Cboe Australia Guidance Note 2C:

CHESS Depository Interests

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1. Introduction

This Guidance Note has been published to explain what CHESS Depositary Interests ("CDIs") are and how they operate.

It is relevant for product issuers that are applying to be listed on Cboe Australia ("Cboe AU") under the **Exempt Intralisting** or **Exempt International Listing** categories and are domiciled in certain countries.

Securities traded on the Cboe AU market are held in uncertificated form and transfers of title occur electronically through an electronic system maintained by ASX Limited called the Clearing House Electronic Subregister System, or "CHESS".[1]

However, some countries do not recognise uncertificated holdings or electronic transfer of title. CDIs enable product issuers domiciled in those jurisdictions to have securities quoted and traded on the Cboe AU market and cleared and settled through CHESS.

This Guidance Note should be read in conjunction with Guidance Note 2B: Cboe Exempt Intralisting, International Exempt Listing, and New Zealand Listing.

2. Basics of CDIs

2.1 What are CDIs?

CDIs are a type of depositary receipt that allows the holder to obtain the economic benefits of owning securities without holding legal title to them. CDIs were developed by ASX to facilitate the transfer and holding of interests in foreign securities in CHESS.

A CDI represents a unit of beneficial ownership in an underlying foreign security that is held on trust for the CDI holder by a depositary nominee as legal owner. The economic benefits attaching to the underlying securities accrue to the CDI holder.

Currently, the only depositary nominee offering CDI services for Cboe AU quoted securities is CHESS Depositary Nominees Pty Ltd ("CDN"). CDN is a wholly owned subsidiary of ASX Limited established to fulfil the functions of a depositary nominee in the CHESS settlement system.

2.2 How CDIs interact with CHESS

CDIs can be held in uncertificated form and transferred electronically via CHESS even if the underlying securities themselves cannot be.

Under the CHESS system, the principal register of securities for most listed entities is made up of two electronic uncertificated subregisters — a "CHESS subregister" maintained by ASX Settlement and an "issuer sponsored subregister" maintained by or on behalf of the product issuer[2].

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[1] CHESS is operated by ASX Settlement Pty Limited, a wholly owned subsidiary of ASX Limited ("ASX"). References to the Settlement Rules, CHESS operating rules or to the operating rules of the CHESS facility in this document mean the ASX Settlement Operating Rules.

[2] Entities will generally engage an Australian registry to establish and administer the issuer sponsored subregister.

If a product issuer is domiciled in a country whose laws have the effect that CHESS cannot be used for holding legal title to its securities[3], it must have CDIs issued over its Cboe AU quoted securities and have a CHESS subregister and an issuer sponsored subregister in those CDIs.

2.3 Offering and Trading CDIs

An offer of CDIs to investors by a foreign issuer is treated as an offer of the underlying securities and regulated accordingly under the Corporations Act.[4]

When CDIs are bought and sold on the Cboe AU market, the seller of the CDIs meets their settlement obligation by transferring the CDIs to the buyer. This also results in the transfer of the beneficial ownership of the underlying securities to the buyer. The legal title to the underlying securities remains in the name of the depositary nominee, now holding the underlying securities on trust for the buyer.

2.4 Restrictions

CDIs are only available to entities domiciled in a country overseas whose laws have the effect that CHESS cannot be used for holding or transferring legal title to its securities. An entity domiciled in a country overseas whose laws allow CHESS to be used for holding or transferring legal title to its securities must have its actual securities (rather than CDIs) quoted and traded on the Cboe AU market.

A product issuer should satisfy itself that it is eligible to issue CDIs and consider obtaining a legal opinion to confirm this, prior to submitting an application to Cboe AU. If there is any doubt over whether CDIs can be used, Cboe AU may require the product issuer to provide a copy of the legal opinion to clarify that it is eligible to use the CDI facility.

3. How to Issue CDIs

3.1 Application

To issue CDIs, a product issuer must be approved by ASX as a foreign issuer of CDIs under the operating rules of the CHESS facility. This is also a criterion for listing under Rule 2.2.1(f) and quoting under Rules 2.3.2(a) and 2.3.5(b). An application for admission to the Cbe AU official list will include an application to ASX for the necessary approvals. Cboe AU may provide this to ASX on the product issuer's behalf, or will otherwise inform the product issuer of the required steps to engage with ASX directly.

