

Friday, 29 May 2020

Office of General Counsel  
ASX Limited  
20 Bridge Street  
Sydney NSW 2000

**Computershare Investor Services Pty Limited**

ABN 48 078 279 277  
Level Three 60 Carrington Street  
Sydney NSW 2000 Australia  
GPO Box 7045  
Sydney NSW 2001 Australia  
Telephone 61 2 8234 5000  
Facsimile 61 2 8235 8150  
[www.computershare.com](http://www.computershare.com)

Attention: Ms Diane Lewis  
By email: [regulatorypolicy@ASX.com.au](mailto:regulatorypolicy@ASX.com.au)

Dear Ms Lewis,

### **Submission - CHES Replacement Tranche 2 Rule Amendments Consultation Paper**

Please see below Computershare's comments on the Tranche 2 Rule amendments consultation paper. As with our comments on Tranche 1, we note that these comments provide our interim position on the matters addressed. They may be revised subsequently, due to the iterative approach for issuance of the Rule amendments for the CHES replacement project, the delayed issuance of critical technical documents and the lack of comprehensive explanation regarding operational impact of the Rule amendments in certain areas. We will continue to seek clarification from ASX-S staff on the operation of various technical, operational and regulatory elements (in the continuing absences of procedure guidelines), and the associated (as yet not provided by ASX-S) fees for both like-for-like services and new services being mandated for Issuers. We will update our position accordingly as and when more information is made available. We note that the late issuance of feedback from ASX-S on Tranche 1 submissions further hinders our ability to fully analyse these Tranche 2 proposals.

In our Tranche 1 submission, we raised our grave concerns with the overall project timeline, given the significant gaps remaining in legal, regulatory, technical and operational requirements and absence of an industry impact assessment and business case. With the intervening disruption of covid-19 impacting all stakeholders, ASX-S announced a 'pause' in the project live date that should have allowed scope for stakeholders and ASX-S to have a measured and informed dialogue about the crucial next phase of this once-in-a-generation cross-industry development effort. We note however that during the period since announcement of the delay, there has been very little desirable progress on the critical gaps that we highlighted in our Tranche 1 submission. In our view, the project pause was urgently required before the impact of covid-19 in order to address the expanding project risks and is thus even more critical now. We look forward therefore to the June consultation on project timing and ASX-S action in addressing these serious concerns.

It is impossible to dismiss the unprecedented impact that the global pandemic has had on every element of day to day life, let alone on a large-scale market structure and technology project. Workforces have been stripped back, resources re-allocated, vendors are folding, and priorities have been re-focussed to 'keeping the lights on' activities with a very near-term horizon. For many, we believe that 'pens are down' on this project at present and have been for months. This will no doubt be reflected in the number and quality of submissions to this consultation, with many key industry stakeholders confirming to us that they have been unable to consider Tranche 2 because they are focussed on getting through their daily business demands and surviving working from home.

It is therefore critical that ASX-S and its regulators do not mistake silence for acceptance; that the inability of many to respond at this juncture is not necessarily agreement to the proposals put forth. The priority of this project has been surpassed by survival for many.

We also note the impact of covid-19-related market volatility on ASX-S's operational capacity. This became evident by the ASX-S systems failures that occurred on the 13<sup>th</sup> March 2020, which triggered the need for ASIC to step in and act to limit the risk to the market. This highlights the need to ASX-S to focus on the core competencies and obligations of a Clearing and Settlement facility, rather than pursuing new commercial opportunities for ASX Ltd in adjacent services.

We will expect the June dialogue to address the essential elements of successful implementation of the CHES replacement system, assessing a revised timeline that reflects the pre-existing project risk and the intervening impact of covid-19 and the following:

- Project re-scoping, to focus on delivery of core elements of CHES replacement Day-1 that ensure market integrity and operational soundness of the clearing and settlement facility, rather than delivering new revenue opportunities for ASX;
- To support well-informed project re-scoping, establishment of adequate cost-benefit analysis for all elements of the project that will proceed, and timely communication of this and of cost and fee impacts for all Users;
- Project governance, ensuring that stakeholders are given the opportunity for input on project scope, definition, and schedule on a timely and properly informed basis, and that ASX-S gives proper consideration to and appropriate incorporation of stakeholders' feedback, on an accountable basis;
- The role of ASIC and RBA, acting more directly in the project oversight and governance; and
- The role of ACCC, to more directly engage in the project scope to protect and guide competitive market outcomes.

For the avoidance of doubt, Computershare continues to progress its development and our sizeable project resources have remained focussed on building a solution. However, along with other stakeholders we continue to have to feel our way somewhat in the dark, despite our best efforts. As our comments on the detailed elements of the Tranche 2 rules demonstrate below, there remains too much uncertainty in the legal, regulatory, technical and operational requirements for us to have a fully comprehensive business implementation plan for this project. Public comments by ASX management that we now have 'everything we need' to proceed with the build are sadly far from true.

