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11 September 2017

Ms Rhonda Luo  
Senior Specialist  
Market Infrastructure  
Australian Securities and Investments Commission  
Level 5, 100 Market Street  
SYDNEY NSW 2000

Dear Rhonda

**CHI-X AUSTRALIA SUBMISSION ON ASIC CP 293: REVISING THE MARKET LICENCE REGIME FOR DOMESTIC AND OVERSEAS OPERATORS**

Chi-X is grateful for the opportunity of providing a submission on Consultation Paper 239, which concerns the proposed revision of the market licence regime for domestic and overseas operators.

This covering letter outlines some critical issues for any proposed regulatory framework in this area. An answer to each of the CP questions is at **attachment one**.

**1. The Importance of Market Infrastructure and a Regulatory Framework Designed to Enhance Australia's Markets**

Market infrastructure is the engine room of financial services. It is critical to the efficient running of a national economy by virtue of its role in:

- (a) the efficient allocation of funds to economically productive enterprises;
- (b) providing prices and other essential information on nationally important securities and financial products;
- (c) providing fair, orderly and transparent markets for the nation's investment funds.

It is therefore critical and important that the regulation of market infrastructure providers (MIPs) is primarily aimed at enhancing Australia's markets. This means not only ensuring market integrity but also that Australia's markets are continually improving as a place to do business. Cost, efficiency, innovation and global alignment of support systems and technology, are just some of the market infrastructure issues that are significantly impacted by Australia's regulatory framework and also determine Australia's attraction as place to do business.

Chi-X is therefore of the view that enhancing Australia's markets and Australia as a place to do business should be more explicit goals in the proposed revision of the market licencing regime and the ultimate framework that is put in place.

## **2. Competition Enhances Australia's Markets**

It has been repeatedly demonstrated that competition can play a critical role in improving the cost, efficiency and service delivery of MIPs and the innovation/globally aligned technology solutions they provide. Competition between MIPs improves Australia as a place to do business.

It therefore makes sense for competition between MIPs to also be an explicit consideration in the regulation and supervision of market operators. The need for regulation and supervision that incorporates competition is demonstrated by the significant barriers to:

- (a) competing providers initially entering the Australian market; and
- (b) licenced providers broadening their service offering into other areas dominated by a monopoly provider.

These barriers to entry play a significant role in some of the inefficiencies and expensive prices that are a feature of the Australian market. Some of these barriers are directly related to the regulation of market operators.

Chi-X is of the view that, for example, the basic principles outlined in CP 293 as providing the foundation for the distinction between 'tier 1' and tier 2' providers, may also be usefully applied to facilitate the further development of competition between MIPs generally. This could provide a flexible framework aimed at enhancing Australia's markets while not compromising market integrity or fairness.

Chi-X is of the view that there may also be merit in ASIC and Treasury examining the costs and benefits of a central listing authority for Australian markets given:

- ASX listing fees are among the most expensive in the world<sup>1</sup>;
- the cost recovery fees that listed companies already pay to ASIC; and
- the success of the central listing authority model in enhancing competition in other parts of the world.

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<sup>1</sup> See for example the report of Morgan Stanley analysts Arvid Streimann, Andrei Stadnik, Richard Wiles, Daniel Toohey and Matthew Dunger, which states that ASX listing fees are among the most expensive in the world. The report is discussed at <https://www.businessinsider.com.au/morgan-stanley-the-asx-will-keep-raising-fees-thanks-to-its-quasi-monopoly-status-2014-2>.

### **3. The Importance of the Stock Exchange Brand and Regulation Commensurate with the Services Provided and Risks Posed**

Chi-X welcomes competition from low cost disruptive business models and regulation that is proportionate to the regulated services being provided and the risks they pose. Focusing on the services delivered by an operator and the risks they pose should enable a tapered allocation of regulatory supervision by ASIC not only between the two tiers but also between two or more operators within those tiers.

However, it is also important that ASIC minimises the possibility of the investing public being misled by the different types of trading platforms that may exist under the proposed revisions. It is therefore important that:

- (a) any revision of the market licence regime does not jeopardise equivalence findings relating to tier one operators;
- (b) the financial promotions and other communications of a tier two operator are subject to appropriate regulation;
- (c) the revisions enable a tier one operator to provide services to tier two operators to enable them to fulfil their obligations; and
- (d) tier one operators are able to provide tier two services that are subject to the lighter touch regulatory regime.

I hope this submission is of assistance, given the importance of your work in this area.

