



2 May 2019

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By email: [NGFreform@treasury.gov.au](mailto:NGFreform@treasury.gov.au)

Dear Nghi

### **Capping Claims on the National Guarantee Fund (NGF)**

Chi-X Australia Pty Ltd (Chi-X) is grateful for the opportunity to provide a submission on Treasury's consultation concerning the capping of claims on the NGF.

Chi-X is a licensed Australian market operator that has applied for membership of the SEGC, the operator of the NGF, and will pay significant initial and annual contribution fees as part of this process. These fees will not be impacted in the medium to long term by whether or not a cap is introduced as proposed by the draft Regulations. Any longer term future review of the annual fee<sup>1</sup> may or may not be impacted by any cap on payments that is in place at that time.

This submission covers:

- (a) Chi-X support for the caps;
- (b) the urgent need for fundamental reform of the legislative regime for compensation and financial services generally;
- (c) the need for further reform of the NGF – Use of Excess Funds.

#### **1. Support for the Cap on Payments Made in Response to Some Claims on the NGF**

Chi-X is supportive of the cap on compensation payments made in response to claims on the NGF.

While a cap on payments may result in negative outcomes for retail investors making a claim in excess of the cap, this is outweighed by the following benefits:

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<sup>1</sup> For example, after five years of Chi-X membership.

- (a) it addresses the moral hazard created by having unlimited compensation payments;
- (b) it ensures the fund remains appropriately targeted at retail investors and not wholesale investors with more significant positions that have greater (i) access to resources that can limit the circumstances giving rise to a claim and (ii) ability to cover any losses that may arise;
- (c) it is an appropriate way to manage the adequacy of a fund that relies for its funding on firms that may have no responsibility for the loss being compensated;
- (d) taking into account all the circumstances, it provides the best balance of ensuring the ongoing adequacy of funds while covering a broad and appropriate set of potential claimants.

The benefits of capping a last resort compensation scheme were covered in paragraphs 6.33 to 6.41 of the Richard St John report on compensation arrangements for consumers of financial services<sup>2</sup>.

Limits on compensation claims are usual in comparable global schemes<sup>3</sup>.

## **2. The Urgent Need for Reform of the Legislative Regime for Compensation**

Determining the compensation entitlements of retail investors under the Corporations Act is beyond the ability of all but a very small set of dedicated financial service professionals. This is fundamentally inappropriate and needs to be addressed.

## **3. The Need for Further Reform of the NGF – Use of Excess Funds**

In November 2011, the CHOICE submission to Treasury on the Review of Financial Market Infrastructure, and which covered the NGF, stated<sup>4</sup>:

*Since 1988 \$21.65 million has been paid to investors and \$13.43 million has been recovered by the NGF from stock brokers. [page 6]*

And on page 5:

*Since 1988 nearly \$136 million has been paid to FIDA.....we understand about \$20 million has been spent on ASX investor education projects, although we have no knowledge about the details or effectiveness of these projects....The remaining \$110 million has been spent on initiatives that develop*

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<sup>2</sup> Retrieved on 2 May from

[http://futureofadvice.treasury.gov.au/content/consultation/compensation\\_arrangements\\_report/downloads/Final\\_Report\\_CACFS.pdf](http://futureofadvice.treasury.gov.au/content/consultation/compensation_arrangements_report/downloads/Final_Report_CACFS.pdf)

<sup>3</sup> See paragraph D10 of Appendix D on page numbered 164 of the St John report, *ibid*. See also the more recent FCA Consultation at <https://www.fca.org.uk/publication/consultation/cp18-11.pdf>.

<sup>4</sup> Retrieved on 2 May 2019 from <https://treasury.gov.au/sites/default/files/2019-03/CHOICE.pdf>

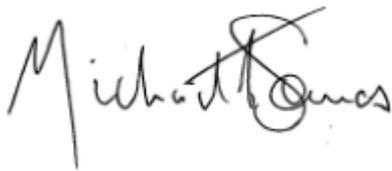
*the ASX such as the Clearing House (\$30m), automated trading systems (\$30m+), data management systems and smaller projects such as the ASX's website. While all of these may indirectly benefit consumers they substantially benefit the ASX.*

Chi-X is of the view that it is appropriate to ensure that there is no possible risk of the fund being used in this way again.

I hope this submission is of assistance in your important work in this area.

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

Yours sincerely

A handwritten signature in black ink that reads "Michael Jones". The signature is written in a cursive style with a large initial 'M' and 'J'.

Chi-X Australia Pty Ltd