



31 August 2017

Ms Rhonda Luo
Senior Specialist
Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000

By email to: financial.markets@asic.gov.au

Dear Ms Luo

SUBMISSION IN RESPONSE TO CONSULTATION PAPER 293

ASX welcomes the opportunity to provide comments in response to *Consultation Paper 293: Revising the market licence regime for domestic and overseas operators*.

As the operator of the leading financial market in Australia, ASX has a vital interest in ensuring that the financial market licensing regime remains appropriate for the current marketplace and maintains public confidence in Australia's financial markets. Providing a market that is fair, orderly and transparent through the maintenance of appropriate operating rules and rigorous supervision is central to ASX's business. It underpins ASX's core value proposition of facilitating efficient capital formation for its listed companies and efficient risk allocation for investors.

ASX supports the proposal in the consultation paper to put in place a two-tiered market licensing regime, whereby an exemption to the requirement to hold a market licence would only be granted in rare and exceptional circumstances.

ASX has previously expressed market integrity and competitive neutrality concerns about the granting of market licence exemptions for professional markets and 'crossing systems'. The proliferation of alternative market venues and the increase in the scope of products traded on exempt markets in recent years has posed significant challenges for the effectiveness of the market licencing regime. While ASX supports a proportionate regulatory approach recognising the nature, scale and complexity of markets, the continued systemic regulation of alternative market venues through conditional licence exemptions would compromise the effectiveness of market supervision due to unlicensed markets being subject to fewer and potentially inconsistent compliance requirements.

ASX submits that ASIC's proposed two tiered market licensing regime based on a risk-based assessment using transparent and consistent criteria for the determination of Tier 1 and Tier 2 market venues provides a proportionate regulatory approach for the licensing of the range of



market venues that currently exist and those that may emerge as technology evolves. ASX considers that the consistent use of the risk-based assessment criteria for the determination of the type of market licence is important for regulatory certainty for current and prospective licensees, and in ensuring that the level of regulatory oversight is consistent for market venues with similar characteristics.

ASX broadly supports the proposed principles underpinning the risk-based assessment for the determination of Tier 1 market venues, which are focused on the current or expected significance of the market venue to the Australian economy and the efficiency and integrity of, and investor confidence in, the financial system. Greater detail and transparency on the application of the risk-based criteria in the Regulatory Guide would also be useful in providing regulatory certainty for current and prospective licensees.

ASX agrees that it is important not only to consider the current or expected significance of the market venue to the financial system in the determining Tier 1 and Tier 2 markets, but also the current or expected significance of the market venue to the Australian economy. This is on the basis of the importance of the financial system to the real economy. A relevant example demonstrating this point is that we would expect a venue providing a market in Australian energy products would be licenced as a Tier 1 venue under the proposed risk-based assessment criteria. ASX considers that this would be appropriate because of the potential impacts any such market could have for the pricing of energy in Australia.

Notwithstanding their scale of operations, ASX agrees that the existing small retail exchanges are sufficiently significant in terms of maintaining investor confidence in the financial system to warrant them being licensed and regulated as Tier 1 venues. ASX also submits that other market venues who offer products to retail investors should be licensed as Tier 1 venues as their operations and conduct would be expected to impact on market integrity and investor confidence in the financial system.

ASX supports in-principle the list of exchanges and trading venues currently licenced in Australia that are identified in the consultation paper as being expected to be Tier 1 venues under the proposed new market licensing regime. ASX also supports the proposal that all Tier 1 licensed markets will continue to be subject to the full set of applicable licence requirements under Pt 7.2 of the Corporations Act to ensure effective market supervision and provide competitive neutrality between relevant markets.

It is understood that the implementation of the proposed two tiered licensing regime will involve a number of markets, which are currently exempt markets, becoming Tier 2 licensed venues and being subject to a core subset of the licensing obligations in Pt 7.2 of the Corporations Act. ASX considers that it is important that the 'flexibility' of the proposed licensing regime, which is aimed at accommodating new forms of specialised and emerging venues, enables the imposition of additional licensing requirements and additional regulatory oversight for Tier 2 venues as and when any risks emerge with respect to these markets.

ASX notes that under the proposed licensing framework crowdfunding platforms will be licensed as Tier 2 venues. ASX has generally supported the Government's new equity crowd funding regime as another option for start-ups and early stage companies to access capital at a point when they are not ready for listing on an exchange. It is important for the effectiveness of the market licensing regime and the crowd funding regime's credibility that appropriate



disclosure and corporate governance arrangements are put in place to protect retail investors. As most crowd-sourced funded companies will not be subject to continuous disclosure, ASX suggests that consideration be given to a disclosure regime requiring the market being provided quarterly business updates and the immediate disclosure of certain prescribed events. This would facilitate informed trading on the secondary market. The disclosure framework that has been put in place by NXT Limited (the New Zealand Exchange's junior board) provides a useful reference point.

On the basis of the different licensing requirements and level of regulatory oversight applicable to Tier 1 and Tier 2 venues, ASX submits that it is important that the distinction between the tiers of licenses and respective market venues is clear to current and future users of the market venues. ASX supports the proposal that Tier 2 venues would not be permitted to use the terms 'exchange' or 'stock/securities/futures market' in their title or public documentation to avoid investor confusion about the different tiers.

ASX notes that 'crossing systems' are not explicitly included in the proposed two tiered licensing framework or referenced in the consultation paper. ASX assumes that this reflects a decision that 'crossing systems' will continue to be subject to AFSL and MIR obligations. ASX submits that consideration should be given to how individual crossing systems and developments in crossing systems, such as an arrangement that connects multiple crossing networks, could be regulated under the proposed two tiered licensing regime. This is on the basis that crossing systems, such as multilateral crossing systems, likely constitute a market for these purposes and should be regulated accordingly.

As part of the process for putting in place the revised market licensing regime, ASX requests that ASIC reconsider the need for ASX Settlement Pty Limited (ASX Settlement) to have an exemption from the requirement to hold a market licence in relation to the provision of the mFund settlement service. ASX submits that a market licence exemption (or a Tier 2 licence under the proposed new regime) for ASX Settlement is not warranted as the making of applications through the mFund settlement service is governed by the ASX Operating Rules under a market licence, and ASX Settlement settles the transactions as a licensed CS facility. ASX would be happy to discuss this matter in more detail as the details of the new market licensing regime is progressed.

Please don't hesitate to contact me or Sally Palmer (sally.palmer@asx.com.au or 9227 0920) if you have any queries or would like to discuss any of the matters raised in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Diane Lewis', written in a cursive style.

Diane Lewis

Senior Manager, Regulatory and Public Policy
+61 (0)2 9227 0154
diane.lewis@asx.com.au