

13 September 2024

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Sent by email: CSfacilities@asic.gov.au

Dear Dodie,

Consultation Paper 379: ASIC CS Services Rules

Introduction

National Stock Exchange of Australia ('NSX') is pleased to provide its response to ASIC's Consultation Paper 379: ASIC CS Services Rules.

NSX is generally supportive of the Clearing and Settlement providers being subject to rules to promote competition, however NSX is of the view that the draft rules clearly place the focus on the incumbent and are not geared towards enticing any new competition or improving accessibility in the market.

Many of the drafted rules seem to be a way to manage the current monopoly. Such rules seem to be necessary because of the need to better regulate the incumbent and may be a consequence of the lack of competition. However, applying such rules to all licensees may act as a barrier to entry for new entrants and counter-productively reinforce the existing monopoly.

NSX suggests clearly delineating rules which may be necessary to better manage a monopoly incumbent which it may be counter-productive to apply to all licensees from rules which may be necessary (but not sufficient) to facilitate competition which should apply to all licensees.

NSX further observes that, not surprisingly given the incumbent's position at the time of mutual ownership and deep vertical integration, the current monopoly solution tightly binds clearing, settlement and subregistry - which now accounts for approximately 90% of the incumbent's sponsored holdings.

An initial step to promoting competition would be to clearly split the rules into 'clearing' rules, settlement rules and subregistry rules and to ensure that the rules require licensees to provide distinct and separately accessible services for each.

Although creating a principles-based set of rules is viewed as a positive by NSX, it also seems to be counterintuitive to state that new rules will be considered if competition arises.

Responses to consultation questions

NSX provides the following responses to the consultation questions:

Consultation Question	NSX Response
<p>A1Q1 We would welcome stakeholder views on whether the prospect of competition emerging in cash equity CS services has changed since 2015. Do you believe the proposed obligations on CS service providers will achieve the intended policy objective of facilitating competition, or competitive outcomes in the absence of competition?</p>	<p>NSX believes that the prospect of competition has changed since 2015 even though a competitor is yet to enter the market. However, NSX is also of the view that the barriers to entry are too high, including the structure of ASX and the requirements for clearing and settlement licences.</p> <p>NSX is of the view that the current proposal will not achieve competition or competitive outcomes.</p> <p>The current proposal seems to attempt to retrofit the current market structure into a ‘competitive’ environment. NSX is of the view that there should be a clear separation between a clearing entity and a settlement entity. Consequently, there should be rules that apply to each of these types of entities. Therefore, if a competitor should assess that they could enter the market for one of these aspects, they should be able to do so.</p> <p>The inclusion of security depository services is a positive move to promoting competition.</p> <p>NSX also believes that ASIC should give thought to competition rules for access to HINs. Ideally, the consumer should ‘own’ the HIN and be able to choose who they grant access to for use of the HIN. The current use and ownership system of HINs perpetuates the existing structure and does not promote competition. The incumbent’s positioning to separate “Issuer Services” away from clearing and settlement allows for it to potentially preserve its monopoly and commercial control of the subregister. Holding Statements are a prime example.</p>
<p>B1Q1 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 CS</p>	<p>No. Please see comments to the previous question.</p>

<p>services? If not, what (if any) are the other obligations the CS services rules should impose?</p>	
<p>B1Q2 Do you have any feedback in relation to how the Regulatory Expectations have been implemented in the draft CS services rules (set out in the attachment to this paper)?</p>	<p>NSX asks whether it is appropriate to implement the Regulatory Expectations into these rules generally. The drafting is very conceptual and is focused on the incumbent.</p> <p>The current model is not working and this proposal attempts to justify it. It would be better to have a new set of rules that would be separate from the Regulatory Expectations. The Regulatory Expectations could remain in place for ASX until it is no longer appropriate.</p>
<p>B1Q3 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed rule. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs but costs would clearly be incurred by the incumbent and any new competitor that enters the market. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>B2Q1 Do you agree with the scope of the annual review? If not, please provide detailed reasons for your answer.</p>	<p>The main issue that NSX foresees with the annual review is that this cost will be passed on to the consumers. This will effectively increase the cost of the service even if competition arises.</p>
<p>B2Q2 Should the proposed scope of the annual review be extended to include technology and governance issues in relation to the CHESS replacement program, noting that these matters are also a consideration under Part 7.3 of the Corporations Act?</p>	<p>As this is already covered by Part 7.3 of the Corporations Act and there is oversight of the issues, NSX is of the view that there would be no need to replicate the requirement.</p> <p>Further, it would again increase the costs for compliance and therefore the consumers.</p> <p>It would also be helpful to understand how this particular requirement would be related to and complied with by new competitors. NSX is of the view that this is beyond the scope of what the CS rules should focus on and promote.</p>
<p>B2Q3 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>

