel the upgrade of CHES, which are now the subject of legal proceedings, and
- (e) the failure of ASX CHES Batch Settlement to complete as scheduled on 20 December 2024.