



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

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14 December 2022

Ms Johanna O'Rourke
Acting ASX Group General Counsel and Company Secretary
ASX Clear Pty Ltd and ASX Settlement Pty Ltd
20 Bridge Street
Sydney NSW 2000

By email

Dear Ms O'Rourke

Notices issued pursuant to s823B of the Corporations Act 2001

1. We refer to the joint letter of expectations issued by the Australian Securities and Investments Commission (**ASIC**) and the Reserve Bank of Australia (**RBA**) to the directors of ASX Limited, ASX Clear Pty Ltd and ASX Settlement Pty Ltd on 17 November 2022 (**Letter of Expectations**).
2. ASIC has referred to an ASIC Delegate the decision to issue written notices to ASX Clear Pty Ltd and ASX Settlement Pty Ltd (the **CS Facility Licensees**) requiring:
 - a. the CS Facility Licensees to provide a special report into specified matters pursuant to section 823B(1) of the *Corporations Act 2001* (the **Act**) (the **Special Report**); and
 - b. Ernst & Young be nominated to undertake an audit of the Special Report pursuant to s823B(2) of the Act (**Audit Report**).
3. The ASIC Delegate has decided to issue notices pursuant to s823B of the Act to the CS Facility Licensees. Please find **enclosed** with this letter notices issued to ASX Settlement Pty Ltd and ASX Clear Pty Ltd (the **s823B Notices**) together with a covering letter.

ASIC's expectations

4. In preparing the Special Report and engaging Ernst & Young to prepare the Audit Report, ASIC expects the CS Facility Licensees:
 - a. to provide ASIC with the proposed terms on which Ernst & Young will be engaged to prepare the Audit Report for our review. We expect

that the CS Facility Licensees will reasonably assist Ernst & Young to carry out the terms of their engagement, including by:

- i. providing Ernst & Young with any information, document or explanation reasonably requested; and
 - ii. to the extent that it is reasonable having regard to the engagement, provide Ernst & Young with access to the CS Facility Licensees' premises, equipment, technology, systems, books and records and to interview representatives of the CS Facility Licensees;
 - b. to ensure that the Special Report is accompanied by an attestation from the Board of Directors of each of the CS Facility Licensees confirming that the Board of Directors reasonably believes that the information contained in the Special Report is accurate; and
 - c. to provide a public version of the Special Report and Audit Report that has appropriately considered the confidentiality of certain commercial information and security (including cyber).
5. ASIC will engage with the CS Facility Licensees further while the Special Report and Audit Report are being prepared to identify and address information that the CS Facility Licensees consider should not be made public.
6. ASIC is continuing to consider what further regulatory action may be taken by ASIC to ensure:
 - a. the adequate functional development, support and maintenance of CHES;
 - b. that the CHES Replacement will meet all functional and non-functional requirements and will enable new functional developments without undue risk and impact to participants in future;
 - c. that ASX Limited and the CS Facility Licensees take all necessary steps to address the gaps and deficiencies identified in the Accenture Review and in addition to identify and address any other gaps in ASX's broader program management including governance, management and capabilities that may not have been identified by Accenture, due to time constraints or limited by their scope of work; and
 - d. that ASX Limited and the CS Facility Licensees have complied with all relevant licence conditions and their legal obligations more generally.
7. ASIC reserves its rights in respect of any further action as it considers appropriate.

Please contact me if you wish to discuss any of the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'N. Bourne', with a long horizontal line extending to the right.

Nathan Bourne
Senior Executive Leader, Market Infrastructure
Markets Group



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The Directors
ASX Settlement Pty Limited
ASX Clear Pty Limited
Level 6,
16-20 Bridge Street
Sydney NSW 2000

C/o Johanna O'Rourke, Acting Group General Counsel
and Company Secretary
By email:

14 December 2022

Dear Directors

Written notice of requirement to prepare a special report and have the report audited

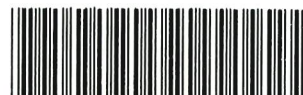
I write to ASX Clear Pty Ltd (**ASX Clear**) and ASX Settlement Pty Ltd (**ASX Settlement**) in my capacity as delegate of the Minister, to give ASX Clear and ASX Settlement written notice that under s823B of the Act, I require ASX Clear and ASX Settlement to:

- give ASIC a special report on specified matters (**Special Report**). The matters to be reported on are set out in **Attachment A and Attachment B** to this letter.
- have the special report audited by a specified person who is suitably qualified (**Audit Report**). The person nominated to audit the report is identified in Attachment A and Attachment B to this letter.
- provide the special report to ASIC by 28 April 2023 and to have the nominated person provide the audit report of the special report to ASIC by 31 May 2023.