The product issuer must provide in its application for listing:

- an appointment of CDN to act as the depositary nominee in respect of any CDIs issued over the securities which the product issuer is seeking to have quoted on Cboe AU, an acknowledgement of the indemnity given by the entity to CDN as the depositary nominee, and an acceptance of the power of

[3] Cboe AU understands that New Zealand, Papua New Guinea, and Bermuda currently allow CHESS to be used for holding legal title to securities and that Israel allows this in certain circumstances.

[4] See ASIC Regulatory Guide 253 Fundraising: Facilitating offers of CHESS Depositary Interests and the ASIC Class Orders referenced in that guide.

attorney given to the entity by CDN as the depositary nominee, under the CHESS operating rules;

- an irrevocable authorisation for CHESS to establish and administer a CHESS subregister in respect of those CDIs;
- a commitment to satisfy the technical and performance requirements of the CHESS facility and meet any other requirements CHESS imposes in connection with the participation of the product issuer's CDIs in that facility;
- a commitment that when CDIs are issued, the product issuer will enter them in the CHESS holding of the applicant before the securities they are over are quoted, if the applicant instructs the entity on the application form to do so; and
- a commitment from the entity that it will make sure that CDIs are issued over securities if the holder of quoted securities asks for CDIs.

If the entity is approved for admission to the Cboe AU official list and has been approved by ASX as a foreign issuer of CDIs, Cboe AU will notify the product issuer that it has been approved.

3.2 The ratio of CDIs to underlying securities ("transmutation ratio")

It is generally expected that the transmutation ratio of CDIs to underlying securities is one for one. This means a holding of CDIs will represent an equivalent number of underlying securities.

Transmutation ratios other than one for one may be permitted in certain circumstances. Any such proposal should be discussed with Cboe AU prior to applying for admission to the official list.

3.3 Vesting securities in CDN[5]

After receiving the approvals referred to in section 3.1, the product issuer must arrange to vest title to the relevant number of underlying securities in CDN as the depositary nominee. As part of the conditions of admission, the product issuer will be required to provide to Cboe AU a statement, which will be provided to ASX Settlement, setting out:

- the number of CDIs that have been issued;
- the transmutation ratio of the CDIs into the underlying securities,
- that title to the underlying securities has been vested in CDN as the depositary nominee;
- if the underlying securities are certificated, that the certificate(s) representing CDN's holding of the underlying securities are held by the entity's principal registry for safekeeping; and
- if the underlying securities are held in an account with an approved clearing house, that CDN's holding of underlying securities are held in a segregated account with that clearing house.

[5] ASX Settlement Operating Rule 13.2.3

3.4 The effect of vesting securities in CDN[6]

CDN holds all right, title and interest in the securities vested in it subject to the right of the holder of a CDI to receive all direct economic benefits and any other entitlements in relation to those securities.

CDN must not dispose of the underlying securities or create any interest (including a security interest) which is inconsistent with the title of the depositary nominee to the underlying securities or the interests of the holders of CDIs in respect of those securities, except as otherwise specifically allowed for under the CHESS operating rules.

4. Rights of CDI Holders

The Settlement Rules provide that:

1. a person who holds CDIs in relation to underlying securities is entitled to all the direct economic and other benefits attaching to those securities; and
2. as far as practicable, a CDI holder receives those economic and other benefits to the same extent they would have if they held the underlying securities directly.

The Settlement Rules also enable the the issuer and its registry to deal directly with the holders of CDIs without the intervention of the depositary nominee.

A high-level, non-exhaustive summary of key CDI holder rights is set out below.

4.1 Dividends[7]

A product issuer that has issued CDIs over underlying securities must pay any dividend declared in respect of the underlying securities directly to the holders of the CDIs.

4.2 Dividend Investment Schemes and Bonus Share Plans[8]

If a product issuer has a dividend investment scheme or bonus share plan operating in respect of the securities underlying CDIs, it must also make available all benefits and entitlements arising under that scheme or plan to the holders of the CDIs.

4.3 Corporate actions[9]

A product issuer that has issued CDIs over underlying securities must administer certain corporate actions[10] as if each holder of CDIs was a holder of a corresponding number of underlying securities unless it is prohibited by the laws of its place of establishment from doing so.

