



28 February 2025



Corporate Finance
Australian Securities and Investments Commission
Level 1, 11 Mounts Bay Road, Perth 6000

By email: rri.consultation@asic.gov.au

Dear ,

Cboe welcomes the opportunity to contribute to ASIC's consultation on ASIC's proposed remake of relief for offers of CHESS Depository Interests in the proposed *ASIC Corporations (Offers of CHESS Depository Interests) Instrument 2025/XX (instrument)*.

Cboe is a licensed market operator that quotes and trades ETPs issued by local and global fund managers, and soon expects to soon expand our product range to include Australian and foreign listed entities (subject to regulatory approval). Consequently, Cboe considers it essential that ASIC relief in relation to CHESS depository interests (**CDIs**) is appropriately scoped to ensure a level playing field and appropriate access to the services provided by CHESS Depository Nominees Pty Ltd.

To that end, this submission includes comments supporting the extension of the existing relief beyond the sunseting date of 1 April 2025, and comments on the importance of neutrality in drafting the instrument, as well as reiterating Cboe's support for its application to be included in the definition of 'approved market operator'.

Remaking the relief instrument

First, Cboe supports ASIC taking steps to continue to provide the relief currently provided under ASIC *Class Order CO 14/827 Offers of CHESS Depository Interests*. It is important

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that ASIC support investors' access to the foreign securities underlying CDIs by ensuring the regulatory regime works as efficiently as possible. In the absence of this relief, the uncertainty about the application of regulatory obligations – and in particular, whether they apply to CHESS Depository Nominees Pty Ltd or the issuer of the securities underlying CDIs – which prompted ASIC to provide this relief in the first place would re-emerge. Cboe considers this would be a poor outcome for issuers and investors.

Market-neutral drafting in the proposed instrument

Second, Cboe suggests that ASIC should draft the instrument in a way that is market-neutral – or, in other words, in a way that applies to types of service provider and licensee rather than particular service providers and/or licensees. Drafting which is not market-neutral constitutes a barrier to competition, because it requires that instruments be amended if market structure changes – for example, by Cboe's emergence as a competitor in the operation of financial markets for cash equities, or if a competitor were to emerge for clearing and settlement of cash equity trades. The fact that the current, sunseting relief does not apply to Cboe, and requires amendment, illustrates this difficulty well.

In a number of instances, this proposed instrument includes provisions and definitions which apply to specifically service providers.¹ A preferable approach is to draft the instrument to interact with existing concepts under the regulatory regime for market infrastructures, in a way that does not limit their application to incumbent service providers.

ASIC could draft the instrument to apply to entities which are licensed under the existing framework – for example, the definition of 'approved financial market' could be drafted to include all financial markets licensed under section 795B(1) (i.e., domestic Australian Market Licensees) and which have been declared under section 9D(2).² Subparagraph (b) of the definition of 'depository interests' could, for example, apply to 'the operating rules of a CS facility licensed under section 824B(1)', rather than 'ASX Settlement' specifically.

This approach has the benefit of future-proofing the instruments to changing market structures in financial services, which both supports competition by removing a subtle but

¹ Paragraphs 5(b) and 6(b)(1A).

² Including, for the avoidance of doubt, those markets which were previously 'prescribed' under the Corporations Regulations which are taken to be 'declared' under the transitional provisions for the Treasury Laws Amendments (Financial Market Infrastructure and other measures) Act 2024, which have been incorporated in section 1705F of the Corporations Act.



noticeable barrier, and reduces ASIC's workload in responding to changing market structures. For this reason, Cboe supports ASIC drafting relief instruments generally in a market-neutral manner, as well as this proposed instrument.

Definition of 'approved market operator'

Cboe notes it has applied to be included in the definition of 'approved market operator' under the existing Class Order and under the draft instrument. We note that the current draft instrument does not include Cboe under the definition of 'approved market operator'. Cboe takes this opportunity to reiterate its support for its inclusion in that definition – either by name or, consistent with our comments above about the importance of market-neutral drafting, by reference to its status as a licensed market operator operating a declared financial market as provided for under section 9D(2) of the Corporations Act.

If you have any questions about this submission please do not hesitate to contact me using the details below.

Kind regards,



Cboe Global Markets - Australia - Sydney

