



Level 23, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

31 March 2014

Financial System Inquiry
GPO Box 89
Sydney NSW 2001

Dear Sir/Madam

Chi-X Australia Submission to the Financial System Inquiry

Chi-X Australia is grateful for the opportunity of providing a submission to the Financial System Inquiry (the Inquiry).

Chi-X Australia is an Australian market operator and a member of the Chi-X Global group of companies that has successfully launched alternate market platforms in other global financial centres. Chi-X Australia was the first stock exchange to compete in the trading of ASX listed securities and is therefore able to draw on a unique mix of Australian and global experience in capital markets innovation and development, an area of key importance to any national or regional financial system. The submission draws and focuses upon our experience with respect to capital market infrastructure, but the proposals outlined are applicable to a wide range of financial services and provided with a view to enhancing Australia as a place to do business.

The submission is **attached** and is divided into:

- (i) Part One - ways to improve the regulatory framework for the policy initiatives and innovations that will be necessary to enhance Australia as a place to do business and maintain its position as a financial centre;
- (ii) Part Two - financial market infrastructure in Australia.

The contents of the submission are not linked to specific paragraphs in the Inquiry's term of reference, however at a general level the submission is directed at the following:

- domestic competition and international competitiveness (paragraph 1.2 of the terms of reference);

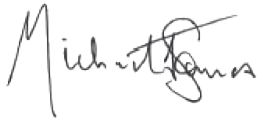
- assessing the effectiveness of financial regulation, including its impacts on costs, flexibility, innovation, industry and among users (2.3);
- the role, objectives, funding and performance of financial regulators, including an international comparison (2.5);
- the role and impact of new technologies and market innovations (3.1); and
- international integration (3.2).

The key theme in the submission cannot be articulated any better than what was said in the Final Report of the Wallis Inquiry:

The efficiency of the financial system affects every business and individual in the nation. There are very large efficiency gains and cost savings which could be released from the existing system through improvement to the regulatory framework and through continuing developments in technology and innovation. Markets can only deliver these outcomes where competition is allowed to thrive and where consumers have confidence in the integrity and safety of the system.

Chi-X Australia is hopeful that the comments outlined in the following pages are helpful for those with the responsibility of delivering enhanced financial markets for the next generation of Australians.

Yours faithfully



Chi-X Australia

Chi-X Australia Submission to the Financial Systems Inquiry

Part One

The Regulatory Framework – Enhancing Australia’s markets

1.1 Overview

- 1.1.1 The Australian financial services sector is no different from many other local industries in being subject to relentless global competition. Within the next twenty years (not much more than the period between the appointment of the Wallis and current Inquiries), it is estimated that an additional 3 billion people will join the middle class globally, many of them located in the Asia-Pacific area¹. The impact of this on financial markets in our region is likely to be profound, enduring and without precedent. Like never before it creates the possibility that, as has happened in other local industries, local consumers of financial services will ignore local policies and regulatory/industry protection frameworks to drive changes that will replace substantial local operators with more efficient offshore providers.
- 1.1.2 The potential impact of this is highlighted by the fact that relative to other regional locations, Australia’s ranking as a financial centre is on a downward trend and that on one measure, Sydney has lost its financial centre status as a “Global Leader”². Some commentators have concluded that “*There is little to show for decades of [Australia’s] efforts to position itself as a regional financial centre*”³. Anecdotally, all participants in Australia’s financial markets will be aware of local employees of Australian market participants that have either personally or had their positions moved offshore, along with key decision making centres for their firm. It is not automatic that an Australian company will raise capital through an Australian market nor that a derivative contract focused on largely Australian underlying physical products will be traded on an Australian exchange⁴.
- 1.1.3 That this is occurring at a time when Australia has emerged from a financial crisis as a global leader in many areas and with a financial system that is the envy of most, is a sound reason for all stakeholders in Australia’s markets to pause and reflect.
- 1.1.4 There are many ways in which Australia’s financial markets operate efficiently and productively, providing a solid platform to take advantage of the possibilities, and manage the threats, generated by the growing global wealth pool. However Australia will not respond to these challenges in a pro-active or dynamic manner, or in a way that best serves local investors, unless

¹ See “Hitting the Sweet spot: The growth of the middle class in emerging markets”, retrieved from [http://www.ey.com/Publication/vwLUAssets/Hitting_the_sweet_spot/\\$FILE/Hitting_the_sweet_spot.pdf](http://www.ey.com/Publication/vwLUAssets/Hitting_the_sweet_spot/$FILE/Hitting_the_sweet_spot.pdf)

² See page 9 of the Z/Yen Group Report “The Global Financial Centres Index 15” published March 2014 and retrieved on 25 March 2014 from <http://www.longfinance.net/programmes/financial-centre-futures/fcf-gfci.html>.