If the benefits conferred in the corporate action are additional or replacement securities, the product issuer must ensure that title to those securities is vested in

[6] ASX Settlement Operating Rule 13.4
[7] ASX Settlement Operating Rule 13.6.2
[8] ASX Settlement Operating Rule 13.6.8
[9] ASX Settlement Operating Rule 13.6.7
[10] Corporate Actions covered by ASX Settlement Operating Rule 13.6.7 include bonus issues, rights issues, mergers, reconstructions and any action taken by an entity to reduce, or that will have the effect of reducing, the number of underlying securities held by a depositary nominee.

the depositary nominee as legal holder and the benefit of those securities is distributed to the holders of CDIs as additional or replacement CDIs.

If the laws of its place of establishment prevent the entity from complying with these obligations, it must notify Cboe AU, who will also notify ASX Settlement, in writing and, if possible, under those laws, provide details of an alternative proposal designed to place CDI holders, as nearly as practicable, in an equivalent economic position. This may include, for example, the payment of a cash component to compensate the holders for any loss of, or inability to receive, entitlements under the corporate action.

If the laws of its place of establishment prevent the entity from putting forward an alternative proposal, the product issuer must provide Cboe AU, who will also notify ASX Settlement, in writing. The product issuer must also provide an undertaking to disclose the details of the corporate action and the statement to the holders of CDIs in due course.

4.4 Takeover offers

It is generally expected that if a target company (a 'target') has issued CDIs over some of its securities and a third party (a 'bidder') makes a takeover offer for those securities, the bidder will make corresponding offers directly to the holders of CDIs to acquire their CDIs.

The Settlement Rules provide that the target must provide the bidder with certain information about the details of CDI holders to facilitate the extension of the takeover offer to them.[11]

If the CDIs are held on the CHESS subregister, takeover offers for the CDIs can be processed electronically by ASX Settlement if the necessary steps are followed.[12] If the CDIs are held on an issuer sponsored subregister, a CDI holder will be able to accept the takeover offer by completing an acceptance and transfer form and sending it to the person/place required under the offer document.

In either case, the depositary nominee is not required to do anything in relation to the takeover offer for the underlying securities it holds.

However, if the bidder chooses only to make a takeover offer for the underlying securities and not to make a corresponding offer for the CDIs, then ASX Settlement will follow certain procedures to enable CDN to take instructions from CDI holders in relation to the offer and will carry-out those instructions.[13]

4.5 Attending and voting at security holder meetings[14]

Ordinarily, CDI holders are unlikely to be able to attend or vote at a meeting of security holders as they are not the registered holders of the underlying securities.

However, under Rule 8.3.10, a company that has issued CDIs must allow CDI holders to attend any meeting of holders of the underlying securities, unless the laws of the

[11] ASX Settlement Operating Rules 13.9.1(j) and 14.13
[12] ASX Settlement Operating Rule 14.14
[13] ASX Settlement Operating Rule 13.17
[14] ASX Settlement Operating Rule 13.8

jurisdiction in which the product issuer is established prevent those holders from attending the meeting.

Further, the Settlement Rules provides that CDN, as the registered holder of the underlying securities, will vote in accordance with the instructions of CDI holders.

The Settlement Rules describe how CDN will do this, including by having processes to ensure:

- CDI holders receive notice of meetings they are entitled to attend at the same time as security holders
- CDI holders may attend meetings
- CDI holders can direct CDN on how it should vote with respect to the resolutions described in the notice;

The company is required to collect and process any such directions from CDI holders and to provide CDN with the necessary information to enable it to lodge a proxy for the meeting.

CDN will appoint a proxy or proxies to vote in accordance with the instructions of CDI holders.

4.6 Transmutation[15]

A holder of securities in a company that has been approved as an issuer of CDIs may elect at any time to convert those securities into CDIs. Similarly, a holder of CDIs can elect at any time to convert CDIs into the underlying securities ("transmutation").

To do this, the holder must provide notice to the company as well as any supporting documents needed to transfer the underlying securities from the holder to CDN or from CDN to the holder (as the case may be)[16]. This will generally be done through a CHESS participant (if the CDIs will be entered/are entered on the CHESS subregister) or through the company's registry (if the CDIs will be entered/are entered on the issuer sponsored subregister).

Upon receipt of the notice and all necessary documents, the Company must:

- In the case of transmutation into CDIs, arrange for those securities to be registered in the name of CDN, record the holding of the relevant number of CDIs, and notify the holder that the transmutation has occurred.
- In the case of transmutation into underlying securities, arrange for those securities to be registered in the name of the CDI holder, record the reduction in holding of the relevant number of CDIs, and notify the holder that the transmutation has occurred.

