



1 November 2023

Payments Strategy and Policy Unit
Financial System Division
Treasury
Langton Crescent
PARKES ACT 2600

By email to paymentsconsultation@treasury.gov.au

ASX SUBMISSION TO CONSULTATION ON REFORMS TO THE PAYMENT SYSTEMS (REGULATION) ACT 1998 – EXPOSURE DRAFT LEGISLATION

ASX appreciates the opportunity to provide comments on the exposure draft legislation to update the *Payment Systems (Regulation) Act 1998 (PSRA)*. It is timely and important to ensure regulators and government can address new risks related to payment systems as the provision of payments evolves and increases in complexity.

ASX acknowledges the benefits of creating a broad and flexible regulatory regime which can address emerging risks related to the payments system. However, a 'future-proofed' framework will inevitably capture entities not contemplated by policy-makers at the time of drafting the legislation.

Given that ASX's clearing and settlement facilities (**CS facilities**) currently operate in a highly regulated environment overseen by both ASIC and the RBA, and the policy intention expressed in the Explanatory Memorandum,¹ ASX has formed the view that it is not intended for CS facilities to be regulated under the PSRA. In addition, the Government has recently legislated to create an access regime with arbitration powers for the ACCC in relation to CS facilities,² which would significantly overlap with key powers granted to the RBA in respect of payment systems under the PSRA.

ASX acknowledges that merely coming within the definition of a 'payment system' will not create any additional obligations for an entity until a designation is made and action taken by the relevant regulator. However, given the significance of ASX's CS facilities to the overall financial system and the seriousness with which ASX takes its regulatory obligations, it is important that ASX has certainty regarding the regulatory regimes that apply to it.

If ASX has correctly interpreted the policy intention of the exposure draft materials, ASX suggests that the Explanatory Memorandum be amended to expressly note that it is not expected that entities such as CS facilities, which are already subject to an appropriately high level of regulation and oversight, would be designated by the RBA or the Minister. This would provide the necessary regulatory certainty.

Alternatively, we propose that consideration be given to an exemption for CS facility licensees under section 9(3) of PSRA, for the reasons set out above and in previous submissions to Treasury on this matter.

ASX notes that designations under the PSRA are notifiable instruments, meaning there is no requirement to consult before making a notifiable instrument, or to provide an explanatory statement for such an instrument. Should the Government not be minded to provide clarity about the application of the expanded PSRA to CS facilities, ASX would

¹ The Explanatory Memorandum at 1.10 provides "These amendments will ensure the payments regulatory framework is fit-for-purpose and can adequately address emerging risks and technologies in the payments ecosystem."

² Treasury Laws Amendment (2023 Measures No. 3) Bill 2023

appreciate the opportunity to discuss the application of the PSRA and potential designation of ASX's CS facilities with Treasury and/or the RBA ahead of any designation being made.

ASX welcomes the opportunity to discuss the matters raised in this submission in further detail. If you have any questions, please contact Shelby Brinkley, Senior Policy Advisor (shelby.brinkley@asx.com.au) or myself on the details below.

Yours sincerely



Diane Lewis
GM, Regulatory Strategy and Executive Advisor
diane.lewis@asx.com.au