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Mr Joseph Longo
Chair
Australian Securities and Investments Commission
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By email: markets.consultation@asic.gov.au

Australia's evolving capital markets: ASIC discussion paper on the dynamics between public and private markets

Dear Mr Longo,

Cboe Australia Pty Ltd (**Cboe Australia**) welcomes ASIC's discussion paper on Australia's capital markets and thanks ASIC for the opportunity to provide input on this important paper. Cboe particularly thanks ASIC for the extension to the deadline for submissions. Cboe's submission responds to question 4 of the paper: "*What developments in public or private markets require regulatory focus in Australia in the future?"*

In approaching this question below, Cboe Australia has drawn on Cboe Global Markets' experience as to what makes for good public markets generally, and Cboe Australia's observations of Australia's markets specifically, which have some unique aspects, such as their structure, participants and history, which in some cases necessitates unique regulatory treatment.

We offer four specific recommendations to further improve Australia's public markets.

Executive Summary

Financial market infrastructures underpin Australia's public markets, which continue to represent the 'gold standard' for transparent capital raising and price discovery resulting from the robust regulatory framework governing their operation. Drawing on its experience operating 27 markets in Australia and other jurisdictions around the world, Cboe believes that further regulatory focus would continue to support the development of public markets in Australia.

Specifically, while Australia's financial markets have benefited greatly from competition to date, there remains work to be done to advance the competitive environment for Australia to realise fully the resilience and innovation that will prepare its public markets for the future. Addressing this opportunity, Cboe has offered the following four recommendations, discussed further below, for discussion.

Recommendation 1: ASIC should broaden the scope of the CS Services Rules to cover clearing and settlement services for exchange-traded equity derivatives.

Recommendation 2: ASIC should carry out further work on the governance of the ASX clearing and settlement facilities.

Recommendation 3: the Council of Financial Regulators should consider the vertical integration of the ASX Group.

Recommendation 4: ASIC should review and amend its rules other instruments and regulatory guidance to ensure they are drafted in a market-neutral manner.

By better facilitating competition, each of these recommendations is directed to achieving a broader Australian public capital market proposition that is clearly more innovative in the solutions that can be delivered to investors. Implemented well, these recommendations will also create genuine resilience in our markets by eliminating or better managing single points of failure in legacy arrangements.

By doing so, Australia has the opportunity to better compete for increasingly global capital flows with a global best-practice market environment, thereby positioning Australia to attract and retain capital flows into the future.

Introduction to Cboe Australia

Cboe Australia Pty Ltd is an Australian Market Licensee which commenced operations as Chi-X Australia in October 2011, and was acquired by Cboe Global Markets in June 2021. Today, Cboe Australia accounts for approximately 20% of daily traded volumes in cash equities, lists approximately 10% of all ETFs offered in Australia and over 1300 warrant products. In 2025, Cboe will introduce a comprehensive corporate listings offering.

Now a part of the Cboe Global Markets Group, Cboe Australia is supported by world-class financial market technology, capability and risk management. Since its founding in 1973, Cboe's aim has been to innovate and build trusted markets that bring together buyers and sellers in a fair, orderly, and transparent manner. Today, Cboe operates 27 markets across countries including US, Canada, EU, UK, Japan and Australia, servicing a truly global client base by delivering solutions that are globally consistent and locally optimised.

In Australia, from the commencement of its operations, Cboe Australia has delivered competition to local financial markets by offering significantly reduced transaction fees and important exchange features absent in the Australian market, saving Australian investors approximately **$500 billion** in transaction fees since 2012. Market participants continue to enjoy the broader dividends of competition in the form of new and improved market features, providing better outcomes for investors in Australia's financial markets.

What makes for good public markets?

Public markets represent the 'gold standard' for efficient capital formation and price discovery. The robust regulatory framework governing their operation ensures transparency and foster investor confidence. Cboe's experience operating markets in other jurisdictions has demonstrated that there are three features that enable and define strong public capital markets.

1. **Strong exchange competition across listings, participation and trading**

   The global jurisdictions within which Cboe operates, including the US, Canada and EU, demonstrate the benefits of highly competitive exchange businesses with strong competition in the pursuit of listed issuers, participant preferencing and trade execution. This competition delivers high levels of issuer and investor benefit as exchanges compete across a range of products and services, and exchanges are incentivised to offer tailored solutions to specific market segments. These levels of competition are possible for at least two reasons.