These obligations will usually be performed on the issuer's behalf by its Australian registry, coordinating with its principal registry offshore where necessary.

[15] ASX Settlement Operating Rule 13.3

[16] The requirements for transferring the underlying securities between the holder and CDN may vary, depending on the law and practice of the entity's place of establishment.

4.7 Right to Inspect Register[17]

A product issuer that has issued CDIs over underlying securities is required to make its CDI register available for inspection in Australia as if it were a register of members of an Australian listed public company. Typically, this obligation will be met on the product issuer's behalf by its Australian registry.

4.8 CDI Holding Statements

Whenever a CDI holder acquires CDIs, disposes CDIs, or transmutes CDIs into underlying securities or vice-versa, they will receive a holding statement. CDI holders who are sponsored by a participant in CHESS will receive CHESS holding statements, issued by ASX Settlement. CDI holders who are issuer sponsored will receive holding statements from the company (and this is an obligation on companies under Rule 4.3), although this is typically done on the product issuer's behalf by its Australian registry service provider.

5. Obligations of CDI Issuers

A high-level, non-exhaustive summary of key obligations that apply to a product issuer that has issued CDIs over underlying securities is set out below.

5.1 Complying with the Settlement Rules

Under Rule 4.2.1, a product issuer that issues CDIs must comply with the Settlement Rules.

5.2 Registers[18]

A product issuer approved to issue CDIs must maintain:

1. A principle register that records the interest of CDN in the underlying securities; and
2. A CDI register that holds information equivalent to a register of members of a listed Australian public company.

To complement this, under Rule 4.2.2, the product issuer's (issuer sponsored) subregister must correctly record legal title of CDI holders.

5.3 Reconciliation[19]

A company that has issued CDIs over underlying securities must ensure that the total number of CDIs on its CDI register is equal to the total number of underlying securities registered in the name of CDN on its principal register. If the company holds certificates in respect of the underlying securities, it must also ensure that the certificates in its possession represent the same number of underlying securities as are registered in the name of CDN.

[17] ASX Settlement Operating Rule 13.5.3
[18] ASX Settlement Operating Rule 13.5.1
[19] ASX Settlement Operating Rule 13.5.2

5.4 Ongoing Reporting Obligations

Under Rule 5.5, a company that has CDIs issued over underlying securities must complete a Form 5C: CDIs on Issue and give it to Cboe AU within 5 business days of the end of each month.

Form 5C: CDIs on Issue compares the total number of each class of CDIs quoted on Cboe AU at month end to the total number of that class of CDIs quoted on Cboe AU at the end of the previous month. The net difference:

1. if positive, represents the additional number of CDIs to be quoted on Cboe AU at month end; or
2. if negative, represents the additional number of CDIs to be removed from quotation on Cboe AU at month end.

Cboe AU will charge the entity an additional listing fee at the rate set out in the Cboe AU Fee Schedule if the number of CDIs quoted on Cboe AU exceeds the number for which the entity has previously paid an initial listing fee or an additional listing fee.

5.5 Periodic Reporting Obligations

Under Rule 5.13, a company that has issued CDIs must include certain information relating to the nature, number and holders of CDIs on issue in their annual report.

5.6 Indemnity[20]

A company that has issued CDIs over its securities is required to indemnify CDN against all expenses, losses, damages, and costs it may incur when performing its functions as depositary nominee.

6. CDIs & Delisting

When a company delists from Cboe AU, the company must, and CDN will, take steps to unwind the CDIs over the underlying securities.

This will generally commence with a communication from the company to CDI holders inviting them to transmute their CDIs to the underlying securities.

If the CDI holders do not do so by the required date, CDN will usually revoke the trust under which it holds the underlying securities, cancel the remaining CDIs, and attempt to transfer the underlying securities to the former holders of those CDIs.[21]

If CDN cannot complete the transfer of the underlying securities to a holder, it will sell the underlying securities and either provide the net proceeds of sale to the holder or deal with the money in accordance with the laws applicable to unclaimed moneys if the holder cannot be located.

Cboe AU may impose any conditions on a delisting it deems appropriate to help achieve these outcomes.

[20] ASX Settlement Operating Rule 13.13.1
[21] ASX Settlement Operating Rule 13.5A