

8 November 2024

Andrew Jones  
General Manager, Equities  
ASX Ltd  
20 Bridge Street  
Sydney NSW 2000

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

Dear Andrew,

Cboe Australia thanks ASX for the opportunity to provide input into ASX's consultation on its pricing policy. We also thank you for providing an extension from the scheduled end of the consultation.

Cboe Australia provides this written submission, with questions copied from the consultation and answers provided below each question. We also provide a number of additional comments not contemplated under the questions ASX has asked.

## Cboe responses to consultation questions

1. Do you agree with the proposal to implement a materiality threshold(s)? Please justify your response.

Cboe Australia has no comment on the proposal to implement a materiality threshold

2. If yes, should the materiality threshold below the revenue requirement (for an under-recovery process) and the materiality threshold above the revenue requirement (for an over-recovery process) be the same, or should there be a different threshold for each (i.e. two thresholds)? Please provide a justification for your response.

Cboe Australia considers that, for the sake of consistency and clarity, if a materiality threshold is adopted then the thresholds should be the same for both under- and over-recoveries.

3. Do you agree with the proposal to implement a materiality threshold dollar value amount of \$1 million for both under and over-recoveries relative to the revenue requirement? If not, please provide an alternative dollar value amount suggestion(s) and justify your response.

Cboe Australia makes no comment on the proposed dollar value of the materiality threshold.

4. Which of the two options for an under or over-recovery beyond the proposed materiality threshold are you most in favour of? Please provide a justification for your selection.

Cboe Australia prefers Option 1, which would allow for more consistent budgeting.

5. Are there any other aims, objectives or considerations which we should take into account in determining which under or over-recovery option to proceed with?

Cboe Australia makes no comment on this question.

6. Do you agree with the proposal to implement the first 'fees review trigger' as described? Please provide a justification for your response.

Cboe has no specific comment as to the threshold for the fee review trigger. However, because revenues and costs will be appear to be presented in aggregated as a single 'bucket', Cboe Australia takes this opportunity to emphasize the importance of targeted fee changes as a result of a review. In other words, the fee review should identify the drivers of any under- or over-recovery and adjust the fees that are related to that particular driver, rather than result in an across-the-board fee change to reconcile under- or over-recoveries with costs incurred by ASX.

7. Do you agree with the proposal to implement the second 'fees review trigger' as described? Please provide a justification for your response.

Cboe Australia makes no further comments other than those provided in relation to Question 6.

8. If implemented as proposed, do you consider that the fees review triggers will strike the optimal balance between ensuring that the CS services fee schedules consistently align with annual revenue requirements, and minimising the frequency of adjustments to those fee schedules?

Cboe Australia has insufficient information to answer this question. ASX is best placed to know how well it forecasts potential post-trade revenues against its broader cost profile.

9. How will your organisation be impacted by the potential frequency of adjustments to the CS services fee schedules based on the operation of the two proposed fees review triggers? Please justify your response, including whether the impacts would be the same for a downward vs an upward adjustment to the CS services fee schedules.

Cboe Australia submits that fee schedule changes should be well known in advance to allow sufficient time for the changes to be incorporated into budgets and accounts. If changes are sufficiently well known then the operational accounting overheads facing users should be manageable.

10. Should ASX consider implementing any other fees review triggers? If yes, please describe the trigger(s) in detail.

Cboe Australia makes no comment on this question.

11. Do you support a commencement date of the new Policy of 1 January 2025? Please provide an explanation for your support or alternative suggestion(s).

Cboe Australia does not support this policy commencing on 1 January 2025. Cboe considers that the commencement should be delayed at a minimum until ASIC's CS Services Rules have been made and published – proceeding on the basis of draft rules risks this policy not according with any changes to the final rules which are ultimately made. Further this approach is out of sync with ASX's users' financial year, as well as ASX's.

## Additional Cboe input not addressed in answers to consultation questions

Cboe takes this opportunity to make a number of additional comments that are not contemplated under the consultation questions.

## Scope of pricing policy

First, while the proposed policy is framed as a “pricing policy”, Cboe considers that it does not actually cover arrangements for ASX to determine either the fees ASX charges users under the clearing and settlement service fee schedules, including how these are set, or to calculate the efficient costs it incurs in providing clearing and settlement services. Instead, this appears to be a model for ASX to determine and document its approach to ensuring it achieves a fair return on the investment/capital it assigns to CHESS.