   Firstly, index creators in these jurisdictions do not distinguish or discriminate between the exchanges or venues on which securities are listed when deciding which securities to include in an index. Both the S&P/500 and Dow Jones Industrial Average have no specific eligibility criteria for exchange listing domesticity. In a market context where retail investors are increasingly accessing index-tracking ETFs, this becomes particularly important to promote competition in listings by exchanges and the mobility of listings between exchange operators. The exclusion of companies from key indices based on listing exchange provider is a barrier to the emergence of effective competition for corporate listing venues, as it limits any corporate issuer with aspirations for inclusion in an index to the approved listing venues.

   Secondly, regulatory settings in US, Canada and various European Union EMIR require or support the trading of securities across all comparable exchanges in a jurisdiction, regardless of the exchange which lists the security. This structure ensures issuers are not unduly influenced by an exchange's market power when deciding on their listing venue. Moreover, this means exchange must compete fiercely to attract both corporate issuers and investors, further benefiting the markets overall and capital formation. As a secondary benefit, this approach also enhances market resilience as issuers and investors are not dependent on a single exchange venue for 100% up-time performance.

2. **Strong derivatives markets**
   Deep, dynamic and liquid supporting derivatives markets are another common feature of strong equities markets globally. Derivatives markets complement equities markets by facilitating efficient risk management by investors, particularly institutional investors such

as fund managers. Key markets demonstrating the complementary benefit of strong, liquid derivatives markets include the US and a number of markets across the APAC region, supporting each as a destination for capital. Conversely, illiquid or poorly operated derivatives markets are a disincentive for broader equity market participation for these investors.

3. **Resilient, well-resourced clearing and settlement facilities**
   Finally, stable clearing and settlement (CS) facilities are a critical foundation of all trading markets, whether for securities or derivatives. Stability in clearing and settlement is born of a culture of vigilant risk management and stakeholder-focused decision making. Such a culture is necessary to facilitate management decisions that recognise the long time-horizon and substantial capital expense of investments required for stable and resilient clearing and settlement facilities. The depository Trust & Clearing Corporation (**DTCC**) and Options Clearing Corporation (**OCC**) facilities in the US are good examples of clearing and settlement entities of this type.

   Without a stable CS facility underpinning the operation of licensed financial markets, investors face significant operational and/or credit counterparty risks which they are otherwise unable to effectively manage, and the current structure of public exchanges – where trade execution counterparties are anonymised, allowing order books to operate on prince-time priority – would not be viable. Stable clearinghouses therefore enable trading markets to function in the most efficient and effective manner possible for the benefit of all participants.

Cboe's observations of Australia's capital markets

Cboe offers the following observations on the state of Australia's capital markets.

IPO Activity and Private Markets

Cboe notes ASIC's observations in the Discussion Paper of reduced Initial Public Offering (**IPO**) activity over recent years, and the increasing proportion of capital formation occurring in private markets. While in Cboe's view a sustained reduction in IPO activity is a poor outcome from an investor perspective, Cboe does not offer a view as to whether the relative decline in IPO activity is cyclical or secular.

More generally, Cboe recognises that private markets can play a complementary role to public markets in capital formation, particularly for firms in a pre-IPO phase of development. Cboe does not offer a view as to whether private markets should be subject to additional regulatory oversight. Rather, as detailed further in this submission, Cboe Australia's focus remains fixed on the further improvement of public markets.

Market-wide Resilience

Consistent with Cboe Australia's view that broad connectivity between exchanges is a key feature of strong public markets, Cboe Australia strongly supports increasing broker connectivity to multiple exchanges. Increased connectivity supports operational resilience across Australia's public markets by providing alternative trade execution venues in the event of an outage at one exchange. To this end, Cboe supported the release of Report 708: *ASIC's expectations for industry in responding to a market outage*. However, not all participants interpreted this guidance in the same way, and some solutions may require further uplift to meet modern resilience standards. Accordingly, more work remains to be done to achieve broader investor connectivity, including for trading and settlement participants offering investment administration (sometimes known as "wrap") services.

Regulation of Monopoly CS Services

ASIC's implementation of the ASIC CS Services Rules 2025 is also a landmark development. In imposing obligations in relation to governance, pricing and access to CS services for cash equities, the CS Services Rules are the strongest step yet to secure a competitive, or 'competition-like', future for users of Australia's monopoly CS services. ASIC deserves credit for its work, alongside other CFR agencies, in implementing these rules, and Cboe Australia looks forward to engaging with ASIC further on additional steps to improve users' input and access to monopoly cash equity CS services as the rules come into force and their effects become clear, and as part of ASIC's broader work on governance issues at market infrastructures.