³ See “Australia’s Asian tilt is a mere wish list” by Satyajit Das, retrieved on 25 March 2014, from <http://www.ft.com/intl/cms/s/0/2bc15154-3d9b-11e3-9928-00144feab7de.html?siteedition=intl#axzz2wwPgZNh2>

⁴ For example, 43 Australian companies are listed or admitted to trading on the LSE (LSE Press Release 10 March 2014). See also the articles “Biota boss talks up Big Apple”, Australian Financial Review 28 April 2012, and “Sunshine Heart to de-list from ASX”, Australian Financial Review 30 January 2013.

its regulatory framework facilitates outcomes that enhance Australia as a place to do financial business.

- 1.1.5 Facilitating these outcomes will not occur by accident or as a consequence of a general ambition to create efficient markets: it needs, from those responsible for setting the regulatory and policy framework for financial services, a specific dedication to, and being held accountable for, the enhancement of Australia as a place to do business.
- 1.1.6 The remainder of Part One outlines the views of Chi-X Australia on how this may be achieved. Chi-X Australia offers these views not as a theoretical critique of the status quo but because there are global centres delivering results in these areas now and which are subject to similar measures. Where appropriate, each of the measures proposed is supported by reference to actual cases.

1.2 The Goals of Regulation – enhancing Australia as place to do business

- 1.2.1 Chi-X Australia is of the view that every policy development and implementation concerning financial markets must be required to transparently account on an ex ante basis for how that policy will enhance Australia as a place to do business by, among other things, encouraging innovation, growth and cost efficiencies.
- 1.2.2 The differences between Australian and global bench marks in this area are highlighted by comparing the regulatory experiences of Chi-X Australia, on the one hand, and BATS Chi-X Europe on the other.
- 1.2.3 BATS Chi-X Europe made an application to the UK regulator to become a regulated stock exchange in December 2012. The application was approved on 9 May 2013 with effect from 20 May 2013⁵. On 8 October 2013, BATS Chi-X Europe announced the launch of its pan-European listings business and ETF platform, which began trading on 18 November 2013⁶. Chi-X Australia, on the other hand, applied for its market licence on 18 April 2008 which was finally granted on 5 May 2011, with a launch date of 31 October 2011 (Chi-X Australia does not currently conduct any listings business).
- 1.2.4 Section 2(3)(e) of the Financial Services and Markets Act states that the FSA must, when discharging its functions, have regard to “*the international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom*”. The FCA has a thorough governance charter which holds it accountable to its statutory mandates (see below).
- 1.2.5 While there are distinguishing features in the Chi-X Australia and BATS-Chi-X Europe applications, Chi-X Australia is of the view that the significant difference in the periods between the application and market launch (42 months in Australia against 11 months in the UK for the launch of listed products) is in part due to the different regulatory goals of the FCA and ASIC concerning the enhancement of the competitive positions of the United Kingdom and Australia.

⁵ See http://cdn.batstrading.com/resources/press_releases/BATS-Chi-X-Approved-for-RIE-Status-FINAL.pdf

⁶ See http://cdn.batstrading.com/resources/press_releases/BATS-Chi-X-Europe-iSharesBeginsFinal.pdf

- 1.2.6 Chi-X Australia is one of a number of organisations, both on and offshore, currently considering entering new markets and introducing new services in Australia. While it is of course necessary for regulators to carefully consider all applications and changes to market infrastructure, it is vital this is done in a timely and efficient manner reflecting the principles enunciated above.