Written notices pursuant to section 823B have been issued to both ASX Clear and ASX Settlement. ASX Settlement and ASX Clear may comply with those notices by providing to ASIC a single Special Report and Audit Report addressing the specified matters as applicable to both ASX Settlement and ASX Clear.

Yours sincerely,

as a Delegate of the Minister
Claire LaBouchardiere
Senior Executive Leader, Corporations
Australian Securities and Investments Commission



Attachment A

Written notice to ASX Settlement Pty Ltd pursuant to s823B of the Corporations Act 2001

1. Definitions

ASIC means the Australian Securities and Investments Commission.

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.

Go-Live in relation to the CHES Replacement Program means cutting over to the CHES Replacement System.

Licensee means ASX Settlement Pty Ltd.

2. Special Report on support and maintenance of CHES

- (1) The Licensee must, by 28 April 2023 give a report to ASIC detailing how the Licensee will ensure that CHES is adequately supported and maintained until the Go-Live of the CHES Replacement System (**Special Report**).
- (2) Without limiting the scope of the Special Report required by 2(1), the Special Report must address the following specified matters:
 - a. With respect to the ongoing operation of CHES:
 - i. identify and assess, any risks to the resilience, reliability, integrity and security of CHES;
 - ii. detail how the Licensee will manage and monitor any risks to the resilience, reliability, integrity and security of CHES;
 - iii. detail how the Licensee will ensure CHES has the appropriate functionality, scalable capacity and performance – including to accommodate current and future reasonably expected growth in trading volumes;
 - iv. identify any necessary upgrades to CHES required to avoid obsolescence of the end-to-end technology;
 - v. detail how the Licensee will manage the safe and secure implementation of material changes to CHES, including testing such changes and ensuring that parties that may be impacted are adequately consulted and communicated with, and prepared for the changes;



- vi. detail the Licensee's management program (including monitoring and performance management) for any outsourced services essential to the operation of CHES and availability of its services, including all risks to resilience, reliability, integrity and security;
 - vii. identify internal and external support requirements, in terms of resourcing and extendable/upgradeable vendor contracts;
- b. with respect to the security of CHES:
- i. detail how the Licensee will ensure the confidentiality, integrity and availability of information obtained, held or used by the Licensee in relation to CHES, including maintaining availability of and authorised access to data;
 - ii. detail how the Licensee will implement a system of security controls, monitoring and periodic testing of controls to ensure CHES is resilient to unauthorised access or disruptions due to cyber events;
- c. with respect to the continuity of CHES detail how the Licensee will:
- i. establish, implement, test and maintain continuity plans that include response and recovery processes for any event that would or would be likely to cause significant disruption to CHES, including (but not limited to) server or network infrastructure failures, software failures, cyber incidents, and business process failures;
 - ii. ensure that disruption scenarios are periodically tested, continuity plans are continually improved, and resources (including any external parties) that are required to engage with such plans are trained and familiar with their roles and responsibilities.
 - iii. implement regular backup and recovery (from back up) procedures to ensure access can be re-established following a disruption event resulting in loss or corruption of data;
- d. with respect to the Licensee's governance arrangements, detail:
- i. what governance arrangements (including Board level oversight and management structures) the Licensee has in place to ensure ongoing monitoring and management of any risks to the performance and operation of CHES and availability of its services, and the adequacy of financial, technological and human resources (including any external parties and outsourced services);
 - ii. how the Licensee will ensure it has the requisite skills and capabilities (including, where necessary, external parties) for the operational maintenance and support arrangements for CHES and for continued performance and operation of CHES and availability of its services until the Go-Live date of the CHES Replacement System;



- iii. what system of controls and monitoring the Licensee has in place to measure, assess and continuously improve and assure the ongoing resilience, reliability, integrity and security of CHES.
 - e. With respect to the above, identify what principles, policies and frameworks (including by reference to international standards where appropriate) are to be applied to guide a comprehensive, consistent and transparent approach across these areas.
- (3) For the avoidance of doubt and where appropriate, the Special Report must detail implementation plans and specify the date by which the arrangements detailed in accordance with 2(2) will be in place.

