



Stockbrokers and Investment
Advisers Association

Serving the interests of investors

13 September 2024

Email: CSfacilities@asic.gov.au

Attention: Dodie Green

Senior Manager
Market Infrastructure
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Dear Ms Green

Consultation Paper 379: ASIC Clearing and Settlement Rules

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and they provide wealth advice and portfolio management services. Our members include clearing and settlement participants.

The history of the stockbroking profession in Australia can be found [here](#).

We welcome the opportunity to provide feedback on the consultation paper on the proposed Clearing and Settlement Services Rules (clearing and settlement rules).

Executive summary

- Clearing and settlement services are currently provided on a monopoly basis and it is difficult to see how a competitor could emerge over the short term, even with the the clearing and settlement rules, as interoperability of the CHES system will only come into full effect on the implementation of CHES replacement Release 2, which is currently scheduled to take place in 2029.

- It is important for clearing and settlement participants, in the absence of a competitor, that the rules provide for outcomes that are consistent with those that might be expected in a competitive environment and ensure that ASX provides access to its clearing and settlement services on a transparent and non-discriminatory basis with terms and conditions, including pricing, that are fair and reasonable, notwithstanding that the services continue to be provided by a vertically-integrated monopoly.
- Transparency on pricing is important for participants – they want to receive the benefits of more competitive pricing for clearing and settlement services even if there is no competitor providing a clearing and settlement service.
- To enable a competitive outcome it is vital that there is regular and transparent reviews of the pricing of the clearing and settlement services against comparable markets. The timing of this report should be once every three years or when a change is made to the pricing model to better reflect the pace and rate of development and change in markets.
- The clearing and settlement rules need to apply to ASX Limited as well as the clearing and settlement subsidiaries.
- SIAA supports codifying ASX’s practice of publishing management accounts on an annual basis in relation to its clearing and settlement services. While a cost allocation and transfer pricing policy is important, it will be the detail provided in the proposed cost allocation model report evidencing how ASX is actually allocating its costs that will be the most valuable method of providing the required transparency.
- To be truly independent the engagement of the independent expert for the annual review should be subject to oversight and review by either ASIC or the ASX Business Committee. SIAA recommends that the proposed rules be amended to provide for either ASIC or the ASX Business Committee to oversee the engagement of the independent expert.

General feedback

Question A1 Stakeholder views on whether the prospect of competition emerging in cash equity clearing and settlement services has changed since 2015.

Our members are uncertain whether a competitor for clearing and settlement services will emerge as no competitor has emerged thus far. Clearing and settlement services are currently provided on a monopoly basis and it is difficult to see how a competitor could emerge over the short term, even with the the clearing and settlement rules, as interoperability of the CHES system will only come into full effect on the implementation of CHES replacement Release 2, which is currently scheduled to take place in 2029. We consider that it is unlikely that a competitor will emerge without equal access to ASX infrastructure.

Creating competition in markets where the monopoly provider of services also controls the infrastructure in a vertically-integrated model has been historically challenging. In some instances, this has required the monopoly provider to divest itself of the necessary infrastructure to which competitors require access. For example, when the government decided to facilitate competition in the telecommunications market, significant changes were made to the structure and operations of

the monopoly provider (Telstra), to break up its vertically-integrated model. It may well be, that without significant structural change, a competitor will never emerge to provide clearing and settlement services and that rule changes are not enough to facilitate competition. For example, a competitor may not want to share ASX's infrastructure. There may also be financial reasons why a competitor does not enter the market; it may not be profitable enough to support two providers.

This does not mean that the policy objective of facilitating competition or competitive outcomes should not be pursued. We consider that it is still important for the rules to be implemented.

It is important for clearing and settlement participants, in the absence of a competitor, that the rules provide for outcomes that are consistent with those that might be expected in a competitive environment and ensure that ASX provides access to its clearing and settlement services on a transparent and non-discriminatory basis with terms and conditions, including pricing, that are fair and reasonable (a competitive outcome), notwithstanding that the services continue to be provided by a vertically-integrated monopoly. That is why transparency on pricing is important for participants – they want to receive the benefits of more competitive pricing for clearing and settlement services even if there is no competitor providing a clearing and settlement service.

Our members do not anticipate incurring any direct costs resulting from any of the proposed clearing and settlement rules. We are unclear as to whether ASX will incur any costs in implementing the clearing and settlement rules and if so, whether those costs will increase the price charged for clearing and settlement services.

Do you believe the proposed obligations on clearing and settlement service providers will achieve the intended policy objective of facilitating competition or competitive outcomes in the absence of competition.

This is a difficult question to answer definitively, particularly taking into account the history of the CHES replacement project that took place in the context of the Regulatory Expectations, which while not legally enforceable, were an important obligation set out by the Council of Financial Regulators.