Compounding the legal, technical and operational uncertainties, the ongoing lack of cost-benefit analysis and pricing information from ASX-S for system changes and new services is egregious. This precludes us, and surely other stakeholders, from completing our own business case analysis and business planning. Correspondingly, the lack of information we hold means that we cannot properly advise our clients of their cost impact or their revised legal responsibilities and potential liabilities, cascading this uncertainty through the market. The re-planning exercise to be commenced in June needs to address these concerns. Specifically, it is critical that the Day-1 implementation is de-scoped to include only functionality that are, at this point in the project, designed with robust legal and technical certainty and a balanced cost-benefit impact across User groups, which many elements of Tranche 2 sorely lack.

### **Registration Details**

It is not clear to us how ASX-S intends to address the legal framework, including liability, relating to migration of existing registration details to the new ISO 20022 format. ASX-S should clarify if this is intended to form part of the 'miscellaneous' component of the Tranche 3 Rule Amendments Consultation. However, we wish to raise this topic now as requiring urgent attention by ASX-S and Issuers, given the volume and nature of the data in question. It should be considered within the review of project timing and approach.

ASX-S has advised us that the migration of Registration Details to the new format for CHESS holdings is to be performed separately by stakeholders, i.e. each Participant, ASX-S, and Issuers' registries will each need to separately re-format the Registration Details, using a tool provided by ASX-S or other means chosen by the User. We do not support this approach. It is a fundamental principle of CHESS Holdings, established in the current operating system and the relevant Settlement Operating Rules that Participants are responsible for all changes to Registration Details for Sponsored Holders, and indemnify ASX-S and/or Issuers for the consequences of any error in changes to registration details. This principle is well-founded on the basis of the Participants' client relationships with Sponsored Holders and the need to ensure a single control point to prevent discrepancy and risk of conflicting versions. A migration approach that disrupts this standing apportionment of responsibility, which could conceivably result in up to three different versions of the re-formatted Registration Details for a single Holder (given the absence of a single update which is then distributed by ASX-S), would create operational and legal risk for all parties.

ASX-S should commence discussions with stakeholders to re-configure the approach to migration of registration details and must provide clarity on the legal and liability framework to support this, before this work proceeds further.

#### **A. Recommendation – revise and/or de-scope selected functionality**

Computershare is supportive of the principle of introduction of additional digital channels to improve the efficient operation of the market. However, based on our extensive experience, we have identified significant information gaps in various of the proposed Rules and associated functionality which impact the ability to adequately determine their impact.

These gaps include a cost-benefit analysis by ASX-S into the impact across stakeholders of the proposed system and legal requirements, particularly for new or significantly changed functionality. We have been seeking such information since the April 2018 consultation and throughout the 2018-2019 focus groups.

Considering this information shortage, we consider that the following functionality should be descoped from the Day-1 implementation pending a full review, the timing of which is to be determined:

- Dividend and distribution reinvestment plan (DRP) and bonus share plan (BSP) elections (Rule 5.19A),
- Entitlement acceptances and related RTGS electronic payment for entitlement offers (Rules 5.21A, 5.21B, 4.1.3, 4.4B & 11.5),
- Specific changes relating to Holdings Adjustments (Rule 8.15).

This full review must address concerns that the proposed solutions force unnecessary burdens and risk on Issuers for limited benefit, none of which has been quantifiably assessed in a business case. It must be based on a complete set of information to ensure that the solution designs are fit for purpose and are viable from a structural, legal, cost and risk perspective. There must be scope for the review to revise and simplify the design if that is what is required.

Noting our call to de-scope this functionality pending a thorough review, sections B & C of this submission outline our general comments on Tranche 2 and our comments on the specific Rule amendments included therein.

#### **B. General Comments**

The ASX-S Settlement Operating Rules establish the regulatory and operating environment for all CHESS (and its replacement) Users, apportioning roles, responsibilities and accountabilities amongst and between ASX-S and its system's Users. Achieving and maintaining the appropriate balance is

critical to ensuring fairness in the system for all parties, the protection of investors and Users, and the effective delivery of the system's services. We note that various of the proposed changes however alter the established apportionment of responsibilities and accountabilities under the existing Rules and operating system, without specifically addressing these divergent impacts or ensuring the adequate re-balancing of risks and responsibilities in the revised environment.

As with the Tranche 1 Rule amendments, we have analysed the proposed Tranche 2 revisions within the rubric laid out in ASIC's Regulatory Guide 211, assessing whether the regulatory environment:

1. Maintains financial system stability;
2. Reduces systemic risk;
3. Ensures that clearing and settlement services are provided in a fair and effective way; and
4. Protects investors and Users of CSFs.

Considerations in assessing the impact of Rule amendments include whether the clearing and settlement process is transparent so that participants understand their obligations and the operation of the facility; whether participants in the facility can identify, understand and evaluate the financial risks and costs associated with their participation; and that facility supervision is not compromised by conflicts between the facility operator's duties and its commercial interests.