1.3 The Goals of Regulation– using competition to deliver outcomes

- 1.3.1 Enhancing Australia as a place to do business ultimately depends on the work of Australia's market participants striving to achieve greater innovation, efficiencies and returns. The most consistently reliable factor in driving these outcomes in our industry is competition and this is recognised globally in the constituting legislation of major regulators⁷. Chi-X Australia is of the view that these measures should be mandated for Australian regulators and those responsible for policy development.
- 1.3.2 The use by a regulator of competition as a tool to develop Australia's financial markets is the best way of ensuring Australia is not decoupled from those global developments which will enhance Australia as a place to do business, if they are integrated into local markets.
- 1.3.3 The Industry Commission stated in its very first Annual Report:

Through protection from foreign competition and the establishment and tolerance of public and private monopolies, governments have blunted the rewards and disciplines that competition provides. Effective competition is critical in ensuring that markets convey the right incentives. It is vital to improved productivity performance. Competition not only keeps costs down, it ensures the benefits are passed on to consumers and it provides strong incentives for production to match evolving consumer requirements. It provides rewards for doing things better and discipline for failing to do so.⁸

- 1.3.4 Australia has many strong financial services companies and organisations that benefit from incumbency and a strong domestic position that generates healthy profits and returns for shareholders. Some of these firms have an entrenched and powerful network/infrastructure and it is expected that they will defend their position and use their considerable resources to do so. However, Chi-X is of the view that it is critical that the Inquiry recognises that what is good for some individual organisations – the stifling of the benefits of competition and maintenance of the status quo – may lead to poor outcomes for Australia by restricting the development of the financial services sector and penalising investors and participants.
- 1.3.5 In these circumstances, Chi-X is of the view that it is essential to require Australian regulators and government authorities to consider the promotion of competition when developing and implementing policies for financial services. The role of competition in financial market infrastructure is further explored below in Part Two.

⁷ See, for example, section 2(3)(g) of the Financial Services and Markets Act(UK), section 2(b) of the Securities Act 1933 (US), s3(f) Securities Exchange Act, s2(C) Investment Company Act, s202(c) Investment Advisers Act.

⁸ See numbered page 9 of the 1989-1990 Annual Report of the Industry Commission, retrieved on 26 March 2014 from http://www.pc.gov.au/data/assets/pdf_file/0004/77512/chapters.pdf

1.4 The statutory framework

1.4.1 Chi-X Australia is of the view that the statutory framework for financial services in Australia is no longer fit for purpose and that this is apparent from the following.

(a) Timeframes for Approving Innovations and Licence Applications

1.4.2 In Australia it takes relatively longer for the authorities to respond to proposed product innovations by licenced markets and licence applications requiring regulatory approvals. **Attachment one** contains a table of some statutorily imposed deadlines on regulators and Chi-X Australia is of the view that these should be imposed in Australia. The above comparison for BATS-Chi-X Europe and Chi-X Australia also provides evidence of a possible underlying cultural difference in regulatory attitudes toward innovation and Chi-X Australia would commend the Inquiry to examine ways to develop and implement a cultural change in regulatory attitudes toward innovation in Australia.

(b) The Perimeter of Regulated Activity

1.4.3 There is a lack of coherence in the definition of the perimeter of regulated activity in Australia and the proportionate regulation of the activities that fall within that perimeter. For example:

- (i) a shadow broker holding significant client money can receive less regulatory supervision and be subject to less onerous supervisory charges and requirements than a principal only member of a stock exchange;
- (ii) an alternate trading system offering trading in derivatives leveraged against underlying securities can operate with significantly less regulation than a platform providing trading in the more straightforward underlying securities.

1.4.4 This lack of coherence impacts upon regulatory outcomes across the spectrum of financial service activity, including:

- ASIC cost recovery for market surveillance, which is imposed solely on market operators and participants notwithstanding the benefit it provides for a wider community of stakeholders (eg issuers, derivative originators/traders and the wider investing community);
- the application of reforms on remuneration for financial advice across regulated activities (eg shadow broking, stock broking and general advice) that are subject to different base level regulation;
- combating the pre-announcement leaks of price sensitive information that is disseminated to persons subject to widely divergent standards of confidentiality and control requirements;

- the different outcomes and benefits for liquidity providers depending on the platform on which they trade.

1.4.5 Chi-X Australia is of the view that the time taken today to develop and implement a dynamic and responsive statutory infrastructure that clearly defines a regulatory perimeter by reference to modern financial services, will be rewarded with many years of coherent and proportionate regulation.

