



8 May 2013

Ms Diane Lewis
Senior Policy Analyst
ASX Limited
20 Bridge St
Sydney NSW 2000

By email: regulatorypolicy@asx.com.au

Dear Diane,

Submission in response to Draft Code of Practice for Clearing and Settlement of Cash Equities in Australia

Commonwealth Bank of Australia Group Participants (Commonwealth Securities Limited, Australian Investment Exchange Limited and CBA Equities Limited) (**CBA Group Participants**) welcome the opportunity to comment on ASX Limited, ASX Clear Pty Limited (**ASX Clear**) and ASX Settlement Pty Limited's (**ASX Settlement**) Draft Code of Practice for Clearing and Settlement of Cash Equities in Australia of 10 April 2013 (the **Code**).

The CBA Group Participants are supportive of the development of the Code and the reasons for having it. We see it as an important step in creating a governance framework through which ASX Group (**ASX**) can engage and work with industry stakeholders to help shape the future landscape of Clearing and Settlement of Cash Equities in Australia.

We have reviewed the Consultation Paper in conjunction with the draft Code and the below comments reflect the view of the CBA Group Participants who service a mix of retail and wholesale clients in both Australia and overseas.

FORUM

- We note that the scope of the Code is limited to the clearing and settlement of cash equities only (i.e. not exchange traded or OTC derivatives and not OTC debt). Whilst we appreciate that this meets the Council of Financial Regulators (CFR) requirement, we would encourage ASX to consider voluntarily extending the Forum, if not the Code, to also contemplate at least exchange traded derivatives given the infrastructure that is being set up and the experience of the stakeholders represented in the Forum.
- We question whether the 21 member composition of the Forum is potentially so large as to become unwieldy. A slightly smaller Forum may be more productive and capable of better and timelier decision making. We also note that as at the time of submission there was no



Forum representation from a Third Party Clearer, and we would welcome such an appointment.

- We note that it is not proposed that ASX Management will have a seat at the Forum but presume that the Forum could chose to invite them.
- We understand that it is proposed that Forum members will sit for two years with half the membership rotated every year. We would be supportive of the rotation to ensure representation can be shared around amongst smaller Participants.
- We note that the Forum will meet three times annually with business (and technical committees as required) being held four to six weeks prior to the Forum meetings. We understand that three meetings per year is less often than the boards of ASX Clear and ASX Settlement meet and question whether this is often enough to make meaningful headway.
- We understand that the boards of ASX Clear and ASX Settlement must give 'due consideration' and report back on matters raised to them with reasons why any recommendations were or weren't adopted. Our preference is that the Code clarifies that the feedback from these boards will be provided in writing and that any reasons for not proceeding with a recommendation(s) should satisfy a 'reasonability' test to ensure fair process and decision making.

PRICING

- It is noted that worked examples and tools will be provided to assist users in modelling fees and the effect of price changes. We suggest that all Clearing and Settlement Participants (and other users as necessary) are notified of the actual effects of any price changes on them.
- Having regard to ASX's commitment to charge all users (including ASX related affiliates) non-discriminatory pricing for materially equivalent services, we suggest this go further and for ASX to pledge that pricing will reflect costs and that any margins over and above cost be 'reasonable' given the existing monopoly of clearing and settlement of cash equities in the Australian market. We are disappointed that the competitive pricing regimes of the larger and more professional markets does not yet apply in the Australian market, and we won't meet the international growth expectations of Australian incorporated institutions unless and until that occurs.
- To ensure it does we require that the peer analysis and benchmarking of ASX's services and charges is:
 - Undertaken in its entirety by an independent and qualified 3rd party not by an analysis commissioned and published by ASX;
 - The review should be published separately and on ASX's website;
 - The Forum should select the independent 3rd party;
 - The cost of the review should be met by the ASX;



- The review should cover, amongst other things, the nature and quality of ASX and global peer;
 - services provided
 - unit operating and capex costs
 - margins charged
 - allocation of and return on risk capital
- Inclusive of observations on framework alternatives to regulate service delivery and pricing by similar monopoly suppliers in direct peer and analogous industries segments.

Access

- We acknowledge that ASX has committed to publishing time frames for responding to requests for services, however we would like the Code to qualify that such timeframes will be reasonable, having regard to the nature and complexity of the request.

Outstanding content

- We encourage ASX to make it known how and when it intends to inform the market of the outstanding content that has not been included in the current draft code (i.e. service descriptions, access request protocols, management accounts, forum agendas (including minutes and reports)).

CBA Group Participants would be pleased to discuss our comments with ASX in further detail if this would assist with ASX's considerations. In that event please do not hesitate to contact me on 0420 944 857 or Brad Elstub, Compliance Executive, on (02) 9916 4191.

Yours sincerely,

Sheridan Thompson
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