Prior to addressing our specific comments on the Rule amendments, we wish to make the following overarching observations.

#### 1. Timing and approach

We appreciate the extension of the comment period for this Tranche. While the immediate basis cited for the extension was the impact of the covid-19 crisis, we reiterate our previous comments that the six-week consultation period was already egregiously short for review of such significant regulatory changes and it disadvantaged stakeholders seeking to undertake comprehensive analysis and respond to the proposed changes. We therefore ask ASX-S to ensure a more reasonable response period is provided for future consultation papers.

We remain concerned with the approach to the Rule amendments, which is posing increasing risk for stakeholders to establish any satisfactory level of regulatory certainty regarding the changes. While the Tranche 2 consultation paper holds out the prospect of a further opportunity to comment on the comprehensive Rule package after completion of the tranches, in our view it is essential that ASX-S formalize the approach to this additional consultation as soon as possible, to permit all stakeholders to manage their efforts more effectively. We understand that ASX-S received only 12 response to the Tranche 1 consultation, which we anticipate was due to the scale and complexity of the proposals issued with a short response timeframe in the middle of the holiday period. This lack of engagement on critical regulatory changes must be concerning to ASX-S and its regulators and should prompt a reconsidered approach.

The current management approach is bordering on incoherent, with comments on this Tranche extended to May 29<sup>th</sup> and yet ASX-S issued its responses on comments to Tranche 1 only days prior to that. It is simply not feasible to review the 213-page Tranche 1 response document and consider its import relevant to our Tranche 2 comments within a week. Tranche 2 has amended provisions included in Tranche 1, without ASX-S providing timely visibility of its response to Tranche 1 submissions. We can only assume, based on experience, this this will continue iteratively for ASX-S's response to Tranche 2 and then the issuance of Tranche 3 amendments. It is impossible for stakeholders to establish any clarity or certainty in the regulatory changes being proposed in this manner.

ASX-S has yet to provide visibility of fees for new services that Issuers are mandated to provide under these proposed Rules, despite our repeated requests, further reducing Issuers' and Registries' ability to adequately assess the effect and impact of the Rules. Absence of critical cost-benefit analysis of new service propositions remains a major source of concern. We also note that ASX-S has only recently commenced releasing chapters of the Operating Procedures (due for completion at the end of October), which are key inputs to establish a clear understanding of the expectations being placed on Users.

While we appreciate that the intervention of the covid-19 crisis has created new and unprecedented challenges for all of us in handling current demands, in our view this simply exacerbated the pre-existing risk presented by the approach to managing the Rule amendments and the project overall. ASX-S should provide longer timeframes for consultation responses and formalise the provision of a consultation on the comprehensive rule package post-Tranche 3.

## 2. Unclear and unexpected outcomes

As with Tranche 1, and despite the claims made in the Consultation Paper asserting extensive consultation or dialogue on specific points, we nonetheless found unexpected operational and regulatory outcomes in the Rule amendments that cannot be found in technical documentation and/or were not readily apparent in the communications. Given Computershare's very high level of participation in the working group discussions, our strong and ongoing bilateral engagement with ASX-S staff and the substantive effort we have committed to reviewing and responding to all public consultations, we find this disturbing.

We continue to question the use of ASX-S's rule-making powers to effect the unnecessary insertion of ASX-S into market processes, impacting Issuers' control over and administration of their corporate actions, such as further changes (cumulative to Tranche 1) to restrict application of Holding Adjustments to any locked units (other than for Reconstructions). This appears to be seeking a re-balancing of control of key Issuer registry management with regard to corporate actions from Issuers to ASX-S, that had not been communicated.

It is very disappointing to have to restate our concern that, in a project of this magnitude and which has proceeded over the course of several years with significant stakeholder investment and engagement, there should be no surprises in the final requirements and no lack of clarity of the outcome. The Rule amendments should merely give effect to the known positions already communicated to the market, based on the Day-1 service scope established after the 2018 consultation. It is an indictment of the project governance that we should be in this position.

The late and unexpected changes to specifications for investor data (including new address lines and TFN treatment) and delay in the specifications for reporting has resulted in these registry-critical components being left out of ASX's supposedly final code release called 'CDE7'. **The intended release date to the new Industry Test Environment for these and other items is still to be announced and is now expected to occur over at least two more test releases, a situation we deem to be unacceptable for a key stakeholder group.** Review of these changed and delayed components occurred during the extended response window for these Tranche 2 rules and still continues on some matters that remain open or require clarity. This uncertainty is not a result of covid-19, but rather a further element of the flawed governance undertaken by ASX-S for this project. Public statements by ASX-S management that we now possess all necessary information to support our development were not accurate when they were made in early April and remain questionable given the array of related information that remains outstanding.

