



24 April 2023

Attention: Lauren Hogan

Capital Markets Unit
Financial System Division
Treasury
Langton Crescent
Parkes ACT 2600

Dear Ms Hogan

COMPETITION IN THE PROVISION OF CLEARING AND SETTLEMENT SERVICES

The Stockbrokers and Investment Advisers Association (SIAA) is the professional body for the stockbroking and investment advice industry. Our members are Market Participants and Advisory firms that provide securities and investment advice, execution services and equity capital-raising for Australian investors, both retail and wholesale, and for businesses. Practitioner Members are suitably qualified professionals who are employed in the securities and derivatives industry.

The history of the stockbroking profession in Australia can be found [here](#).

SIAA members represent the full range of advice providers from full-service and online brokers to execution-only participants and provide wealth advice and portfolio management services. Our members include Clear and Settlement participants.

SIAA welcomes the opportunity to provide feedback on the exposure draft *Financial Sector Reform (Competition in Clearing and Settlement) Bill 2023*. We note that we provided member feedback at the roundtable held with Treasury on 14 April 2023.

Executive summary

SIAA makes the following recommendations:

- ASIC to make the development of the rules a priority and consult with our members on their development.
- The rules regarding regulatory expectations should be developed as soon as possible.
- The rules implementing the minimum conditions must provide for interoperability arrangements between competing facilities.
- The explanatory memorandum must clearly state that the rules implementing the minimum

conditions regarding interoperability will not impose an obligation on clearing and settlement participants to connect to competitive facilities.

- The Explanatory Memorandum to clarify that an access seeker can include a clearing or settlement participant and that they can use the arbitration powers to resolve an access dispute on reasonable terms.

General comments

SIAA's members support the regulatory framework and the concept of competition in the provision of clearing and settlement services.

We note that the regulatory framework provides for the detail to be included in ASIC-made rules. These rules will deal with an extensive range of matters of significant importance to our members. We recommend that ASIC:

- make the development of the rules a priority.
- consult with our members on their development rather than release a draft set of rules for consultation. This provides an opportunity for our members who are Market Participants and Clear and Settlement Participants, to provide input to ASIC on their views of what the rules could cover. For example, a discussion with our members on what is fair and reasonable as regards pricing could inform the development of the rules. Another example where it would be of value to hear from our members is board composition of any clearing and settlement provider, to ensure proper governance frameworks are in place.

Regulatory expectations

In the absence of a committed competitor in either clearing or settlement, the rules implementing the regulatory expectations must provide a competitive outcome, notwithstanding that the services continue to be provided by a vertically integrated monopoly. It is important for Clear and Settlement participants that ASX remains responsive to users' evolving needs and provides access to its monopoly cash equity clearing and settlement services on a transparent and non-discriminatory basis with terms and conditions, including pricing, that are fair and reasonable.

It is of particular importance, that ASX ensures that its design of the CHES Replacement System does not raise barriers to access from competing clearing and settlement facilities. The design of the CHES Replacement System is currently underway, and it should not assume any integrated model with other ASX systems but ensure that interfaces and services offered are industry standard APIs. The regulatory framework will not be serving its purpose if the architecture of the CHES Replacement System means that any competitor entering the market finds that it is not a level competitive playing field, but advantages one clearing and settlement facility over another.

The rules implementing the regulatory expectations will need to be drafted as soon as possible.

Minimum conditions

The issue of interoperability between competing clearing and settlement facilities is an important one for our members. The rules implementing the minimum conditions must provide for

interoperability arrangements between competing facilities.

SIAA welcomes competition, which in general provides for reduced fees. However, competition could impose additional operational costs on participants. These costs could include up-front costs for establishing new connections, processes and technology and duplication of participation costs, such as legal and compliance. Any cost benefits achieved due to competition will be offset if participants are required to connect to all competitive clearing and settlement venues to achieve best execution.

We recommend that the Explanatory Memorandum clearly states that the rules implementing the minimum conditions regarding interoperability will not impose an obligation on clearing and settlement Participants to connect to competitive facilities. That should remain a commercial decision.

Arbitration powers

We welcome the introduction of an arbitration regime to clearing and settlement services to be used where there is an imbalance of bargaining power between a clearing and settlement service provider and an access seeker. We recommend that the Explanatory Memorandum clarify that an access seeker can include a clearing or settlement Participant and that they can use the arbitration powers to resolve an access dispute on reasonable terms.

Conclusion

If you require additional information or wish to discuss this submission in greater detail, please do not hesitate to contact SIAA's policy manager, Michelle Huckel, at michelle.huckel@stockbrokers.org.au.

Yours faithfully

A handwritten signature in black ink, appearing to be 'JF' with a stylized flourish and a small 'x' at the end.

Judith Fox
Chief Executive Officer