

By email: [regulatorypolicy@asx.com.au](mailto:regulatorypolicy@asx.com.au)

Dear Mr Richards

22 June 2018

**CHESSE Replacement: New Scope and Implementation Plan (Non-confidential submission)**

Attn: Cliff Richards  
Office of General  
Counsel  
ASX Limited  
20 Bridge Street  
NSW 2000

NSX is a licensed market operator and is the second largest listing exchange in Australia behind ASX. As an Approved Market Operator (“AMO”), NSX currently uses the monopoly services provided by the ASX Group through CHESSE for settlement by virtue of a commercial contract to use the DvP Settlement Services. This allows participants to manually submit matching CHESSE dual entry settlement messages to settle an NSX trade. This has proved to be an impediment to growing the NSX market as the participant ‘user’ experience does not follow the same seamless post-trade process that participants are accustomed to when trading ASX securities which are cleared and settled through CHESSE. Some participants are currently not willing to take on this additional operational risk in settling NSX trades and the current construct therefore places NSX at a competitive disadvantage vis-à-vis ASX.

NSX is seeking to address this by taking up the ASX Clearing and Settlement Trade Acceptance Service (TAS) and, after negotiating with ASX Group for over 9 months on gaining access on equal terms, has recently submitted an application to take up the service. TAS will enable trades executed on the NSX market to be cleared and settled in the same seamless way as ASX trades. This will remove the operational risks to participants that exist today and improve the competitive position of NSX for listings.

It is against this background, and with the broader government objective in mind of facilitating competition in this area, that NSX makes the following comments in relation to the current consultation on CHESSE replacement.

Ongoing Stakeholder Engagement

Our comments on ASX’s plans for ongoing stakeholder engagement can only be read in the context of ASX’s approach to this important aspect of CHESSE Replacement to date.

*Engagement with AMOs to date*

The AMO CHESSE Replacement Working Group (the “AMO Working Group”) was formed at the request of non-ASX aligned AMOs, following approval from the ASX Clear Board. Throughout the course of the three meetings conducted under the auspices of the AMO Working Group, ASX undertook to define the current services provided to AMOs as a starting point for ascertaining AMOs’ CHESSE Replacement Day 1 requirements. Defining these existing services is a critical starting point in the process necessary to allow AMOs to obtain a greater level of understanding of ASX Group’s services so that

a holistic set of requirements from AMOs, including ASX itself, for the New Post-Trade System could be provided to ASX Group.

After three meetings and several exchanges with ASX, including a tripartite letter from NSX, Chi-X and SSX, no further engagement occurred between ASX and AMOs until 13 June 2018, some three months after the current consultation was issued and approximately one week before the submission deadline. On 13 June ASX finally held a meeting with AMOs to discuss the current services provided by the ASX Group. This was presented in draft form for the purpose of seeking feedback from AMOs. The next stage of the consultation with AMOs presented by ASX is to define these services provided under ASX's regulatory licences for clearing and settlement services. This is to be followed by a definition of future services.

NSX queries the adequacy and value of a consultation document published by ASX which fails to include a discussion of AMO requirements and a phasing and implementation plan for those requirements, taking into account the broader scope and implementation plan now being consulted on. We assume that should further business requirements be designed following the more robust consultation we have suggested below then ASX will need to re-consult on scope and implementation for the entire CHES Replacement project given the phased implementation approach it has proposed.

Given the very late provision by ASX of information critical to NSX's ability to provide meaningful feedback on the broader scope and implementation plan, NSX's feedback on the current consultation is limited to high level requirements and principles about the New Post-Trade System (NPTS). NSX may have additional comments to make, following the closure of the current consultation, depending on the substantive progress of the separate engagement with AMOs, which may supplement or alter the comments made below.

#### *Ongoing Stakeholder Engagement & 'genuine' consultation*

ASX Group has highlighted in section 9.3.4 of the paper (which deals with the AMO Working Group) the scope to address specific issues around the connectivity of their trading systems to the NPTS.

Given the lack of consistent and timely engagement with AMOs to date, NSX asks that the scope of the engagement with AMOs be broadened to include the points and concerns raised below. NSX also believes that as key stakeholders, AMOs should be invited to all other stakeholder consultation activities discussed in the consultation so as to be better placed to make informed views, and provide more holistic input, into the broader project. More fulsome engagement with AMOs on a broader range of issues is necessary to aid better understanding of the interplay between the constituent parts of the CHES replacement project.

Going forward, NSX expects the consultation by ASX to be more comprehensive, consistent and transparent. This means asking key stakeholders what they see the issues as being – as opposed to ASX defining the issues for stakeholders - consulting and engaging on those issues, providing sufficiently detailed information and options in order for stakeholders to provide meaningful feedback, demonstrably considering

feedback and providing a rationale for either accepting or rejecting specific feedback. Decisions must be objectively justifiable and capable of being defended against assertions of selectivity designed to favour the service provider. To date this approach has not been a feature of ASX's engagement – for example, NSX's February 2017 response to ASX's Supplementary Questionnaire does not appear to have been considered and accounted for by ASX at all, nor was it published by ASX despite repeated confirmation from NSX that it was free to do so - and is therefore not consistent with consultation best practice. ASX's consultation practices currently leave it exposed to allegations that the consultation is 'closed', limited in scope and effect, and decisions made on the back of it are unreasonable, fail to take into account all relevant considerations and made without regard to the impact on key stakeholders, some of whom are competitors.