The dialogue on project timing to be commenced in June cannot be properly concluded until ASX-S addresses each of these concerns, providing absolute clarity on all components of the Day-1 service,

how these integrate together, and including specifying the technical, legal/regulatory, operational, cost and testing environments that will govern them.

## C. Comments on Amendments to ASX-S Settlement Operating Rules and Procedures

### 1. Corporate Actions: DRP and BSP Elections

#### Rules

New Rule 5.19A

#### Regulatory policy concerns

Protection of Users – investor data protection

Provision of clearing and settlement services in fair and effective way – regulatory certainty for Users

Provision of clearing and settlement services in fair and effective way – conflict of interest between Operator’s commercial interests and its supervisory authority

#### Detailed comments

**The proposed new Rules for DRP and BSP elections are an unjustified and unnecessary insertion of ASX-S into corporate action administration, including complex and risky duplication of data management. The arrangements conveyed via the proposed Rules met with opposition at the working group discussions. They create undue risk and cost through the complex arrangements for managing elections communicated via ASX-S and the duplication of all election data.** While we are supportive in principle of the establishment of CHESS as an optional channel for elections, we challenge the rationale for the approach adopted, which is entirely disproportionate to the market need purportedly being addressed. We accordingly urge ASX-S to remove these provisions and functionality from Day-1 implementation and to significantly re-scope them to facilitate an optional pass-through election channel, in conjunction with the enquiry facility for Participants to confirm elections with the Issuer’s registry.

In addition to providing a channel for elections for CHESS Holdings, ASX-S proposes that Issuers be required to transmit all election data to it, which it will then store, including elections received via other channels (Rule 5.19A.3). We query the legal basis on which ASX-S seeks to compel Issuers to provide all election data to it, to be stored, particularly election data from other channels. To ensure integrity in administration of the Plan, the Issuer’s agent (registry) must manage elections, received from all channels and for all holders including Issuer sponsored, in accordance with the relevant Plan Rules. The ASX-S records, for which we see no valid legal or operational rationale and therefore challenge being created at all, should only ever be secondary to the registry data. The maintenance of a record of elections by ASX-S appears to be an attempt by ASX-S for such records to *de facto* take precedence over the Registry-administered record, as the Rules mandate that ASX-S’s record be updated before the Registry can process any amended elections on its record.

This would be an unacceptable change in the fundamental approach to managing these corporate events, creating significant risk. Could ASX-S please confirm what its intentions are in this regard?

In Working Group discussions, we highlighted that any passing of elections through to the Controlling Participant must be subject to legal analysis on the privacy and authorisation aspects. It is not apparent to us that such analysis has been completed by ASX-S before issuance of these draft Rules and therefore their implementation must be deferred until such analysis is complete. In addition, prior to implementation ASX-S must consider whether there is a need to provide a function for an investor to opt-out of such notifications to the Controlling Participant and if so, how that would be managed (as discussed further below).

The duplication of election data by storing it on ASX-S's systems creates operational risk and is an excessively complex approach to provide an optional election channel. It is hard to understand the purpose of such convoluted requirements (as described in more detail below), unless the unstated goal is to continue developing the ASX-S record of entitlements into a central market repository.

Indeed, the redundancy of the creation of this complex web of election administration is evidenced by the inclusion of an enquiry facility under Rule 5.19A.10, which allows Participants to confirm the election status of CHESS holdings under their control. The combination of (what should be) a streamlined election mechanism, allowing transmission of elections from the Participant and confirmations back from the Issuer, in conjunction with an ability to enquire and obtain confirmation of elections submitted via other channels direct to the Registry will meet the market need for convenience and visibility of elections. The enquiry mechanism was raised as a possible alternative to ASX-S central storage of elections (by Computershare) but not further detailed by ASX-S until very recently. We consider it to be a potentially useful addition to the service offering, in place of the ASX-S storage of elections, subject to the appropriate warranty and indemnity protections for all stakeholders and confirmation that there are no privacy implications for shareholders.

Highlighting the rushed nature of this late design, we had some concerns with the recently released technical requirements for the enquiry facility, which emerged subsequent to the issuance of Tranche 2 Rules. The lack of discussion and supporting documentation led to differing expectations on how this functionality should perform. This only became apparent based on our review and further enquiry which resulted in a change in approach advised to us by email but that has not yet been fully documented and communicated to all stakeholders.