1.5 Governance at Regulatory Authorities

1.5.1 Chi-X Australia is of the view that imposing governance requirements on financial services firms is a justified regulatory requirement that delivers identifiable benefits in the services they provide. Chi-X Australia is of the view that a global benchmarking of governance at Australian regulators may identify several areas where governance standards could be changed to bring about a commensurate improvement in the services they provide.

1.5.2 A comparison of the described governance standards at the UK's FCA and ASIC indicates some differences⁹. Chi-X Australia is of the view that governance changes at Australia's regulatory authorities could play an important role in changing the regulatory culture in a way that would enhance Australia as a place to do business. Matters that could be considered in this area include:

- (i) ASIC has no independence on its Commission (eg an independent Chair or Commissioner);
- (ii) policy development at ASIC can take place in opaque processes not subject to a transparent ex ante cost benefit analysis that is part of the consultation process;
- (iii) the same person(s) at ASIC can be responsible for making key decisions on the policy development, drafting, implementation, supervision and enforcement of key financial service initiatives – in effect ASIC is the lawmaker, policeman, prosecutor, judge, jury and executioner¹⁰;
- (iv) the membership, and transparency of the conflict management processes, of the RBA board in respect of those board members holding positions at RBA regulated entities.

1.6 A Secretariat to promote Australia as a Place to do Business

1.6.1 There is a need for a secretariat to promote Australia as a place to do financial business and Chi-X endorses the views of Mr Mark Johnson:

⁹ Compare <http://www.asic.gov.au/asic/asic.nsf/byheadline/ASIC%27s+governing+bodies?openDocument> with <http://www.fca.org.uk/your-fca/documents/corporate-governance>

¹⁰ ASIC currently requires a real time feed of market data from multiple market operators in a way that significantly hampers innovation by those operators and Chi-X Australia queries whether this feature of ASIC governance is one explanation for this outcome.

Any new body recommended by the Murray inquiry should “cover the breadth of the major influences on the financial services industry, which of necessity includes taxation ,” Mr Johnson said¹¹);

and Mr Elmer Funke Kupper:

The chief executive of the Australian Securities Exchange, Elmer Funke Kupper, says the Australian government needs to be much more deliberate in its efforts to promote capability, pointing to London, which has a Lord Mayor dedicated to selling Britain’s financial services industry abroad¹².

- 1.6.2 Australia needs an independent body to promote the enhancement of Australia’s financial centres, to monitor and hold all stakeholders to account on the implementation of agreed measures to achieve that goal and to generate/maintain the momentum necessary to travel from goal setting to implementation.
- 1.6.3 While it is not a market infrastructure issue, a secretariat could ensure momentum and focus is maintained in seeking to regulate investment management firms in a way that will enable passporting throughout our region, as this has proven to be a seminal area for the development of many global financial centres.

¹¹ See “New Body needed to entrench Murray reforms” retrieved on 25 March 2014 from http://www.afr.com/p/business/financial_services/new_body_needed_to_entrench_murray_4TUMhVRz2cpfBm1n7Kg6dL

¹² See “World class finance sector needs developing”, retrieved from http://www.afr.com/p/national/world_class_finance_sector_needs_g9aH5GaQkTpBH1qOI8F9N

Part Two

Capital Market Infrastructure

2.1 Overview

2.1.1 Australia has benefitted significantly from the introduction of competition between platforms for the secondary market trading of ASX Listed securities. The evidence is clear: it has provided advantages for all Australians and enhanced Australia as a place to do business. Part Two of the submission focuses upon why competition in market infrastructure, whether it involves Chi-X Australia or not, is crucial for Australia.

2.2 Taking an evidence based approach to the benefits of competition in market infrastructure

2.2.1 Chi-X Australia is a subsidiary of a global group that specialises in providing cost effective and innovative capital market infrastructure and the Chi-X business model is based in part upon disrupting the monopoly power exercised by incumbent providers. This can involve significant market reform. As the Industry Commission stated in its first annual report, reform is seldom easy and, in spite of net benefits for the wider community, there is usually strong opposition to change from those adversely affected by it and the architects of existing industry arrangements¹³.

2.2.2 In these circumstances it is essential when developing policies concerning market infrastructure, for all stakeholders to continually be held to account to independent and properly analysed data. The following is some of the evidence on the impact of competition in market infrastructure globally and in Australia.