3. Requirement to have the Special Report audited

- (1) The Licensee must have the Special Report audited by Ernst and Young (**Audit Report**).
- (2) The Licensee must provide the Audit Report to ASIC by 31 May 2023.

Dated 14 December 2022

Signed.....

Claire LaBouchardiere
As delegate of the Minister under section 1101J of the Act



Attachment B

Written notice to ASX Clear Pty Ltd pursuant to s823B of the Corporations Act 2001

1. Definitions

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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.

Go-Live in relation to the CHES Replacement Program means cutting over to the CHES Replacement System.

Licensee means ASX Clear Pty Ltd.

2. Special Report on support and maintenance of CHES

- (1) The Licensee must, by 28 April 2023 give a report to ASIC detailing how the Licensee will ensure that CHES is adequately supported and maintained until the Go-Live of the CHES Replacement System (**Special Report**).
- (2) Without limiting the scope of the Special Report required by 2(1), the Special Report must address the following specified matters:
 - a. With respect to the ongoing operation of CHES:
 - i. identify and assess, any risks to the resilience, reliability, integrity and security of CHES;
 - ii. detail how the Licensee will manage and monitor any risks to the resilience, reliability, integrity and security of CHES;
 - iii. detail how the Licensee will ensure CHES has the appropriate functionality, scalable capacity and performance – including to accommodate current and future reasonably expected growth in trading volumes;
 - iv. identify any necessary upgrades to CHES required to avoid obsolescence of the end-to-end technology;
 - v. detail how the Licensee will manage the safe and secure implementation of material changes to CHES, including testing such changes and ensuring that parties that may be impacted are adequately consulted and communicated with, and prepared for the changes;
 - vi. detail the Licensee's management program (including monitoring and performance management) for any



- outsourced services essential to the operation of CHES and availability of its services, including all risks to resilience, reliability, integrity and security;
- vii. identify internal and external support requirements, in terms of resourcing and extendable/upgradeable vendor contracts;
- b. with respect to the security of CHES:
 - i. detail how the Licensee will ensure the confidentiality, integrity and availability of information obtained, held or used by the Licensee in relation to CHES, including maintaining availability of and authorised access to data;
 - ii. detail how the Licensee will implement a system of security controls, monitoring and periodic testing of controls to ensure CHES is resilient to unauthorised access or disruptions due to cyber events;
- c. with respect to the continuity of CHES detail how the Licensee will:
 - i. establish, implement, test and maintain continuity plans that include response and recovery processes for any event that would or would be likely to cause significant disruption to CHES, including (but not limited to) server or network infrastructure failures, software failures, cyber incidents, and business process failures;
 - ii. ensure that disruption scenarios are periodically tested, continuity plans are continually improved, and resources (including any external parties) that are required to engage with such plans are trained and familiar with their roles and responsibilities.
 - iii. implement regular backup and recovery (from back up) procedures to ensure access can be re-established following a disruption event resulting in loss or corruption of data;
- d. with respect to the Licensee's governance arrangements, detail:
 - i. what governance arrangements (including Board level oversight and management structures) the Licensee has in place to ensure ongoing monitoring and management of any risks to the performance and operation of CHES and availability of its services, and the adequacy of financial, technological and human resources (including any external parties and outsourced services);
 - ii. how the Licensee will ensure it has the requisite skills and capabilities (including, where necessary, external parties) for the operational maintenance and support arrangements for CHES and for continued performance and operation of CHES and availability of its services until the Go-Live date of the CHES Replacement System;
 - iii. what system of controls and monitoring the Licensee has in place to measure, assess and continuously improve and assure



the ongoing resilience, reliability, integrity and security of
CHES.

- e. With respect to the above, identify what principles, policies and frameworks (including by reference to international standards where appropriate) are to be applied to guide a comprehensive, consistent and transparent approach across these areas.

- (3) For the avoidance of doubt and where appropriate, the Special Report must detail implementation plans and specify the date by which the arrangements detailed in accordance with 2(2) will be in place.

3. Requirement to have the Special Report audited

- (1) The Licensee must have the Special Report audited by Ernst and Young (**Audit Report**).
- (2) The Licensee must provide the Audit Report to ASIC by 31 May 2023.

Dated 14 December 2022

Signed.....

Claire LaBouchardiere
As delegate of the Minister under section 1101J of the Act