<p>C1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>	<p>NSX is supportive of the requirement for interoperability to be included in the rules. Listing the acceptable rules is also a positive and NSX agrees that proprietary standards and/or interfaces should not be used.</p> <p>However, the standards listed in the draft rules are tied to the existing model and are somewhat historic. Alternative open standards may be more appropriate for alternative solutions. NSX believes that ASIC should not enshrine version numbers in the rules but should seek to prevent the use of proprietary standards.</p>
<p>C1Q2 Do you agree with the definition of 'international open communication procedures and standards' and do you consider that the definition covers the relevant procedures and standards, noting that these will be fixed as at the date the rules are made? In your response, please give detailed reasons for your answer.</p>	<p>Please see the response to the previous question.</p>
<p>C1Q3 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C1Q4 The proposed rules are intended to ensure that CS service providers' core systems accommodate technical interoperability with users' systems. More broadly, what do you understand by 'interoperability' and the scope of interoperability in the Australian market?</p>	<p>NSX is of the view that HINs should also be included when considering interoperability. Please see NSX's comments in A1Q1.</p>
<p>C2Q1 Do you agree with this proposal, including the scope and frequency at which the review needs to be conducted? In your response, please give detailed reasons for your answer.</p>	<p>NSX is of the view that this requirement is again perpetuating the monopoly and completing this type of review does not actually change anything or promote competition. This rule seems to be attempting to manage the current monopoly as opposed to creating competition. The rule itself could be considered a barrier to entry for competitors through the increased overhead.</p> <p>There is also no consequence to this requirement. For example, if the independent review was to conclude that the provider's</p>

	<p>pricing was not in line with international standards and/or was not competitive, there is no consequence to this rule and the provider is not required to change the prices.</p> <p>It would also be difficult to assess the pricing against international standards as it would not be a 'like for like' comparison.</p> <p>If the review of pricing was to remain as a requirement, it would be pertinent to review the profit margins of the incumbent and not only the pricing. The question to be considered is whether the pricing is in the best interests of 'mum and dad' investors.</p> <p>Such a report should consider pricing throughout the period since the last review (not just be a snapshot of current pricing).</p> <p>If pricing is a concern, ASIC may consider pricing control until a competitor emerges.</p>
<p>C2Q2 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C3Q1 Do you agree with the definition and scope of 'CS service provider'? In your response, please give detailed reasons for your answer.</p>	<p>NSX is of the view that the definition should not refer to specific entities, i.e. ASX Clear and ASX Settlement, as this is perpetuating the current monopoly again.</p>
<p>C3Q2 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C4Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>	<p>NSX notes that this is also a duplication of the requirement under the Corporations Act, including the Review Party Regime.</p>

<p>C4Q2 Does this proposal adequately address the management of the conflicts of interest between the covered licensees and other entities within ASX Group in relation to the provision of CS services? If not, please elaborate on further or alternative options.</p>	<p>This requirement exists under the Review Party Regime and has not improved competition over the years. It is arguably inadequate on its own.</p> <p>NSX notes ASX has released a Conflicted Entities Watchlist.</p>
<p>C4Q3 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C5Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>	<p>NSX is of the view that this proposal would benefit from clear definitions for what is considered services, access and at what points the matters raised are to be considered.</p>
<p>C5Q2 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C6Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>	<p>NSX supports this proposal.</p>
<p>C6Q2 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>C7Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.</p>	<p>NSX notes, again, that this rule is again focused on the current monopoly. NSX is unsure whether this proposal would be appropriate where competition arises.</p>
<p>C7Q2 Do you expect to incur any costs as a result of our proposal? If so, please provide an estimate of the time and costs that you will</p>	<p>At this stage, any costs would depend on the end model. NSX does not expect to incur costs, but costs would clearly be incurred by the incumbent</p>