- (i) Research undertaken by the Goethe University has concluded that market quality is highest in those areas where market competition is greatest¹⁴.
- (ii) Analysis undertaken by the Strategic Intelligence Unit at ASIC has concluded that from the commencement of competition in market infrastructure to January 2013, the benefits of competition may have been worth up to \$300million per year¹⁵.
- (iii) The Capital Markets Cooperative Research Centre conducted an independent study in which it found that in the first year alone, competition in market infrastructure Australia had delivered welfare benefits between \$36m-\$220m¹⁶.

¹³ See page 2 of the Industry Commission's Annual Report for 1989-1990, retrieved from http://www.pc.gov.au/data/assets/pdf_file/0004/77512/chapters.pdf

¹⁴ Goethe University House of Finance, Competition among electronic markets and market quality, Peter Gomber, Markus Gsell, Marco Lutat, Discussion Paper 01/2011, retrieved on 26 March 2014 from http://safe-frankfurt.de/uploads/media/Gomber_competition_among_electronic_markets_and_market_quality.pdf.

¹⁵ see page 32 of the Treasury Market Supervision Cost Recovery Impact Statement at http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2013/ASIC%20Market%20Supervision%20Cost%20Recovery/Key%20Documents/PDF/Consultation_draft_CRIS.ashx

¹⁶ *How beneficial had competition been for the Australian equity marketplace?* Michael Aitken, Haoming Chen and Sean Foley, 24 May 2013 – retrieved on 21 October 2013 from: <http://www.cmcr.com/documents/1372142696hascompetitionbeenbeneficialforaustralianmarketplace.pdf>

- (iv) Comments in the Johnson Report and by the ASX Chair evidence the positive impact of competition on ASX itself. In 2009, it was stated in the Johnson Report that:

*In the [Australian Financial Centre] Forum's assessment, [the role of ASX as market operator, central counterparty and market supervisor] has been a significant barrier to new competition and innovation. The Forum received a good deal of feedback from industry concerning the lack of equity trading platform development (see Appendix 4) and innovation.*¹⁷

In 2012, the ASX Chairman stated:

*"ASX's response to competition has been substantial and positive. The company cut its fees, introduced new products and invested in its Technical Services business"*¹⁸.

- (v) Within the first twelve months of Chi-X Australia launching competing products, some of the ASX fees charged to ASX participants for those products had decreased from over \$500,000 pa to no more than \$12,000 pa.

2.2.3 While the decision to introduce competition in secondary market trading is an entrenched part of the Australian landscape, this evidence is nonetheless worth emphasising as it provides compelling evidence of the benefits of competition in market infrastructure and how it has enhanced Australia as a place to do business. This is of significance when considering competition in other areas of market infrastructure.

2.2.4 Chi-X notes that UK authorities have specifically highlighted the importance of competition outcomes in market infrastructure in recent proposals on the regulation of UK recognised investment exchanges¹⁹. Chi-X is of the view that the Australian regulatory landscape does not currently clearly allocate a responsibility in this area to either the ACCC or ASIC and that therefore issues in this area constantly falls into a regulatory gap. It is noticeable that Martin Wheatley has stated that responsibility for competition was the single most significant change in the new objectives for the FCA²⁰.

2.2.5 Chi-X is of the view that for Australia to keep up with global standards in this area, one of ASIC or the ACCC should be allocated a specific legislative responsibility of ensuring competition is maintained and properly supervised in Australia's market infrastructure.

¹⁷ See page 37 of *Australia as a Financial Centre Building our Strengths*, a report by the Australian Financial Centre Forum, retrieved on 25 March 2014 from

http://cache.treasury.gov.au/treasury/afcf/content/final_report/downloads/AFCF_Building_on_Our_Strengths_Report.pdf

¹⁸ See page four of the ASX Chair's address at the 2012 ASX AGM, retrieved on 25 March 2013 from

http://www.asx.com.au/documents/investor-relations/Final_Speeches.pdf

¹⁹ See <http://www.fca.org.uk/news/cp13-16-rec>

²⁰ See UK exchanges face FCA competition probe, Financial News, 3 February 2014, retrieved on 26 March 2014 from