In addition to objecting to the overarching premise of this proposition, **we have a number of concerns with the specifics of the draft Rules, which are unduly complex and create a high risk of uncertainty regarding the administration of elections received via ASX-S. A revised approach to this functionality, to be considered post-Day-1, needs to address these.** The convoluted nature of the provisions strongly suggests a lack of practical knowledge of how elections are administered:

- The provisions of new Rule 5.19A for the Issuer to respond to elections received via ASX-S, including the Rules regarding over-riding elections received via various channels are complex, unclear and confusing. We are concerned with the viability of giving proper effect to these Rules in practice. There is no clear explanatory material accompanying the Rules which provide any further insight into their intended application in an operating environment, or the legal basis or justification for essentially compelling Issuers to provide this election information to ASX-S.
- The provisions regarding the required treatment where elections are made in respect of all of a holding or only part of a holding are particularly complicated. We consider that these will be excessively cumbersome to administer in practice. We have provided below examples of difficulties driven by the application of particular Rules but stress that this is by no means exhaustive – if this mechanism is nonetheless pursued (which we challenge), the Rules require significant review and revision to minimize the operational risk they create in current form:
  - Rule 5.19A.3(c): where there is an existing accepted or pending election for all of a CHESS holding, the Issuer can only process an update to that election by first cancelling or rejecting the accepted/pending election, regardless of whether the election is communicated by a channel other than ASX-S's systems.
  - Rule 5.19A.3(d): where there is an existing accepted election for part of a CHESS holding, the Issuer can only process an update to that election to record an election

for the whole CHESS holding where the Participant first cancels the partial acceptance and then provides a new election for the whole holding.

- These examples are unnecessarily burdensome on Issuers and Participants, requiring multiple active steps which create risk of error and delay, contrary to the standard practice of over-riding existing elections with the new election.
  
- Rule 5.19A.5 provides for cancellation of elections for CHESS holdings. The note to Rule 5.19A.5(b) addresses that any cancellation is subject to acceptance or rejection by the Issuer pursuant to Plan Rules. Yet there is no apparent mechanism for Issuers to in fact make this determination within the construct of ASX-S's handling of elections. Per Rule 5.19A.5(b), ASX-S will process the cancellation on its records on receipt of the cancellation message from the Participant, and then notify the Issuer of this. There is no provision in the Rules for the Issuer to demur and require the election to remain on foot if required under the Plan terms – in effect the ASX-S processing against its record has over-ridden the central oversight and recording of entitlements necessarily undertaken by the Issuer's registry. This will result in a mis-match between ASX-S and registry records of entitlements, where the cancellation was not valid per Plan terms.

Further, the proposed Rules raise a number of serious concerns where ASX-S is using its Rule-making authority to unduly interfere in the operation and terms of Issuers' Plans:

- In what capacity is ASX-S purporting to act in collating election data? Is this within scope of its limited agency role for Issuers, to administer the CHESS subregister? If so, we consider the burdens imposed on Issuers by the proposed Rules to be wholly disproportionate to any limited role to facilitate the handling of corporate actions on the CHESS subregister.
  
- Proposed Rule 5.19A.9 requires all Issuers to include certain provisions in their Plan terms to support the ASX-S requirements with respect to elections, prompting legal and practical concerns:
  - We question the basis for a clearing and settlement facility to assert regulatory authority to require amendment to Issuers' DRP & BSP Plan Rules, as the nexus to administration and operation of the facility is tenuous at best. It appears to us that any oversight of DRP & BSP Plans and the imposition of terms on shareholders is more appropriately considered in stock exchange listing Rules, such as Chapter 7 of the ASX Listing Rules. Further, as Rule 5.19A.9 applies to Issuers listed on non-ASX ALMOs, we question whether there is therefore some potential for conflict between non-ASX ALMO Listing Rules and these proposed Rules.
  
  - Perhaps due to the tenuous connection of a clearing and settlement facility to Plan terms management, we note that there is no consideration given to how such Plan amendments should (or could) be undertaken by Issuers. Will the Issuer need to communicate changes to Plan terms to all current shareholders with an election? This would be a considerable cost for Issuers. How will ASX-S monitor Issuers' compliance with the amendments? At what point will elections communicated via ASX-S become available – on implementation of the new system or not until confirmation that an Issuer's Plan terms have been amended – or even after communication has been delivered to shareholders? How could this be coordinated across the market?
  
  - Again, these proposals therefore create significant regulatory and operational uncertainty for Issuers and Participants.
  
  - The highlighted comment in the draft Rules that the provisions will be subject to further amendment in Tranche 3 prompts additional concern, both at the macro level of governance of the Rule amendments process and the specific concern with additional requirements for Issuers. We challenge why the additional terms relating to



payment etc could not be incorporated in Tranche 2, and wonder whether this could be due to concerns with potential privacy aspects for mandating such data be provided to ASX-S without specific holder consent? Will Issuers be required to provide an opt-out for shareholders and how would this operate? This exemplifies our concern with the excessive demand that all such data be passed through to ASX-S, as well as the lack of clarity inherent in the iterative rule-making.

The above considerations and the lack of an informed cost/benefit analysis necessitate the de-scoping of this functionality from Day-1, and a re-scoping of the nature of the service if progressed thereafter. Based on our client records, an 'average' sized Issuer has 30,000 participants in their DRP. Anticipating that each Issuer would need to incur legal and other costs to perform the revision to their Plan terms, then the per-holder costs of communicating those changes to each existing DRP participant (digitally or by post), the costs for each Issuer to manage the changes to their Plan terms will be very significant, even before consideration of the development cost and ongoing compliance requirements. Extrapolated across the market, these costs are insupportable.