Australian indices

Unlike in the US, Australian indices include eligibility criteria relating to the exchange on which a corporate issuer is listed. Issuers who are not listed on ASX are excluded from inclusion in ASX indices. This means that issuers must factor in their prospects for index inclusion and the desirability of index inclusion into their listing decisions, which reduces competition in other metrics like the efficiency of the administration of the listing function, liquidity, and trade execution outcomes in the issuer's securities.

Australia's ETF Market

Changes to ETF naming have also been positive development for Australian investors. Standardised naming conventions support investor confidence in dealing with the wide variety of different funds that are available on Australian exchanges. In particular, ASIC's updates to Information Sheet 230 *Exchange traded products: Admission guidelines* to standardise the use of 'ETF' and remove the term 'managed fund' were positive steps. Cboe Australia also commends ASIC for its work on responding to industry feedback on the difficulties posed by the 'complex' labelling requirements.

More generally, the ETF market has continued to grow, which Cboe Australia considers is positive for Australian investors. ETFs provide investors with access to a wide range of investment strategies and underlying assets. Exchange-traded products such as private credit or equity ETFs may be a useful avenue for investors to access some of these types of investment opportunities. ETFs benefit from transparency and liquidity but can be constructed in a way that provides access to underlying products with features more commonly found on private markets. In Cboe Australia's view, ETFs can play a role in connecting public and private markets by giving investors access to products similar to those available in private markets.

Improving public markets by further unlocking competition

As set above, Cboe has observed a sustained focus and important regulatory outcomes from Australia's regulators in facilitating competition in public markets. These outcomes have clearly driven improvement in market offerings and outcomes for Australian investors. However, Cboe would suggest that there is more work to be done to advance the competitive environment for Australia to realise fully the resilience and innovation that will prepare its public markets for the future.

Some of Cboe's recommendations below are relatively straightforward, while others will require further discussion which we propose to initiate with this submission. Each of the specific recommendations below is directed to creating a broader Australian public capital market proposition that both recognises the reality of increasingly global competition for capital and reflects global best-practice, thereby positioning Australia to attract and retain capital flows.

Recommendation 1: Broaden the scope of the CS Services Rules to cover CS services for exchange-traded equity derivatives

Recommendation 1*: ASIC should engage with Government to broaden the scope of the ASIC CS Services Rules 2025 to cover exchange-traded equity derivatives.*

Cboe Australia takes this opportunity to encourage ASIC to consider the state of Australia's derivatives markets. Derivative markets play an important role supporting participation in capital markets by providing access to risk management products. Lacking the ability to manage risk, capital allocators may be less likely to participate in primary or secondary debt or equity markets, which in turn reduces liquidity and capital formation across the economy.

Accordingly, it is important that Australia's equity derivatives markets are competitive and liquid. Unfortunately, industry has consistently criticised Australia's derivatives markets for being expensive and illiquid, which makes risk management correspondingly more expensive and participation in Australia's equity markets less attractive.

Consistent with the reasoning outlined in respect of Recommendation 2, Cboe Australia considers that the vertically integrated monopoly market structure for equity derivatives clearing in Australia has limited competition and innovation which might otherwise deepen Australia's equity derivatives markets.

Cboe Australia acknowledges that work to consider the vertically integrated monopoly structure of the ASX Group pursuant to Recommendation 3 would take some time. That work may address the issues in derivatives markets at the same time. However, in light of the likely timeframe for such a consideration, Cboe Australia submits that ASIC should engage with government to amend the relevant ministerial instruments which set the scope of the ASIC CS Services Rules 2025 and expand them to apply to CS services provided in relation to exchange-traded equity derivatives.

Expanding the scope of these rules would support competition in Australia's equity derivatives markets which, in turn, can reduce barriers to participation in primary and secondary equity markets posed by expensive and illiquid risk management tools. If, and/or when, government takes steps to address the vertically integrated structure of the ASX Group, then Cboe Australia expects these rules would be reconsidered at that time.