<p>expend. In providing this estimate, please compare your costs with the situation where we do not introduce the proposed amendment. Please provide feedback on whether these costs are likely to be one-off or ongoing.</p>	<p>and any new competitor that enters the market, which will likely be passed on to the consumers. The high compliance cost may actually be another barrier to entry for competitors.</p>
<p>D1Q1 Do you agree with the proposed three-month transition period? In your response, please provide detailed reasons for your answer.</p>	<p>NSX notes that the incumbent should currently be completing these requirements under the Regulatory Expectations and questions why there would be a need for a three-month transition period. A shorter transition period or no transition period would be sufficient.</p>
<p>D1Q2 In implementing the proposed rules, how will you need to change your business practices? In your response, please provide detailed reasons for your answer.</p>	<p>No comment.</p>
<p>D1Q3 Do you foresee any new material risks being introduced to your organisation in complying with the proposed rules? If so, please provide detailed reasons for your answer.</p>	<p>No comment.</p>

Comments on the rule drafting

Further to the above responses, NSX has the following comments on the drafting of the CS Services rules.

2.1.2

For 2.1.2, NSX asks whether the intention for (2)(b) is to relate to (1)(d). If so, this is not reflected in the rule and should be explicitly referenced.

NSX is of the view that rules should also be drafted to:

- define the mechanism by which a representative body can give [formal] input; and
- require the CS Service Provider to record any [formal] input given; and
- require the CS Service Provider to document their assessment of any [formal] input, including
 - whether the [formal] input was accepted; and
 - where the [formal] input was accepted, how the CS Service Provider has incorporated the [formal] input or where the [formal] input was not accepted, why the CS Service Provider has not accepted the [formal] input.

In relation to (3)(c), this rule should also explain why feedback has not been incorporated.

2.1.4

For 2.1.4(c), this rule should require new entrants to comply from day one and not from ‘any changes’.

For 2.1.4(a), there is no obligation to use all services. Where a CS Service Provider offers more than one [set of sub-Services], being:

- Clearing Services; and/or
 - novation
- Settlement Services; and/or
 - DVP; creation of (guaranteed) register updates
- Subregistry Services
 - Register management

any User may elect to use one or more [set of sub-Services] with no obligation to use any other [set of sub-Services].

Regarding 2.1.4(b), there should be no monolithic design. Where a CS Service Provider offers more than one [set of sub-Services], a User must be able to independently access each [set of sub-Services] with no obligation to traverse any other [set of sub-Services].

For 2.1.4(c), the rules should promote equivalent access for associated and unaffiliated users. Where the CS Service Provider offers a [set of sub-Services] to an Associated Entity, the Associated Entity must access any such [set of sub-Services] in the same manner as an Unaffiliated Entity.

Also, where the CS Service Provider offers more than one [set of sub-Services], a [set of sub-Services] should access another [set of sub-Services] in the same manner as an Unaffiliated Entity.

As an example, where ASX Clear offers Clearing Services and ASX Settlement offers Settlement Services. There should be a clearly defined boundary between those sets of sub-Services, with a clearly defined interface. Any alternate provider of Settlement Services should be able to connect to ASX Clear through that clearly defined interface; any alternate provider of Clearing Services should be able to connect to ASX Settlement through that interface.

Consideration should also be given to how providers of Clearing Services will interact (to support interoperability), in particular, where there is an external provider of Clearing Services.

As noted above, it would be helpful if CS services were subdivided into:

- Clearing services: for managing counterparty risk in the period between trade and settlement
- Settlement services: for effecting DVP of cash vs (guaranteed by law) register update
- Subregistry services: for effecting the register update and accessibility

Each subdivision should be:

- Separately licensable
- Fully isolated (in technology terms), that is, with clearly defined interfaces that all upstream and downstream providers must use.

It should be possible to insert a new entrant at any level.

Further, it should be explicitly recognised that models may exist where clearing provides no benefit because risk is managed in an alternative way and/or there is no meaningful period of time over which the risk is to be managed. In such circumstances, the use of clearing services should not be mandated; no should the access to settlement services via clearing services.

Conclusion

NSX is supportive of a rule framework for competition in clearing and settlement. Although the current proposal is a step in the right direction, NSX is of the view that the draft could benefit from a more conceptual view of clearing and settlement and the rules should not be retrofitting the current monopoly into the rules through the Regulatory Expectations.

NSX views the inclusion of security depository interests as a positive however Holder Identification Numbers should also be included in these rules.

The rules would benefit from a split to include rules for clearing and rules for settlement to promote competition in both or either of these.

Finally, the drafting could benefit from requirements that lead to consequences.

Yours sincerely,

A solid black rectangular box used to redact the signature of Chan Arambewela.

Chan Arambewela
Chief Operating Officer