The costs to Issuers stand in stark contrast to the likely usage of the functionality. Retail investors, who form the largest group of DRP participants by number of holders, predominantly participate on a 'set and forget' election basis. They already have access to other election channels, including digital methods which are well-used. We appreciate that institutional investors more actively manage their DRP elections, particularly around dividend time. However, without any evident analysis of expected systems implementation across all Participants and considering the relative benefit to investor types, the likely scale of use of this functionality – which is optional for Participants but mandatory for Issuers – cannot justify the costs, complexity and legal risk being created for Issuers. It appears to be a solution that derives benefits for a very small subset of investors yet with costs and risks imposed disproportionately on Issuers to provide a service for all investors. Our initial support for this functionality as an optional channel has always highlighted the need for ASX-S to establish an adequate business case, and address the legal and privacy implications, which remain outstanding.

## 2. Corporate Actions: Entitlement Acceptances (Rights Offers & Securities Purchase Plans)

### Rules

New Rules 5.21A & 5.21B

### Regulatory policy concerns

Provision of clearing and settlement services in fair and effective way – transparency of data, fairness between Users

Protect Users – regulatory certainty for Users

Protection of Users – Issuer risk

### Detailed comments

**While we support the principle of an additional channel for submission of Rights Offers and SPP entitlement acceptances, we are disappointed to note that the Rules give effect to this 'indirect' channel routed via ASX-S without providing concomitant visibility to Issuers of pending acceptances. In consequence, the entitlements acceptances would be implemented in a manner that is disproportionately more beneficial to Participants than Issuers, and an opportunity to improve market efficiency by increasing visibility for Issuers has been missed. There are a number of apparent gaps in the Rule amendments which create uncertainty in Issuer obligations. Also, an unnecessary divergence in process between Rights and SPP has been created, simply due to an apparent administrative error, causing complexity, duplication of effort and cost.** Again, we therefore consider that there is insufficient regulatory and legal certainty and disproportionate cost impact on Issuers, and that these provisions and associated functionality must be de-scoped from Day-1 implementation, pending resolution of such concerns.

We note the narrative in the Consultation Paper that ASX-S has outstanding discussions with ASIC regarding potential relief in respect of ss. 723(a) and 1016A(2)(a) of the Corporations Act, regarding traded rights. The lack of regulatory certainty in this regard – and noting that a similar caveat was included in the 2018 Consultation Paper without apparent material progress on the topic in the interim – renders us unable to adequately comment on the regulatory and technical impact for Issuers until we have visibility of the expected outcome of this dialogue. It is completely opaque to Users how ASX-S considers this relief, if granted, would be administered and policed.

It is not evident how Issuers will be informed of acceptances with respect to the entitlement acceptances prior to RTGS payment being made. As Participants are not required to initiate the Corporate Actions RTGS Instruction in respect of an acceptance already notified to ASX-S until the later of closing time on the Applications Close Date or RTGS Instructions Cut-off (4.30pm) on that date, the Issuer may not be notified of acceptances until the last possible moment. This impedes an Issuer's ability to understand the status of its offering during its offering period, which is detrimental. This is a missed opportunity to provide improved visibility to Issuers of pending acceptances, while Participants benefit from the alternate acceptance channel at a cost to Issuers.

We note that ASX-S has chosen to not develop ISO 20022 messaging to convey this information to Issuers via existing channels and has instead recently made public representations that it will be available via node access. In the absence of any documented information in that regard, including associated costs and availability of the data to Registries, it is impossible to assess this in any manner, and we must yet again reserve comment until more information is made available by ASX-S.

We are concerned that the unique reference number is only required to be included in the Entitlement Acceptance message in respect of a limited category of offerings, being regulated offerings where the rights have not been renounced (Rule 5.21A.3(a)). Without any mechanism to communicate to Participants which offerings are subject to this requirement – we understand there is no technical provision to validate this for affected offerings – it will create additional market uncertainty.

As ASX-S is no doubt aware, for non-regulated offers this identifier is important to validate investor consent to the terms of the offer. It appears that ASX-S considers this requirement to be fulfilled by the required Holder representations and warranties mandated under Rule 5.21A.9. However, we remain concerned that this untested approach creates regulatory risk for Issuers with respect to informed shareholder consent to the offering. This also appears inconsistent with investor protection principles, insofar as Rule 5.21A.9(b) and (c) rely on a message from the Controlling Participant to affirm that the investor warrants their acceptance and understanding of the relevant terms and conditions (including Product Disclosure Statements). The partial requirement for the identifier in Rule 5.21A.3(a) indicates ASX-S's recognition of this need to affirm consent, and yet there is no structural mechanism to provide Issuers comfort in compliance. Has ASX-S liaised with ASIC on this point, and if so can ASX-S please advise what ASIC's position is on the point of investor understanding and consent?