In light of the ongoing failure by ASX to publish responses to the Supplementary Questionnaire we have included it again with this submission. **It is not confidential and we expect it to be published in its entirety.**

Issues that NSX seeks to raise, and will continue to engage with ASX on as part of the ongoing consultation with AMOs include the following:

a) *"Ownership" and/or control of customers*

An issuer choosing to list on NSX is NSX's customer. The current commercial relationship with ASX due to legacy systems and rules which are forced on issuers is not appropriate in a competitive landscape nor one which anticipates greater competition in the near future. We believe the services provided through the NPTS to issuers should be structured accordingly to recognise and give effect to the primary commercial relationship with the listing AMO. This is necessary to position AMOs as viable and credible competitors to the incumbent. In the circumstances it is necessary for ASX to demonstrate why its access to competitors' customers is essential and objectively justifiable. To the extent that access to and control of competitors' customers is an objective or by-product of the design of the CHES Replacement product then it is essential for ASX to demonstrate the necessity of the design choices that are being made and that there are no less anti-competitive design options available to it.

b) *NSX Securities Reference Data*

The current process which sees ASX act as an aggregator to issue and manage securities reference data is not appropriate. Whilst it may have its origins in the historic market structure and its incumbent legacy processes and systems, it is clearly the case that in the current policy environment of increased domestic competition and the era of globally competitive markets, it is not appropriate to have a competitor housing this function. Further, there are alarming precedents set in other jurisdictions whereby monopolistic control of key data, including ISINs, has resulted in substantial market harm. Sustaining the current set-up provides the incumbent with greater opportunities to leverage its existing market power into new products and services, further entrenching the advantages that come with being vertically integrated. We believe that ASX has an obligation to adopt an approach that results in greater contestability of services.

*c) ASX Corporate Actions STP Project*

The industry-wide cost savings from STP processing of corporate actions are selectively focused only on ASX securities. As it stands, it appears that NSX's securities will not benefit from these STP improvements which will result in substandard processes being encountered by participants. As such, NSX would like to discuss and understand the impact on the NSX market and how we can ensure that seamless processes are in place for participants across ASX and NSX securities. It is a key attribute of an orderly market to minimise the risks and costs associated with the processing of corporate actions.

*d) Ownership and Data Rights to NSX Market*

NSX would like to raise the issue of data ownership rights to NSX issuers, NSX securities, NSX participants, NSX transactions and NSX holdings held by investors as the current arrangements, where ASX through its business rules ties the relationship and ownership of AMOs' data, is not appropriate in a fully competitive landscape.

*e) Interoperability*

NSX would like to understand how ASX will position the NPTS for open source and interoperability with other potential competitors of post-trade systems. TARGET2, MiFIID and MiFIID2 are examples where competition across markets has been successfully implemented. The introduction of a NPTS is an opportunity to lay common tracks for competition so that all stakeholders can future proof their infrastructure spend.

Technical Solution for CHES Replacement

ASX indicates in 5.9.2 that it cannot yet ensure the interoperability given unknown requirements for unknown parties, although they have indicated that they will facilitate access to other clearing and settlement facility on the non-discriminatory terms. Whilst it is to be expected that interoperability cannot be fully defined in the absence of a specific interconnection request, it is expected that ASX's approach to achieving interoperability will appropriately consider an approach designed to have minimal impact on AMOs and participants, both technically and commercially, when designing the new system. Our earlier comments about the competitive effects of design choices are equally applicable here.

Testing and Release Management

We expect that ASX will ensure that NSX-related securities data will be included in all testing environments, and that non-AMO functionality will be included for Day 1 testing, and would be grateful for your confirmation that this is the case.

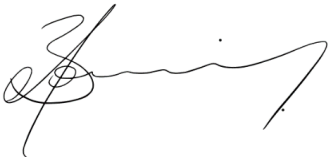
NSX also expects that the ASX 'Day 1' service for the NPTS will have a like-for-like process in place for ASX securities and NSX securities, settling through a TAS equivalent. We raise this expectation on the basis of our reasonable assumption that NSX's TAS application will proceed, and in light of the fact that NSX-listed securities are plain cash equities (as are ASX securities), are CHESS eligible and already on CHESS.

#### Migration and Implementation Approach

NSX expects that the migration and implementation plan envisaged by ASX in paragraph 8.1 will be finalized only after a process of seeking and considering feedback from AMOs and participants. This step is critical to ensuring that all stakeholders' requirements are accounted for in successful transition and that the transition itself does not have unintended consequences.

We look forward to working with ASX further on this important project which has implications, and the potential to realise significant benefits for, the broader Australian market. **NSX confirms that no part of this response is confidential and that ASX may publish it in its entirety.**

Yours sincerely



**Ann Bowering**

Managing Director and CEO

Cc: CFR agencies