22 December 2023

Financial Advice and Investment Management
Regulation & Supervision
Australian Securities and Investments Commission
GPO Box 9827
Brisbane QLD 4001

By email: [redacted]

Dear ASIC Investment Management Team,

Submission of Cboe Australia on remaking ASIC class order on exchange traded funds: [CO 13/721]

Cboe Australia (**Cboe**) welcomes the opportunity to provide feedback on the proposal to continue the relief currently given by [CO 13/721] in a new legislative instrument: *ASIC Corporations (Relief to facilitate Admission of Exchange Traded Funds) Instrument 2024/XX* (**ETF Relief**).

Cboe is supportive of the ETF Relief and agrees that the policy rationale for extending this relief to issuers of all types of quoted ETFs (not just those that are passively managed and track an index) will facilitate a reduction in pre-launch time and costs for those issuers that currently need to seek individual relief from ASIC, as well as increasing the overall competitiveness of Australia's managed fund industry.

However, as a licensed market operator with a strong track record of supporting innovation and competition in the financial markets, Cboe is of the view that the ETF Relief should be market neutral and the availability of the relief not be contingent on amending the instrument. In relation to the proposal contained in Consultation Paper 374 (**CP**), this would mean that condition (a) of the definition of "ETF" is drafted so that the relief is available in relation to a registered scheme or a sub-fund of a CCIV that is traded on a financial market (as approved by ASIC or meeting other specified criteria), rather than naming the specific financial markets.

Cboe notes that retaining language that is not market neutral in the regulatory framework (and where the regulation in this area is already fragmented across numerous class orders and legislative instruments) can lead to unintended consequences and act as a potential barrier to entry that must be addressed before a market operator can quote an ETF product. Whilst Cboe commends ASIC for amending the current definition of "*acquisition and withdrawal facility*" in CO 13/721 so that the relief in section 11 will, in future, apply equally to all ETFs quoted and traded on ASX **and** Cboe, we submit that it would be desirable to have (at least) a transparent regime that applies across all market venues and to all eligible product issuers to harness appropriate competition outcomes.

Our response to the three questions set out in the CP are provided in Attachment 1. If you have any questions, please contact me [redacted].

Yours sincerely

[redacted]

[redacted]

Cboe Australia Pty Ltd

ATTACHMENT 1

ASIC Question		Response
B1Q1	Do you agree with our proposal? If not, why not?	Yes, Cboe agrees that the relief given by CO 13/721 should continue and supports the term of five years with an expiry date of 1 April 2029. We note that the ETF Relief will reflect the updated naming conventions for ETFs in ASIC INFO 230 and suggest that ASIC could consider confirming for clarity that those funds that are currently categorised as "Quoted Managed Funds" or "Managed Funds" will be able to continue to utilise the relief until such time as they transition to ETF status in accordance with the Cboe Operating Rules.
B1Q2	Are you aware of any significant issues with the operation of this class order? If so, please explain.	Cboe is aware of examples where the class order relief has discriminated against Cboe products by restricting the application to ASX quoted products where market neutral language is not adopted. The consequence of this is further discussed in the covering letter for this submission.
B1Q3	Will the proposed relief need to be extended to ETFs that use internal market making? If so, please explain which form of relief is required, if any, and why.	Cboe is of the view that the ongoing disclosure relief in the proposed section 7 (Ongoing disclosure for ETFs) of the ETF Relief needs to be extended to ETFs (previously referred to as managed funds) that use internal market making. This would maintain the current relief offered in CO 13/721, which is utilised by Cboe issuers. If these funds are excluded from the relief (which we understand is the case due to the revised definition of "ETF" that requires that the responsible entity does not make a market for the relevant interests) then issuers would likely need to seek individual relief from ASIC.