ASX-S must further address the risk of appreciable cost increases for Issuers resulting from the requirement to establish CHESS Rights Subregisters for all Rights, including non-renounceable rights which are not currently held on the CHESS Subregister. Further, ASX-S should clarify the impact of the Tranche 1 amendment to Rule 8.14.2, requiring the closure of all CHESS Subregisters. Our concerns expressed in response to Tranche 1 regarding Issuer cost for the closures must be addressed to prevent a considerable escalation of costs to Issuers, and revenue to ASX-S, from the confluence of these provisions.

ASX-S should also address the handling of duplicate acceptances and payments for CHESS Holdings, where acceptances may in future be made via CHESS as well as directly to the Registry. As ASX-S will lock the CHESS Holding, we are concerned that, in effect, this will determine that the acceptance channelled through CHESS will always have priority over acceptances delivered directly to the

Registry. However, as there is no apparent visibility to Issuers and Registries of locked holdings or early notice of acceptances via CHES, any duplicated acceptance (e.g. due to change of holder payment preference) will only become apparent on completion of the offering, when the final CHES-facilitated payments are received, and the Registry is able to fully reconcile. Governing principles to address this risk should be established, following appropriate consultation with all market stakeholders who may be exposed to this risk.

Proposed Rule 5.21B requires revision to account for the possibility of scaled-back offerings, in addition to acceptance rejections.

We further note with concern the differential handling imposed for Rights and SPP which has caused duplication in the design of functionality and operational processes. While acceptances and payments for both forms of offer are proposed to be routed via CHES, Issuers will not be required to establish CHES Subregisters for SPPs. We understand that this is due to a failure to request permission from the Association of National Numbering Agencies for permission to allocate an ISIN to SPP entitlements given their non-tradeable status, resulting in an inability to create subregisters for these offers. As a result, Issuers and their registries, and other Users, will be required to continue with dual processing structures for handling administration of the securities balances, creating unnecessary duplication of operational and systems requirements for forms of offers that are substantially similar in process.

### 3. Real Time Gross Settlement

#### Rules

Rules 4.1.3, 4.4B, 11.5

#### Regulatory policy concerns

Protect Users – regulatory certainty for Users

#### Detailed comments

**We have found it particularly hard to effectively map out the requirements for the new Corporate Action Payments Participant (CAPP), which is central to giving effect to the use of CHES as an election channel for rights offers and SPPs. There is no adequate explanation of the CAPP structure and its role in the administration of entitlements acceptances, and despite lengthy focus group meetings and communications with ASX-S staff we consider that the operation of the functions is not sufficiently clear as to provide us with regulatory certainty of the structure and obligations, and accordingly should be de-scoped from Day-1 implementation, particularly in view of the dependency on Rules 5.21A and 5.21B.**

The participation criteria appear almost circular: the CAPP must meet the requirements of section 11 as a RTGS Participant; an RTGS Participant is a Settlement Participant or CAPP that is RTGS Accredited; RTGS accreditation requires the participant to meet the RTGS Participation Requirements which include, but are not limited to, providing ASX-S with details of a RTGS Bank Account; the RTGS Bank Account is a bank account opened by the RTGS Participant with an RTGS Payments Provider. It seems that the upshot is that a Participant can qualify as a CAPP if it has a bank account with an RTGS Payments Provider? We are uncomfortable with the lack of clear definition in the Rules – we should not need to follow such a daisy chain to establish basic principles of eligibility. We are particularly concerned with the lack of specificity of the RTGS Participation Requirements – requirements that ‘...include, but are not limited to, ...’. This vague definition provides no certainty regarding ASX-S requirements and requires clarification.

#### 4. Corporate Actions: Takeovers & Buybacks

##### Rules

Rules 14.22 – 14.30

##### Detailed comments

Computershare is broadly comfortable with the provisions of these draft new Rules, which largely codify and settle existing market practice. We note that the provisions could benefit from some minor wording improvements, in particular the frequent reference to 'acceptance of an offer' should also refer to making elections in respect of the offer, given the context of these particular events.

#### 5. Holding Adjustments

##### Rules

Rule 8.15

##### Regulatory policy concerns

Protect Users – regulatory certainty and Issuer liability

##### Detailed comments

**The further amendments to Rule 8.15 made in Tranche 2, which revise amendments already proposed in Tranche 1 and without ASX-S evidently considering feedback provided in that respect, exemplifies the distressingly poor governance of this Rule amendment process. These further amendments increase the risk to Issuers from the non-application of the Holding Adjustment or Securities Transformation, as the draft Rule now applies to all forms of Holding Locks and Holder Records Locks. There is no informed guidance on the impact of this for Issuers' securities administration, and responsibilities and potential liabilities to shareholders. These provisions should be de-scoped from Day-1 implementation, and ASX-S should undertake a comprehensive review of the potential impact for Issuers and shareholders before proceeding thereafter.**

In our response to the Tranche 1 consultation, we raised serious concerns with the restrictions on applying Holding Adjustments and Securities Transformations, which have now been exacerbated by the extension of the restrictions to all forms of locked or sub-positioned units and holdings. We note that ASX-S issued its response to the Tranche 1 consultation only very recently, with insufficient time for review prior to completion of our comments here. However, based on the further changes in Tranche 2, ASX-S has taken this extraordinary step of further extending its actions in an area of expressed stakeholder concern. This shows ASX-S's real disregard for the consultation process, which for proper governance must duly consider and respond to stakeholder feedback, rather than pushing ahead regardless. It equally snubs the considerable efforts committed by stakeholders to participate in ASX consultations.