<http://www.efinancialnews.com/story/2014-02-03/uk-stock-exchanges-face-fca-competition-probe?ea9c8a2de0ee111045601ab04d673622>, and Making Competition King – a speech by Martin Wheatley to the ASIC Forum:

retrieved on 26 March from <http://www.fca.org.uk/news/making-competition-king>

2.3 Competition in Market Infrastructure – Clearing and Derivatives

2.3.1 The G20 requirements for standardised OTC derivatives to be centrally cleared has placed clearing infrastructure at the centre of global considerations on the attractiveness of Australia as a place to conduct business. Competition in clearing has delivered significant benefits in other global jurisdictions. The Oxera Report prepared for the European Commission DG Internal Market and Services, concluded that the effects of increased competition and market integration in Europe on the prices of trading and post trading services over the period 2006 to 2009, had resulted in a decline in central counterparty (CCP) clearing costs for equities from €0.37 per transaction to €0.10 per transaction, a reduction of 73%²¹.

2.3.2 Chi-X Australia does not underestimate the challenges posed by the cross border regulation of clearing entities, however an increasingly common feature of leading global financial centres is the incorporation of a collegiate approach to such regulation. Significant entities such as CLS and pan-European CCPs are regulated in this manner and it has proven to be a successful method of managing the risks of cross border clearing without forsaking the benefits it can provide.

2.3.3 In respect of derivatives infrastructure, in the last 6-9 months LSE, CME, ICE and Deutsche Borse have announced initiatives that will compete with the Singapore Exchange and in response to which Magnus Bocker, CEO of the Singapore Exchange has remarked:

“what are we doing in the face of this intensifying competition? [The] most important thing is that we continue to innovate”²².

2.3.4 The global experience with respect to competition in market infrastructure, including in our own region, is that competition produces results and enhances services for all participants, including end users. Chi-X Australia is of the view that the Inquiry should take steps to ensure that Australia is not precluded from enjoying the rewards and disciplines offered by competition between providers of clearing and derivatives market infrastructure.

2.4 Competition in Market Infrastructure - Settlement

2.4.1 Chi-X Australia is of the view that it is important for Australia to address the corporate governance in place concerning the settlement functions currently located within ASX and that this falls directly within the terms of reference of the Inquiry. In particular, Chi-X Australia is of the view that the entity responsible for settling cash equities in Australia should be operated as a public utility. CHES was developed using industry funds and it should be operated for the benefit of all Australian shareholders. There are global precedents for the national settlement and subregister functions being undertaken by a utility body and there is merit in that model being implemented in Australia. If a separation of this business from the ASX Group is not possible then Chi-X Australia is of the view that consideration should be given to an imposed separation that ensures:

²¹ Oxera, *Monitoring prices, costs and volumes of trading and post trading services: report prepared for European Commission DG Internal Market and Services*, Oxera Consulting Ltd, Oxford, 2011 at paragraph A5.4.2 on page 136, retrieved from http://ec.europa.eu/internal_market/financial-markets/docs/clearing/2011_oxera_study_en.pdf.

²² See the speech of Mr Bocker at the 14th AGM of SGX, retrieved on 25 March 2014 from http://www.finanznachrichten.de/pdf/20130919_141227_S68_631FE115DC6E26D648257BEB0021DE12.1.pdf

- (i) an appropriate governance structure and operating purpose for a separate entity within the ASX Group; and
- (ii) that the executive and board members of the settlement entity have every incentive to act in a non-discriminatory manner.

2.5 Competition in Market Infrastructure – Conclusions

- 2.5.1 Australian authorities must resist the temptation of developing a bespoke Australian “Claytons competition” in market infrastructure. Adapting competition as a mantra but declining to set in place a framework that allows competition to genuinely disrupt an incumbent monopoly power, will diminish the attractiveness of Australia as a place to do business and damage the interests of all stakeholders in our financial markets. The observations of the Industry Commission on Government resisting the temptation to blunt the rewards and disciplines that competition provides are as relevant today to market infrastructure as they were in 1990 to the non-productive industries that were the focus of that generation’s great macroeconomic reforms²³.
- 2.5.2 A complete examination of all aspects of competition in market infrastructure is beyond the scope of this submission, but the key points remain:
- (i) as outlined in the Wallis Inquiry, financial services work best when competition is allowed to thrive and, apart from settlement systems providing evidence of legal title, financial market infrastructure is no exception to this;
 - (ii) there are lessons to be learned from the manner in which competition in market infrastructure has been introduced globally, including in our region;
 - (iii) leading global centres have managed the cross border supervision of collateral holding businesses through colleges of regulators that efficiently manage the complete range of risks posed by the globalisation of financial services without forsaking the rewards and disciplines that competition provides.
- 2.5.3 Australia cannot afford to prohibit competition, intentionally or by default, and delegate key aspects of Australia’s attractiveness as a place to do business to a monopoly provider of market infrastructure that is legally compelled to prioritise the interests of its shareholders.

