

11 July 2023

Dr Jon Bell
Acting Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

By email: corporations.joint@aph.gov.au

Dear Dr Bell,

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation – CHES Replacement

I refer to Governance Institute's appearance at the Committee Hearing on 8 June 2023.

Governance Institute's responses to the Questions on Notice raised by the Committee at the Hearing are set out below.

1. Could the Governance Institute take notice if you want to provide us any detailed thoughts, or some thoughts, in relation to the two options, and what the view of the Governance Institute is with respect to the merits or otherwise of the two options?

Governance Institute has raised the issues of the governance structure for the CHES Replacement Project (Project) on a number of occasions, including in our Submissions dated 27 June 2018 and 6 August 2020 and as noted in Ms Motto's evidence to the Committee on 8 June 2022, by her, at meetings of the ASX Business Committee.¹

As requested by the Committee we have consulted our members in relation to the two Options for enhanced governance for clearing and settlement (C&S) set out in the Computershare Supplementary Submission dated 23 May 2023 (Supplementary Submission). ASX is both the licensed operator of a critical piece of market infrastructure which is used by a wide range of stakeholders and is a vertically integrated for profit entity with a monopoly on clearing and settlement. This dual role creates inherent tensions which the current governance model for both the C&S functions and the Project do not adequately address.²

Both Options address the concerns around the current governance structure referred to in the Supplementary Submission and in the evidence of witnesses appearing before the Committee. Our members consider that both Options have merit, Option 1 may lead to a continuance of the existing

¹ See evidence Megan Motto, Committee Hansard 8 June 2023 at pages 49 and 51.

² See Supplementary Submission, 23 May 2023, Computershare Pty Limited at page 13.

complexity around the governance of the Project without improving efficiency, particularly if there is frequent recourse to the resolution process outlined in Option 1. They consider that while the structure of Option 2 is less complex than Option 1 it has significant ramifications for the regulation and operation of C&S functions which would need to be thoroughly tested and consulted upon before implementation. This would take time and from a practical perspective the CHESS Replacement has been in progress for some years, and it is important for the market and all market stakeholders that the Project moves forward to a satisfactory outcome more quickly than it has to date.

Our members also note the Opening statement of the ASIC Chairman to the Committee on 27 June 2023 ‘...Given the importance of the replacement of CHESS to Australia’s financial system, it will be important to ensure any additional governance mechanism is clear about its remit and function and that it doesn’t interfere with the decision making and accountability of ASX over the project.’³

Our members continue to maintain that the current bodies, the ASX Business Committee and the Technical Committee are not the appropriate bodies to have governance oversight of the Project. They consider there is a role for a ‘CHESS Replacement Project Oversight Committee’ which would have the following characteristics:

- Regular meetings – monthly or six-weekly
- Of an appropriate size to make decisions effectively, somewhere between 8 and 11 members
- Members should have an appropriate mix of skills and experience and be representative of relevant market stakeholders. An independent non-executive director from the C&S Boards should be a member.
- An independent chair, a member of the ASX Executive should not chair this body
- This body would provide reports and make recommendations to the C&S Boards about the Project and have close links to the ASX Business Committee and the Technical Committee, and
- The regulators should attend as observers.

Our members consider this model would assist in improving market ‘buy in’ for the Project as well market confidence in the Project. It would also assist in resolving the inherent tension created by ASX being both the owner and licensed operator of this critical piece of market infrastructure. A Project Oversight body with the appropriate mix of skills, experience and independence would also create greater accountability. It would also ensure that ASX retains decision making and accountability over the Project. We do not consider that it would take significant time to set up and recruit members for the body.

Our members consider that the ASX Business Committee and the Technical Committee would still have important roles to play. The remit of the Business Committee is broader than the Project, operational performance, T+1 and could also be enhanced to look at more forward-looking market issues. Similarly, the Technical Committee can continue to provide input to the more technical aspects of the Project.

2. If you can provide those on notice for the committee and any responses from ASIC or any follow-up to non-responses, we would be very interested to see what is going on in that space.

The CHESS Replacement Stakeholder Group (CRSG), a diverse group of capital markets stakeholders and share registry representatives including Governance Institute, met ASIC and other Council of Financial Regulators (COFR) representatives in June 2019 to discuss Group members’ concerns around the Project. The CSRG also wrote to ASIC in August 2019 to ask it to encourage ASX to convene a market open forum

³ See [Opening statement by ASIC Chair Joe Longo at the Parliamentary Joint Committee on Corporations and Financial Services, Oversight of ASIC, the Takeovers Panel and the Corporations Legislation, 27 June 2023.](#)

to discuss the Project. The CRSG wrote to the COFR in November 2019 to follow up on the meeting with the COFR in June 2019.

On 25 March 2020 ASX announced that it would commence a public consultation for a revised timeline for the Project in June 2020. Governance Institute's CEO encouraged ASX to use the opportunity of replanning the Project timeline to consider an enhanced governance model for the Project at the ASX Business Committee meeting on 8 April 2020.⁴ COFR representatives attend ASX Business Committee meetings as observers. Governance Institute's August 2020 Submission also encouraged ASX to reset the governance structure in place for the Project and for clearing and cash equity clearing and settlement services more generally.⁵

Please contact me or Catherine Maxwell, GM Policy and Research if you have any questions in connection with this letter.

Yours sincerely,

Megan Motto

CEO

⁴ See evidence Megan Motto, Committee Hansard 8 June 2023 at page 51.

⁵ See Submission [CHESS Replacement: Revised Implementation Timeline](#), Governance Institute of Australia, 6 August 2020.