SIAA appeared before the Parliamentary Joint Committee on Corporations and Financial Services on 23 February 2023 and provided evidence on the substantial costs incurred by our members in preparing for the previous CHES replacement project that was terminated in November 2022. Notwithstanding that the Regulatory Expectations provided for user input to governance as regards CHES and its replacement, these arrangements were not effective and required ASIC and the RBA to step in and direct ASX to establish the ASX Cash Equities Clearing and Settlement Advisory Group and publish various audited reports on aspects of the project. We are pleased that the Parliamentary Joint Committee report and recommendations have informed ASIC's approach to the clearing and settlement rules.

While we will need to wait and see if the clearing and settlement rules have their intended effect, SIAA's members welcome their implementation.

It is important for the industry that:

- the rules implement the Regulatory Expectations in a way that facilitates competition and competitive outcomes in the monopoly provision of clearing and settlement services
- ASX is subject to rules that are legally enforceable
- ASIC will have the power to address any inconsistency in ASX's implementation and conduct and any undesirable outcomes arising from its ongoing monopoly.

We note that should a committed competitor emerge for any aspect of ASX's clearing and settlement services, ASIC will make necessary changes to the clearing and settlement rules to provide for this.

Implementing the Regulatory Expectations

Question B1 Do you consider that the proposed rules cover the Regulatory Expectations and more broadly are sufficient to facilitate competitive outcomes in the monopoly provision of clearing and settlement services? If not, what other obligations should the rules impose?

We repeat the points we made in answer to the previous question.

We strongly support the addition of the following obligations to the clearing and settlement rules:

- Interoperability of core systems.
- Management of intragroup conflicts of interest.
- International pricing comparison.
- Coverage of ASX Limited.
- Commitments with respect to CHES replacement.
- Publication of management accounts.
- External review of the cost allocation model.

We are pleased that the proposed rules require independent pricing reviews and audited management accounts on an annual basis that include a cost allocation and transfer pricing policy that describes the methodology used for allocating revenue and costs. These provisions are vital if the industry is to have greater transparency on pricing as, in addition to facilitating a competitive outcome, they may facilitate the emergence of a competitor. For example, while ever there is a lack of transparency around cost structures, it will be very difficult for a third party to put forward a competitive offering.

We support the details prescribed in Rule 2.2.1 (2) (e) that will require disclosure of the costs of allocated capital and a methodology for determining prices of clearing and settlement services. In order for the rules to operate effectively it will be necessary for the market to be able to hold ASX clearing and settlement to account for the prices they are charging.

The provision of a report comparing the pricing of the services against the price of similar services in other comparable international markets is an important additional obligation.

Annual external audit and report

Question B2 Do you agree with the scope of the annual review. Should the proposed scope of the annual review be extended to include technology and governance issues in relation to the CHES replacement project?

Yes. We agree that ASX clearing and settlement should be required to engage an independent expert to conduct an audit about their compliance with the clearing and settlement rules.

The design of the CHES replacement project will be an important part of the technical interoperability requirements as it will determine how third parties access clearing and settlement infrastructure. As such it is important that compliance with this requirement is included within the scope of the annual review. This means that the scope will need to include technology and governance issues in relation to the CHES replacement project. We note that the inclusion of technology, governance and delivery issues in relation to CHES replacement in the annual review was a recommendation of the Parliamentary Joint Committee and we support the extension of the scope to include these matters.

To be truly independent the engagement of the independent expert for the annual review should be subject to oversight and review by either ASIC or the ASX Business Committee. SIAA recommends that the proposed rules be amended to provide for either ASIC or the ASX Business Committee to oversee the engagement of the independent expert.

Definition of 'international open communication procedures and standards' to mean ISO 20022 and FIX 5.0

Question C1 Do you agree with the proposal to define 'international open communication procedures and standards' to mean ISO 20022 and Fix 5.0. Do you agree with the proposal to require a clearing and settlement provider to take all reasonable steps to ensure any changes to its core systems accommodate these?

Yes. SIAA supports the phasing out of EIS and the adoption of internationally accepted protocols. It will be interesting to see if the adoption of ISO 20022 results in ASX clearing processes becoming more standardised.

Independent review of pricing

Question C2 Do you agree with the proposal to require the clearing and services provider to undertake an independent review of the pricing of their clearing and settlement services against those in other comparable international markets?

SIAA considers that to enable a competitive outcome it is vital that there is regular and transparent reviews of the pricing of the clearing and settlement services against comparable markets. We agree that in the absence of competition, a monopoly provider can use its market power to charge high

fees to users. Our members would like to see transparent, fair, reasonable and more competitive pricing being offered for the clearing and settlement services currently provided.

We note that ASX has only provided one comparative pricing report (in 2014). Clearly, this needs to be a mandatory requirement.

As regards the frequency at which the review needs to be conducted, we note that the proposed rules require ASX clearing and settlement to provide a report at least once every five years.