To reiterate and extend our concerns previously communicated in Tranche 1:

- There is no apparent mechanism for ASX-S to give notice to the Issuer that it has not given effect to such an Adjustment or Transformation on a locked holding. Failure to notify the Issuer that the Adjustment or Transformation has not been applied to a Holding creates a risk for administration of the corporate action, impacting reconciliation and management of the entitlements of individual shareholders.
- It is not apparent that this information will be included in any effective reporting to the Issuer/Registry. The only mechanism we have at present to view this information is via a comprehensive 'on demand' report, that is only available on a no-cost basis to each Issuer 12 times per year. The report is disproportionate to this need, and the limitation on availability further render it not effective for this purpose. If information on locked or 'unavailable units' is

to be made available via a node, the cost to access a node and charges for accessing the data must be available before an Issuer can comment on the viability of the proposed changes.

- It is not clear how ASX-S proposes that Issuers will administer the benefit of the corporate action for the Locked Holdings, and ultimately reconcile and adjust entitlements, or indeed if ASX-S has in fact considered this impact for Issuers.

We therefore restate with some urgency that prior to progressing implementation of the changes to Holding Adjustments, ASX-S must establish a mechanism to a) provide Issuers with operational visibility of holdings with units that are not available for processing; b) notify Issuers of non-applied Adjustments or Transformations for those locked holdings; and c) that further discussion on appropriate protocols for handling the position of locked holdings is necessary. We reiterate the need for ASX-S to conduct a comprehensive review of the various forms of corporate actions that may be impacted by the various types of locks and confirm the impact on Issuers, to support effective engagement on the proper handling of locked holdings.

In particular, it is unclear how a Scheme of Arrangement may be managed in the event of locked holdings – will the lock be lifted to allow completion of the master transfer, which is the instrument used to transfer units from existing investors to the Bidder, and give effect to the Scheme? These further amendments have significantly increased the operational and legal risk relating to a transaction. ASX-S has again injected itself into an operational process and created a new dependency for Issuers. In consequence, ASX-S is exerting de facto control over key elements of administration of the event, by preventing Issuer processing. It is therefore incumbent upon ASX-S to more effectively define the process, address the potential detrimental impacts and clarify requirements.

#### **D. Conclusion**

It is evident that a significant segment of these Tranche 2 rule amendments has been poorly constructed, are not supported by any cost-benefit analysis and contain critical gaps. They are emblematic of the poor rule management process and overall project governance. In our view these Rules would cause unacceptable uncertainty and risk to Users if progressed as drafted. Despite the lack of a formal cost-benefit analysis, the proposals are clearly skewed to benefit a subset of Users at disproportionate cost and risk to Issuers. These provisions and associated functionality should therefore be de-scoped from Day-1 of the new settlement framework.

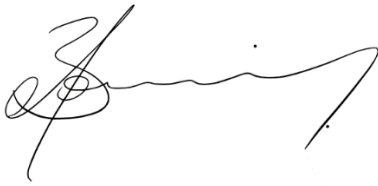
The enormous uncertainty that organisations are attempting to understand and navigate was well encapsulated by Governor of the Reserve Bank in comments made to the Senate Select Committee on COVID-19 yesterday (28th May 2020): "The key observation is that the world is very uncertain, and I think it's too early to say what it's going to be, what the economy is going to be like, in four months' time," Dr Lowe said. The recessionary pressures and questions around unemployment are important to consider. This is and will have an impact on the market's ability to meet the expectations of ASX for delivery of such a complex and extensive market structure project.

#### **We are calling for:**

- 1. Descoping of changes and functionality that are not sufficiently complete, supported or are not core to the role and responsibilities of a settlement facility;**
- 2. A fundamental change in project governance to put this project back on track and deliver a robust solution to the market;**
- 3. A project timeline that realistically reflects the impact of covid-19, the looming economic and social headwinds and the scale, risk and complexity of this project, and addresses the impending question, "What is the Plan B?"**

Should you have any questions in relation to the above comments, please contact the undersigned.

Yours sincerely,



**Ann Bowering**

CEO Issuer Services, Australia and New Zealand

Cc: Council of Financial Regulators and related agencies  
c/o Dodie Green, Senior Manager, Market Infrastructure (ASIC)