Please do not hesitate to contact us if you have any queries.

Yours sincerely



Chi-X Australia

**ATTACHMENT ONE**

| CP Question   | Response  |
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| <b>B1Q1 Do you agree with the proposed two-tiered approach?</b> | <p>Chi-X is of the view that the regulation of market infrastructure providers (MIPs) should be framed according to the services provided and the risks they pose. This should enable a tapered allocation of regulatory supervision by ASIC not only between two formal tiers but also in the supervision of different providers within those tiers.</p> <p>For example, it is clear that there are significant barriers to licenced providers seeking to broaden their product offering and entering a market for services delivered by a monopoly provider. In these circumstances, enhancing competition between providers should be an explicit regulatory consideration taken into account when shaping the supervisory framework for MIPs.</p> <p>In these circumstances, formal tiered regulation may be appropriate, although Chi-X notes:</p> <ul style="list-style-type: none"><li>(a) it is important that the tiers do not jeopardise or harm Australian equivalence findings;</li><li>(b) the two tiers should not allow inappropriate regulatory arbitrage between the two levels by, for example, enabling tier two platforms to trade in similar products to those traded by tier one operators;</li><li>(c) enhancing competition to enhance Australia’s markets and as a place to do business should be considered by ASIC when applying the regulatory framework, as it currently</li></ul> |

| CP Question   | Response   |
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|   | <p>is in offshore jurisdictions; and</p> <p>(d) ASIC criteria for determining the regulatory burden to be imposed on market operators should be transparent and impacted persons must be able to request an independent review of ASIC decisions where that is appropriate.</p>  |
| <p><b>B1Q2 Do you have an alternative proposal for facilitating specialised and emerging market venues with proportionate regulation?</b></p> | <p>Chi-X is of the view that there should also be scope for a ‘tier one operator’ to provide tier two services: not every service provided by a market operator needs to be regulated by ASIC according to the most systemically important and highest risk service the operator provides.</p>   |
| <p><b>B2Q1 Is the risk-based approach to market licence tiers sufficiently clear?</b></p>   | <p>The risk based approach for allocating an operator to tier one or tier two could be made clearer by specifying:</p> <p>(a) that it is not only the risks at a point in time that ASIC will consider but also:</p> <ul style="list-style-type: none"> <li>(i) the possibility of regulatory arbitrage between the different tiers;</li> <li>(ii) the likelihood of a tier two operating competing with a tier one operator;</li> <li>(iii) the possibility of investors being misled as to the status of a tier two operator;</li> <li>(iv) the potential for a tier two operator to be more appropriately classified under another regulatory category (eg as a dealer with an AFSL).</li> </ul> <p>(b) the risks that will determine ASIC’s approach to different entities within the same tier,</p> |

| CP Question  | Response  |
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|  | <p>especially given that the differences between the risks posed by entities within tier one may be more significant than the difference in risks between tier one and tier two entities.</p>   |
| <p><b>B2Q2 Do you have comments on the proposed criteria?</b></p>                          | <p>Chi-X is of the view that the following additional criteria may be appropriate:</p> <ul style="list-style-type: none"> <li>(a) enhancing Australia as a place to do business;</li> <li>(b) the facilitation of competition by MIPs as a means to enhance Australia as place to do business;</li> <li>(c) the need to avoid regulatory arbitrage by MIPs;</li> <li>(d) ensuring MIPs providing services in the same financial products and to the same or similar categories of investors, are subject to the same regulatory framework and requirements; and</li> <li>(e) the extent to which tier one and tier two operators are in competition with each other.</li> </ul> |
| <p><b>B3Q1 Do you have comments on the proposal for identifying or branding tiers?</b></p> | <p>Chi-X is of the view that tier 1 and 2 operators should be subject to transparently different regimes that are contained in different regulatory guides. This reflects the arrangements in other jurisdictions where second boards and other alternate wholesale only platforms are clearly distinguished from tier 1</p>  |