Recommendation 2: ASIC should carry out further work on the governance of ASX

***Recommendation 2**: ASIC should carry out further work on the governance of the ASX CS facilities.*

In Report 808 *Response to submissions on CP 379 ASIC CS Services Rules* (**REP 808**) ASIC identified those submissions it had incorporated into the ASIC CS Services Rules 2025 and those it had not. As a result of industry submissions, ASIC decided not to incorporate certain proposals relating to governance of the ASX cash equity CS facilities but noted it would undertake broader work on governance in relation to these entities in 2025.[1]

Cboe Australia continues to strongly support ASIC undertaking further work in relation to ASX's governance arrangements for its cash equity CS facilities. ASX's governance arrangements have been an industry concern for several years, and many users have felt that their concerns were not adequately considered. While the ASIC CS Services Rules 2025 were a positive development, there is scope for further reform to support all users' input. Cboe Australia continues to believe this is best achieved through more effective user representation within ASX Clear's various committees and user groups, as well as user representation at the board level of the CS facility licensees.

Recommendation 3: The CFR should consider the vertical integration of the ASX Group

***Recommendation 3**: ASIC, in consultation with the CFR, should review whether the vertically integrated structure of the ASX Group limits the performance of Australia's public markets.*

Australia's financial market infrastructure is dominated by the vertically integrated ASX Group, which has restricted access to critical functions including clearing and settlement and central securities depository functionality (which can be used to provide, for example, depository nominee services). In Cboe Australia's view, this market structure has created both competition risks and operational risks, both of which limit the attractiveness of Australia's capital markets.

[1] See REP 808 Response to submissions on CP 379 ASIC CS Services Rules, ASIC, February 2025, page 10, available at https://download.asic.gov.au/media/0slfgj1u/rep808-published-25-february-2025.pdf

In REP 808, ASIC noted that industry participants believe the prospect of competition in clearing and settlement for cash equities has diminished since 2017 when the CFR published its new and revised policy statements governing the monopoly and competitive provision of CS services for cash equities in Australia.[2] In Cboe Australia's view, this is at least partly attributable to the demands of the CHESS replacement project, which requires significant resourcing commitments from industry. This makes it difficult for some important industry participants, such as software vendors, to support a new entrant.

This makes it critical that the regulatory regime for market infrastructures appropriately manages the risks posed by ASX's vertical integration. There are at least two such key risks – namely, competition risks and operational risks.

Competition risks

Vertical integration can bring benefits to customers and markets but can also be leveraged in a way that is damaging to customers and the market as a whole where a vertically integrated group holds a monopoly over critical infrastructure. As a result, this market structure necessitates additional regulatory oversight to mitigate competition risks, including in ways which seek to prevent competition from emerging. In Australia, financial market infrastructure for equity securities – which underpins our equity capital markets – is defined by the challenge of adequately addressing the anti-competitive dynamic caused by vertical integration.

By contrast, in the United States – which hosts the most liquid securities and derivative markets in the world – critical monopoly financial market infrastructures are operated by mutualised firms, and no firm maintains a vertically integrated monopoly in equity securities and equity derivatives. The mutualised structure of the DTCC and the OCC and their respective charters incentivise and require them to serve all members, including exchange operators, equally.

Cboe recognises this is not the only successful model in the world, and evolutionary changes may occur in the US. In Europe, the most beneficial model is competitive interoperability that allows for multiple clearinghouses to compete to clear transactions from a multitude of trading venues across Europe. However, it is clear that in the US the mutualisation of the DTCC and OCC allows exchanges to compete on equal terms, benefiting participants, investors and ultimately the broader economy. These organisations actively support exchange competition and provide for effective governance, operations and risk management without the misaligned incentives created by vertical integration.

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[2] Namely, the *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia*; the *Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia*; and the *Minimum Conditions for Safe and Effective Competition in Cash Equity Settlement in Australia*

With the introduction of the ASIC CS Services Rules 2025, ASIC has taken action to mitigate the competition risks stemming from the vertical integration of ASX. ASIC deserves genuine praise for this action. However, Cboe Australia considers that this discussion paper presents the opportunity for consideration of more fundamental reforms to the structure of the ASX Group.

Operational risks

The operational risks posed by the monopolisation of critical market infrastructure functions have been made clear by both the CHESS replacement project's failure in November 2022 and the settlement failure in December 2024. There remains considerable uncertainty about the reliability of critical components of Australia's financial market infrastructure.

In the context of this discussion paper, these failures diminish the reputation of Australia's markets and make Australia a less attractive place to invest. They place Australia's markets at high risk due to the risks facing ageing systems, and act as a handbrake on innovation and competition by tying up large amounts of industry resources which could otherwise be deployed to improve those firms' product offerings.