²³ See above at footnote 8.

Attachment One

Approval to which Limit Applies	Country	Provisions (link)	Substance	Time Line
Exchange Approval	United Kingdom	S290(1B) of the Financial Services and Markets Act – application to be an exchange http://www.legislation.gov.uk/ukpga/2000/8/section/290	“In the case [of an application to be an RIE], the application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.	Six months (exchange approval)
Rule Change	United Kingdom	REC – guidance on supervisory relationship with UK exchanges http://fshandbook.info/FS/html/FCA/REC/4/2	“ <i>UK recognised bodies</i> are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the <i>UK recognised body</i> operates, they are likely to involve changes to the way it satisfies the <i>recognised body requirements</i> . The <i>FCA</i> expects a <i>UK recognised body</i> to take its own steps to assure itself that it will continue to satisfy the <i>recognised body requirements</i> when considering any changes to its business or operations.”	No FCA approval required.
Rule/ significant change approval	Canada – OSC	Protocol with CXC – timeline is for significant rule changes involving changes to the Form 21-101F1 lodged by the exchange http://www.osc.gov.on.ca/documents/en/Securities-	“ 9. Review and Approval Process for Proposed Fee Changes, Public Interest Rules and Significant Changes (a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule or	45 Days (significant changes to Form 21-101F1 particulars)

Approval to which Limit Applies	Country	Provisions (link)	Substance	Time Line
		Category2/rule_20121004_21-101_review-approval.pdf	Significant Change within (i) 45 days from the date of filing of a proposed Public Interest Rule or Significant Change; and (ii) seven business days from the date of filing of a proposed Fee Change. (b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule or Significant Change will exceed the timelines in subsection 9(a)."	
Exchange Approval	Canada – Ontario	Securities Act contains minimal detail http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90s05_e.htm#BK41	National Instrument 21-101 states that “an ATS must not carry on business as an ATS unless it has filed Form 21-101F2 at least 45 days before the ATS carries on business as an ATS”.	45 days for an ATS Nil for an exchange
Rule Change	United States	S19(2) of the Securities Exchange Act 1934 Page 287 of http://www.sec.gov/about/laws/sea34.pdf http://www.dodd-frank-act.us/Dodd_Frank_Act_Text_Section_916.html	SEC must approve or disapprove a proposed rule within 45 days or institute proceedings to determine whether it should be approved. Proposed amendments under Dodd-Frank allow a further 45 days if the SEC publishes reasons for the further delay.	45 days or 180 days if hearing held.

Approval to which Limit Applies	Country	Provisions (link)	Substance	Time Line
Rule Change	Australia	Section 793E of the Corporations Act	Within 28 days of ASIC receiving notice of a proposed rule change, the Minister may disallow all or a specified part of the change to the operating rules. The rule change process is subject to time limits prior to lodgement with ASIC that are imposed at the discretion of ASIC.	Approval required from ASIC within a time limit that is at the discretion of ASIC. Ministerial approval required within a 28 day time limit.
Exchange Approval	Australia	<p>Licence approval is granted by the Minister under section 795B of the Corporations Act, but in practice this requires ASIC approval.</p> <p>ASIC has issued guidance in RG172 that is non binding: see paragraph 172.137 of RG172 at http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg172-reissued-24-September-2013-1.pdf/\$file/rg172-reissued-24-September-2013-1.pdf</p>	“We aim to deal with simpler applications within 12 weeks of receiving them. More complex applications will take up to 16 weeks. These time frames are based on receiving <i>all</i> information and documents required. If we ask you to supply more information, we do not count the time during which we are waiting for your response. If the application requires public consultation, this will normally take a further 6 weeks.”	<p>ASIC approval required and no statutory time limit.</p> <p>Applicable time limits are at the discretion of ASIC.</p>