While Cboe does not disagree that the return on investment/capital assigned to CHESS should be subject to a public consultation and be reflected in a publicly available policy document, Cboe also considers that in isolation this does not meet all of the requirements under the proposed CS services rules in relation to fair, transparent, and reasonable pricing of CS services. In particular, proposed rule 2.2.1(f) would, if made as proposed, require ASX to *‘maintain and publish a methodology for determining the prices of its Covered Services that demonstrates that the expected revenue from the provision of Covered Services reflects the efficient costs of providing those services, including a return on investment commensurate with the commercial risks involved.’*<sup>1</sup>

- 1) Clearly, the return on investment forms part of that requirement, and this proposed methodology addresses that element. However, at least two elements are missing. These are:

While the consultation paper contemplates reviews to the CS service fee schedules in response to under- or over-recoveries in consecutive financial years, it does not outline a methodology for how those fee schedules are or will be set. Similarly, while the consultation paper notes that the building block method is intended to ensure ASX does not recover any more than the ‘efficient costs’ of service provision, it does not contemplate any mechanism for calculating what those efficient costs are. The proposed methodology would simply capture those costs that ASX incurs in providing its CS services. In Cboe’s view, these deficiencies mean that the proposed policy does not provide sufficient transparency to users on either how the prices of CS services are calculated, and does not distinguish between ASX’s ‘costs’ and ‘efficient costs.’

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<sup>1</sup> See subrule 2.2.1(f) on page 8-9 of Attachment to CP 379 ASIC CS Services Rules: *Draft rules ASIC CS Services Rules 2024*, available via <https://asic.gov.au/regulatory-resources/find-a-document/consultations/cp-379-asic-cs-services-rules/>

Both of these matters are particularly important given the costs associated with the failure of the CHES replacement project. Users of ASX's CS services have already borne significant costs as a result of the failure, and it is important that users have transparency about ASX's costs and prices to ensure that the costs of the CHES replacement project are being appropriately attributed.

Cboe therefore considers that a complete pricing policy should go further, and at a minimum:

- 1) Set out the methodology ASX will apply to calculate prices of CS services that ASX provides under the fee schedule; and
- 2) Detail how ASX arrives at the calculation of the efficient costs that ASX Clearing and Settlement incurs in providing those discrete across its broad range of clients and services.

## Operation of a pro-rata model

Notwithstanding our comments above, Cboe emphasizes the importance of proportionality in any under- or over-recoveries under the proposed methodology. Specifically, Cboe considers that any under-recoveries should be attributed to users on a pro-rata basis in proportion to the fees that they are charged under the fee schedules, or at least materially similarly to such fees. For example, if one user's fees represented 0.1% of ASX's revenue for CS services in a year in which ASX under-recovered its costs by 10%, that user should not be attributed an equal share of the 10% under-recovery as other users; rather, it should be attributed 0.1% of the dollar value of the under-recovery, or something very close.

## Implementation schedule

Finally, Cboe considers that the implementation schedule is too short, and should be delayed for three reasons.

First, the ASIC CS services Rules have not yet been made. While ASIC has published draft rules, ASX should delay the implementation of its pricing policy until the final rules are made so that it can ensure its pricing policy is compliant with the scope of the finalized rules. As Cboe has expressed above, we consider that this policy is of a necessary but not sufficient scope to fulfil even the draft rules. ASX should closely consider expanding the scope of the policy to cover the matters Cboe has identified above.

Second, Cboe also takes this opportunity to reiterate its view that it is subject to unequal services compared to ASX Trade when accessing CHESSE for trade acceptance. In particular, Cboe and other AMOs – but not participants or ASX trade – are forced to:

- 1) contract a small third-party supplied service to convert its global industry standard FIX trade feed to ASX CHESSE' proprietary, bespoke and outdated 'External Interface Specification'; and
- 2) use an esoteric encryption protocol for trade acceptance traffic which throttles the maximum potential throughput of executed trades to ASX for clearing and settlement.

ASX has asserted that these differences will be resolved as part of the CHESSE replacement project. Cboe therefore considers that this pricing policy should not be finalized, at least in relation to its application to AMOs, until all AMOs are on an equal footing with ASX Trade in relation to CS services.

Thirdly, the proposed 1 January implementation date is misaligned with the financial year of ASX and its users. This limits its practical application for rule implementation and financial reporting, and complicates budgeting and accounting processes.

Once again, thank you for the opportunity to comment on this consultation and for the extension to the due date. If you have any questions please contact me using the details below.

Kind regards,



Benjamin Phillips

**Senior Director - Head of Product Development**

Cboe Global Markets - Australia – Sydney

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