Cboe Australia acknowledges that multiple regulators are closely examining the CHESS replacement failure, the new replacement project, and the performance of the existing CHESS. However, to the best of our knowledge, these examinations will not consider either the impacts of these projects and failures on the health of the capital market as a whole, or the role of ASX's vertically integrated structure and profit motive in causing them.

Solving competition and operational risks

In Cboe Australia's view, Australia's public markets would be far better served by a structurally separate, standalone, industry-owned CS facility operator. Such an operator's commercial interests would be aligned with those of the industry as a whole.

Cboe Australia is aware that making such a significant change to Australia's dominant incumbent FMI is likely beyond ASIC's current powers, and that the recent ASIC CS Services Rules 2025 are designed to mitigate some of the risks posed by ASX's vertically integrated structure. Cboe Australia remains strongly supportive of these rules, and this recommendation should not be interpreted as any lack of faith in their ability to improve outcomes for participants in Australia's public markets.

However, this discussion paper presents an opportunity to consider more fundamental changes to Australia's market infrastructure. In Cboe Australia's view, the defining characteristic of Australia's public markets is the vertical integration of ASX's monopoly CS facilities for cash equities and equity derivatives. This means that any change will require significant groundwork before it can be implemented, including supportive CFR advice to government.

Cboe Australia strongly considers that ASIC should, alongside the CFR, begin this groundwork now by specifically reviewing the impact of ASX's vertical integration on Australia's public markets. At a minimum the CFR should set out the metrics or outcomes by which it would conclude that the vertical integration of cash equity exchange, clearing and settlement arrangements is no longer fit for purpose in Australia which would justify action by government to structurally separate these functions. Ideally, the CFR would go further and review the current operation of the vertically integrated trading, clearing and settlement arrangements against these metrics, with a view to providing advice to government about the outcome of that assessment.

Recommendation 4: Review and amend regulatory instruments and guidance to ensure they are market neutral

Recommendation 4: *ASIC should review and amend its regulatory instruments and guidance to ensure they apply in a manner which is market-neutral.*

Finally, Cboe Australia suggests that ASIC review and amend its regulatory instruments and guidance to ensure they are drafted in a manner that is market-neutral – or, in other words, in a way that applies to types of service provider and licensee rather than particular service providers and/or licensees.

The regulatory regime for market operators is complex. Depending on the securities listed, quoted, and/or traded, the market operator may need to consider the application of the Corporations Act, the Corporations Regulations, ASIC legislative instruments which impose substantive obligations (such as the ASIC Market Integrity Rules) and ASIC instruments which provide class order relief (such as *ASIC Corporations (Offers of CHESS Depository Interests) Instrument 2025/180*).

Unfortunately, many of the relevant ASIC legislative instruments are drafted in a manner which is not market-neutral but instead applies specifically to established incumbents. This means that new entrants must apply for ASIC to amend these instruments and grant further relief even after being granted a license and where no material policy issues apply. It also requires ASIC to amend its instruments when incumbents seek to expand their service offering.

This unsurprisingly increases the regulatory burden and constitutes a barrier to competition. To be clear, Cboe Australia accepts that regulatory scrutiny of new service offerings is a necessary and important part of the regulatory framework. However, the current drafting of many ASIC instruments requires changes even after regulatory risks have been assessed, which usually occurs at the time a license is granted or, for expanded service offerings, varied. By the time an applicant seeks changes to ASIC legislative instruments, these risks are usually not material.

Accordingly, Cboe Australia submits that ASIC should review its legislative instruments which apply to market infrastructures to ensure that they are drafted, where appropriate, in a market-neutral manner. This approach has the benefit of future-proofing the instruments to changing market structures, which both supports competition by removing a subtle but burdensome barrier and reduces ASIC's workload in responding to changing market structures.

To the extent that the application of a particular instrument gives rise to regulatory risks, these risks should be more appropriately considered at the time a license is granted or varied, rather than in a piecemeal fashion as an applicant engages with particular instruments in the regulatory regime.

Next steps

We hope that this submission assists ASIC in considering the important issues raised by the discussion paper. Cboe Australia is happy to provide ASIC with any additional input or assistance that it requires.

If you have any questions, please do not hesitate to contact Benjamin Phillips on 02 8078 1700 or at bephillips@cboe.com or myself on 02 8078 1700 or at equinn@cboe.com.

Yours sincerely,

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