SIAA recommends that the time period of this report be reduced to once every three years or when a change is made to the pricing model as this timing better reflects the pace and rate of development and change in markets.

Coverage of ASX Limited

Question C3 Do you agree with the proposal that the clearing and settlement rules will also apply to the direct or ultimate holding company of the clearing and settlement provider?

Yes. We agree that ASX Limited plays a key role in the operation of ASX clearing and settlement, including in investment decisions about core systems. We agree that for the rules to operate effectively they will need to apply to ASX Limited as the direct or ultimate holding company of the clearing and settlement providers. Any other alternative ignores the reality of the situation.

As currently drafted a CS Service Provider means:

- a) a Covered Licensee (each of ASX Clear Pty Limited and ASX Settlement Pty Limited); **or**
- b) a direct to ultimate holding company of a Covered Licensee.....; **or**
- c) an Associated Entity of a Covered Licensee.....

For the rules to be effective and reflect how the ASX group operates the rules must apply to both ASX Clear and ASX Settlement **as well as** ASX Limited, not instead of.

SIAA recommends that the definition of CS Service Provider be amended to:

- a) A Covered Licensee; **and**
- b) A direct or ultimate holding company of a Covered Licensee.....; **and**
- c) An Associated Entity of a Covered Licensee.....

Conflicts of interest

Question C4 Do you agree with the proposal to require licensees to have policies and procedures relating to conflicts of interest?

We consider that there is an actual conflict of interest when clearing and settlement services are provided by a privately owned entity that is operated as a vertically-integrated monopoly by ASX Group. These conflicts of interest arise in relation to the clearing and settlement subsidiaries as well as ASX Limited.

The only way that a conflict of interest can be avoided would be to require ASX Limited to divest itself of its clearing and settlement subsidiaries. We consider that it is unlikely that ASX's monopoly will be broken up. Accordingly, it is important that the rules require ASX Limited **as well as** ASX clear and settlement to have policies and procedures to identify and mitigate against any actual or perceived conflicts of interest in a way that ensures the trust and confidence of its customers and facilitates a competitive outcome.

The rule as currently drafted imposes the requirement to have a conflicts of interest policy upon the ASX clearing and settlement subsidiaries only. We consider that ASX Limited must also be bound by these conflicts of interest requirements as it is the entity that has the greatest conflict of interest and plays a key role as the parent company in the operation of ASX clear and settlement.

SIAA recommends that Rule 2.4.5 be amended so that the obligation is imposed on the CS Service Provider (amended as per our recommendation above) rather than just the Covered Licensee (that is defined as just ASX Clear Pty Limited and ASX Settlement Pty Limited).

Barriers to access

Question C5 Do you agree with the proposal to require the clearing and service provider to take all reasonable steps to ensure that its core systems are designed and developed in a way that does not raise barriers to access by unaffiliated entities.

We agree with the obligation that ASX Limited and the clearing and settlement subsidiaries must take all reasonable steps to ensure that the Core Systems don't **create** (rather than raise) barriers to access. While we understand the use of the word 'raise' in the context of raising barriers, we would prefer the use of the word 'create'. Otherwise, stakeholders may assume that it is acceptable for there to be barriers in place as long as they are not increased by the Core Systems.

SIAA recommends that the Rule 2.1.4 be amended to ensure that its Core Systems do not **create** barriers to access by Users.

Audited accounts that include a cost allocation and transfer pricing policy

Question C6 Do you agree with the proposal to require a licensee to publish audited management accounts on an annual basis that include a cost allocation and transfer pricing policy that describes the methodology used for allocating revenue and costs?

Yes. We support codifying ASX's practice of publishing management accounts on an annual basis in relation to its clearing and settlement services. Transparent and non-discriminatory pricing principles are an important part of facilitating competitive outcomes. While a cost allocation and transfer pricing policy that describes the methodology used for allocating revenue and costs is important, it will be the detail provided in the cost allocation model report evidencing how ASX is actually allocating its costs that will be the most valuable method of providing the required transparency.

External review of cost allocation model

Question C7 Do you agree with the proposal to require a service provider to engage an appropriately qualified independent expert to conduct a review, prepare a written report about the appropriateness of the clearing and settlement service provider's model for the internal allocation of costs and publish the report?

Yes. As stated above, it will be the detail in this report that evidences whether or not ASX is complying with its obligations to provide transparent, non-discriminatory and fair and reasonable pricing.

Transition period

Do you agree with a three-month transition period for the commencement of the Clearing and Settlement Services Rules?

Yes. ASX has committed publicly to comply with the regulatory expectations in its Code of Practice since 2014. SIAA does not consider there is any reason for the implementation of the Clearing and Settlement Rules to be delayed any longer.

Conclusion

If you require additional information or wish to discuss this submission in greater detail please do not hesitate to contact SIAA's policy manager, Michelle Huckel, using the contact details in the covering email.

Yours sincerely



Judith Fox
Chief Executive Officer