| CP Question   | Response  |
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|   | mainstream MIPs.  |
| <b>B3Q2 Do you have other proposals for distinguishing between tiers?</b>   | Chi-X is strongly of the view that the regulation should focus on defined services and the risks they pose when distinguishing between the tiers.   |
| <b>B4Q1 Do you agree with the proposal for tier 2 licensees to be required to comply with a specified subset of licence obligations, as a starting point?</b> | <p>Chi-X is of the view it is appropriate for ASIC to taper regulation based upon the nature of and risks posed by the services delivered by a market operator. This tapering should not only be part of the tier 1 and tier 2 approach but also the supervision of entities within the separate tiers.</p> <p>Chi-X is of the view that:</p> <ul style="list-style-type: none"><li>(a) some form of ongoing monitoring of compliance by tier two operators with the subset of obligations may be required; and</li><li>(b) it may be appropriate to review the tier two regime on an ongoing basis to ensure that it is not having a negative impact on the Australia MIP brand.</li></ul> |
| <b>B5Q1 Do you have comments to address risks</b>   | Chi-X supports ASIC taking a risk/cost/benefit approach to the imposition of regulatory burdens on  |



| CP Question  | Response   |
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| <b>identified for specific venues on a case-by case basis?</b> | MIPs. However it is appropriate for ASIC to consider benefits beyond the individual case being considered. For example the issues associated with regulating a particular tier two operator may have wider impacts on the Australian regime for MIPs. The licencing of a tier 2 entity, and any conditions imposed, may also have an impact on other entities, both those that are currently regulated and those that may be in the future.  |
| <b>B5Q2 Do you have alternative or other proposals?</b>        | <p>The principles governing the application of the regulatory framework should include:</p> <ul style="list-style-type: none"><li>(a) the need to enhance Australia’s markets, both locally and relative to other global financial centres;</li><li>(b) the need to facilitate competition between MIPs as a means of enhancing Australia as a place to do business.</li></ul> <p>It is also not clear to Chi-X why there has not been a transparent cost benefit analysis of the development and implementation in Australia of the centralised ‘listing authority’ model. “ASX is one of the most expensive listing venues in the world”<sup>2</sup>. The centralised listing authority model has enhanced competition between listing market operators in other jurisdictions. Chi-X is of the view that there is merit in, at a minimum, examining the costs and benefits of this model for the Australian</p> |

<sup>2</sup> See the report of Morgan Stanley analysts Arvid Streimann, Andrei Stadnik, Richard Wiles, Daniel Toohey and Matthew Dunger, retrieved on 8 September 2017 from <https://www.businessinsider.com.au/morgan-stanley-the-asx-will-keep-raising-fees-thanks-to-its-quasi-monopoly-status-2014-2>



| CP Question  | Response   |
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|  | market place, particularly given the current cost recovery model and the ASIC fees that are being charged to listed entities.  |
| <b>B6Q1 Do you agree with the proposal to update and clarify the explanations in the draft guidance?</b> | <p>Chi-X is of the view that the guidance and supporting framework may be improved in the following areas.</p> <ol style="list-style-type: none"><li>1. Supervision</li></ol> <p>Chi-X is of the view that MIPs and federal regulators need to do more to ensure a collegiate approach is taken to the supervision of market participants and product issuers. This impacts on the proposed guidance relating to the monitoring of both issuers and participants, neither of which should be subject to regulatory duplication that could result from a literal application of the guidance as it is: for example, there will be little benefit in a new market operator subjecting an existing participant of another MIP market operator regulated by ASIC to the same rigorous and review and verification process to which it was subject when it first applied for a licence and/or participant status. This is particularly the case given that the participant will be subject to and presumably complying with the Market Integrity Rules.</p> <ol style="list-style-type: none"><li>2. Monitoring</li></ol> <p>Chi-X is of the view that the guidance should expressly acknowledge the fees paid by market operators and participants to ASIC for it to undertake the lead market monitoring role. The guidance should expressly acknowledge that it may be appropriate for an operator to focus its monitoring resources on operational functionality.</p> |

| CP Question   | Response   |
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|   | <p>3. Changes in Control</p> <p>Chi-X is of the view that it is appropriate for ASIC to focus on the actual decision makers in the ownership chain and to arguably impose the burden for providing this information on a prospective new controller prior to any change in ownership taking place.</p> <p>4. Bespoke ASIC Guidance</p> <p>Chi-X is of the view that it may be appropriate for ASIC to develop a protocol for providing bespoke guidance upon a request from MIPs and for the protocol to be contained in the new Regulatory Guide.</p> |
| <p><b>B6Q2 Do you have comments about other areas of the law that could be clarified?</b></p>   | <p>Chi-X is of the view that Parts 7.2 to 7.5 of the Corporations Act are out of date and need to be amended. This work could include the delivery of a more coherent and modern definition of the regulatory perimeter and licence obligations as they relate to financial markets.</p>   |
| <p><b>B7Q1 Do you think there are further key risk areas that should be addressed in Appendix 2 'Market licensee systems and controls'?</b></p> | <p>Chi-X is strongly of the view that the guidance should cover the obligations of market operators with respect to each other and, in particular, the relevant obligations where one market operator provides services to another.</p>  |

