



# Australian CS Facility Licence (ASX Clear Pty Limited) Additional Conditions Notice 2021 (No. 1)

*Corporations Act 2001*

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I, Kim Demarte, Acting Senior Executive Leader, Australian Securities and Investments Commission, issue this notice under paragraph 825A(1)(a) of the *Corporations Act 2001* (the Act).

Dated 24 November 2021

Signed .....  


as a delegate of the Minister under section 1101J of the Act.

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## 1. Name of notice

This notice is the *Australian CS Facility Licence (ASX Clear Pty Limited) Additional Conditions Notice 2021 (No. 1)*.

## 2. Commencement

This notice takes effect from 24 November 2021.

## 3. Additional conditions

Schedule 1 sets out additional conditions that are imposed on the *Australian CS Facility Licence (ASX Clear Pty Limited) 2002* as varied by:

- (a) *Australian CS Facility Licence (Options Clearing House Pty Limited) Variation Notice 2002 (No. 1)*;
- (b) *Australian CS Facility Licence (Options Clearing House Pty Limited) Variation Notice 2004 (No. 1)*;
- (c) *Australian CS Facility Licence (Australian Clearing House Pty Limited)(Additional Conditions) Notice 2005 (No. 1)*

- (d) *Australian CS Facility Licence (Australian Clearing House Pty Limited) Variation Notice 2010 (No.1); and*
- (e) *Australian CS Facility Licence (Australian Clearing House Pty Limited) Variation Notice 2010 (No.2).*

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## Schedule 1—Conditions

### 1 Definitions

In this Schedule:

*CHES* means the Clearing House Electronic Sub-register System.

*CHES replacement program* means the program to replace CHES with the CHES replacement system.

*CHES replacement system* means the system to replace CHES which is to be delivered or implemented as part of the CHES replacement program.

*Executive Steering Group* means the Executive Steering Group overseeing the CHES replacement program.

*go-live* in relation to the CHES replacement program means cutting over to the CHES replacement system.

*go-live decision framework* means the licensee's decision framework to proceed with the migration to the CHES replacement system and then go-live.

*IBM review recommendations* means the recommendations contained in the final report issued to ASX Limited dated 22 June 2021.

*licensee* means ASX Clear Pty Limited.

*relevant oversight body* means:

- (a) the Executive Steering Group; or
- (b) if the Executive Steering Group is no longer in place—any other group of senior executives of the licensee responsible for overseeing the CHES replacement program.

*reporting date* means 30 June and 31 December.

### 2 Appointment of an independent expert

- (1) Within 28 days of the imposition of the conditions in this Schedule, the licensee must appoint an independent third party (*independent expert*) to:
  - (a) assess the assurance program for implementation of the CHES replacement program and oversee the implementation of any remedial actions from the IBM review recommendations which are relevant to the CHES replacement program; and

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- (b) provide the licensee and ASIC with the following written reports on the CHESS replacement program and the CHESS replacement system:
- (i) by 15 February 2022—a report on the design of the assurance program assessing whether the existing plan is fit for purpose, identifying any topics that need further independent assessment and proposing any remedial actions;
  - (ii) within 7 days after each reporting date occurring within the period commencing on 30 June 2022 and ending on the date go-live occurs—a report:
    - (A) providing an update on the matters set out in the report provided under condition 2(1)(b)(i);
    - (B) outlining the status of existing remedial actions and identifying any further remedial actions required; and
    - (C) containing an update on the implementation of any remedial actions from the IBM review recommendations which are relevant to the CHESS replacement program;
  - (iii) not less than 14 days prior to go-live—a report on:
    - (A) the status of any remedial actions and whether they are necessary to be undertaken prior to go-live; and
    - (B) the findings of the totality of the assurance program reviews indicating whether the remedial actions identified by the independent expert in the reports referred to in conditions 2(1)(b)(i) and 2(1)(b)(ii) and the relevant IBM review recommendations have been appropriately implemented by the licensee; and
  - (iv) within 7 days before each of the dates that are 6 months and 12 months after go-live—a post implementation review report, including an assessment of whether the go-live decision framework was followed and identifying any remedial actions with respect to the CHESS replacement system that the independent expert considers appropriate.
- (2) The independent expert appointed by the licensee must:
- (a) be satisfactory to ASIC; and
  - (b) engaged on terms and conditions that are satisfactory to ASIC.

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- (3) The licensee must provide all assurance reviews received by the licensee in respect of the CHES replacement program and the CHES replacement system to the independent expert and to ASIC at the time of receipt.

### **3 Senior Executive attestation requirements**

- (1) Prior to go-live the licensee must provide to ASIC an attestation from the relevant oversight body that the relevant oversight body reasonably believes that:
- (a) the licensee has implemented any remedial actions identified by the independent expert;
  - (b) the licensee has completed all necessary testing for go-live;
  - (c) all implementation readiness activity is complete;
  - (d) there are no known implementation issues or dependencies that would prevent the go-live;
  - (e) all open defects are not critical;
  - (f) the CHES replacement system has met its functional and non-functional requirements; and
  - (g) the CHES replacement system is operationally ready to go-live.
- (2) The attestation may be made by one or more members of the relevant oversight body authorised by the relevant oversight body to make the attestation on its behalf.
- (3) If the relevant oversight body is unable to attest to the matters in condition 3(1)(a) the attestation need not include that matter provided that it contains an outline of the remedial actions identified by the independent expert that have not been fully implemented and explains the reasons why.

### **4 Board attestation requirements**

Prior to go-live for the CHES replacement system, the licensee must provide an attestation to ASIC on behalf of the Board of Directors of the licensee confirming that, having regard to information provided by the licensee's senior executives and, where relevant, applicable reports from experts independent of the licensee:

- (a) the licensee has put in place adequate controls and procedures designed to implement the remedial actions recommended by the independent expert appointed under condition 2(1); and
- (b) the licensee has employed or engaged all necessary people with the requisite skill and expertise in order to implement the remedial

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actions recommended by the independent expert appointed under condition 2(1).

**5 Conditions which must be satisfied before the replacement system goes live**

The CHES replacement system must not go-live unless the documents and information referred to in conditions 2(1)(b)(i)—(iii), 2(3), 3 and 4 have been provided to ASIC and 14 days have elapsed after the provision of such documents and information to ASIC.

**6 Compliance with conditions**

- (1) The licensee may seek ASIC's written consent to extend the time by which any of the requirements of the licence conditions in this Schedule are to be completed. The licensee must provide ASIC with written reasons for seeking the extension prior to expiry of the time under the licence condition for completion of the relevant requirement. No extension shall be effective until such time as ASIC has provided its written consent to the licensee.
- (2) Nothing in these licence conditions derogates from any other obligation of the licensee to give notice to ASIC of a matter under section 821B of the Act.
- (3) If the licensee fails to perform any of the requirements of the licence conditions in this Schedule in the time required by the conditions, or as extended under licence condition 6(1), the licensee must immediately notify ASIC in writing of the failure to perform the relevant requirement and when compliance with the relevant requirement of the conditions will occur.

**7 Conclusion of licence conditions**

- (1) Conditions 3, 4 and 5 in this Schedule cease to have effect once go-live of the CHES replacement system has occurred.
- (2) All remaining licence conditions in this Schedule cease to have effect upon provision to ASIC of the report required to be given 12 months after go-live under condition 2(1)(b)(iv).