| CP Question  | Response   |
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|  | <p>As such the guidance could cover interaction between market operators when there is a disruption to systems or otherwise at operator 'A', and other operators are dependant on operator 'A' for the provision of critical services.</p>   |
| <p><b>B7Q2 Should we consider giving guidance on other aspects of a licensee's obligation to have adequate technology resources?</b></p> | <p>Chi-X is strongly of the view that ASIC guidance should extend to the fair, orderly and transparent operations of markets in the scenario where one market operator, 'A', provides multiple market services, some of which compete with other market operators and some of which do not.</p> <p>In these circumstances it is critical for ASIC to provide guidance upon:</p> <ul style="list-style-type: none"> <li>(a) the need, all other things being equal, for operator 'A' to structure its services in a way that does not provide a competitive advantage to its own products over those of another market operator;</li> <li>(b) the need to provide appropriate priority, in the event of a market disruption at Operator A, to those services which assist other market operators and will enable them to continue operation even if operator A's competing services are disrupted;</li> <li>(c) how operator A can structure its services in a way that ensures it is fulfilling its obligations in respect of the services delivered to competing market operators.</li> </ul> |

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| <p><b>B8Q1 Do you agree with the proposal to apply the two-tiered approach to overseas operators, based on the risk-based tiered approach, as well as by taking into account how the trading venue is regulated in its home jurisdiction?</b></p> | <p>Chi-X agrees that this principle is an appropriate factor to be taken into account when assessing the appropriate level of risk based supervision.</p>  |
| <p><b>B9Q1 Do you agree with the proposed consolidation?</b></p>  | <p>As a rule, Chi-X supports consolidation of rules/guidance as an appropriate way to deliver cost effective implementation. However, the consolidation of guidance as outlined may have potentially negative impacts on equivalence findings and the ‘stock exchange’ brand that warrant further consideration.</p> |
| <p><b>C1Q1 Are there circumstances when on-sales to retail investors within 12 months of shares being issued under CSF offers should be permitted?</b></p>  | <p>Chi-X is of the view that exceptions to this requirement should be limited but otherwise does not, at this time, wish to express a view.</p>  |
| <p><b>C1Q2 Since continuous disclosure does not apply, what disclosure requirements should apply to secondary trading of shares in eligible CSF companies to facilitate informed trading? Please elaborate. For example: (a) what</b></p>         | <p>Chi-X is of the view that:</p> <ul style="list-style-type: none"> <li>(a) continuous disclosure mechanisms should always be ‘market neutral’ to facilitate competition between providers; and</li> <li>(b) mandatory transaction reporting should be required to enable appropriate monitoring of</li> </ul>      |



| CP Question   | Response  |
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| <b>information should be disclosed to facilitate informed trading? (b) what timing requirements for disclosure should apply, for example if secondary trading occurs periodically? (c) are there other investor protection obligations that should apply?</b> | market activity and a permanent audit trail.<br><br>Other than these basic principles, Chi-X does not wish to express wish to express a view at his time.   |
| <b>C1Q3 Are there any circumstances when secondary trading of shares in eligible CSF companies should not be permitted?</b>   | Chi-X does not wish to express a view at this time.   |
| <b>D1Q1 Do you agree with the proposed way forward for existing exempt professional markets?</b>  | Chi-X is of the view that the streamlined and expedited arrangement may be appropriate subject to:<br><br>(a) the need to ensure the equivalence of the Australian market operator framework is not compromised as a result;<br><br>(b) appropriate distinction is made in labelling and disclosure requirements to ensure there is no possibility of retail investors confusing tier 1 and tier 2 operators. |
| <b>D2Q1 Do you agree with the proposed approach for new applications?</b>   | Chi-X agrees with the proposed approach.  |



| CP Question  | Response   |
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| <b>D3Q1 Do you have preliminary feedback on this proposal (noting that separate consultation is likely to be undertaken before any changes are made to the regulations)?</b> | Chi-X currently supports the proposal for consistent treatment of like trading venues.<br><br>In keeping with the comments provided above, Chi-X is of the view that ASIC should focus on the nature of and risks posed by the services that are being regulated. In these circumstances the services should be regulated in a similar manner irrespective of whether they are provided by a tier 1 or 2 operator or an offshore firm looking to grow its Australian presence. |