



6 July 2022
File:

Mr Jason Lange
Executive Director
Office of Best Practice Regulation
1 National Circuit
BARTON ACT 2600

Dear Mr Lange

CERTIFICATION OF INDEPENDENT REVIEWS – COMPETITION IN CLEARING AND SETTLEMENT REFORMS

I am writing to certify that the attached independent reviews have undertaken a process and analysis equivalent to RIS processes.

The primary independent reviews attached are as follows:

- *Review of Competition in Clearing Australian Cash Equities: Conclusions*, Report by the Council of Financial Regulators (CFR), June 2015;
- *Safe and Effective Competition in Cash Equity Settlement in Australia: Response to Consultation*, Report by the CFR, September 2017; and
- *Competition in Clearing Australian Cash Equities: Conclusions*, Report by the CFR, December 2012.

These reviews led the CFR to support a position of openness towards competition, and prompted the CFR to recommend that government legislate to give ASIC rule-making powers, and the ACCC arbitration powers, in respect of clearing and settlement.

To guide the implementation of these powers, the CFR has also published the following policy statement:

- *Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia*, September 2017, (the policy statement is publicly available at <https://cfr.gov.au/publications/policy-statements-and-other-reports/2016/regulatory-expectations-policy-statement/pdf/policy-statement.pdf>)
- *Minimum Conditions for Safe and Effective Competition in Cash Equity Clearing in Australia*, September 2017, (the policy statement is publicly available at <https://cfr.gov.au/publications/policy-statements-and-other-reports/2016/minimum-conditions-safe-effective-cash-equity/>)

- *Minimum Conditions for Safe and Effective Competition in Cash Equity Settlement in Australia*, September 2017, (the policy statement is available at <https://cfr.gov.au/publications/policy-statements-and-other-reports/2017/minimum-conditions-safe-effective-competition/>)

I certify that these documents adequately address all seven RIS questions, and are submitted to the Office of Best Practice Regulation for the purposes of satisfying the regulatory impact analysis requirements related to the competition in clearing and settlement reforms.

I am satisfied that the scope of the problem and the recommendations in the certified reviews are substantially the same as the identified problem and recommendations in the policy proposal. Although several years have passed since these Reviews were conducted, Treasury considers the need for reforms remains unchanged. Attachment A outlines how the issues the CFR sought to address in its previous reviews remain the case today.

The regulatory burden to business, community organisations, or individuals has been estimated using the Australian Government’s *Regulatory Burden Measurement* framework.

I note that the implementation of this proposal will increase the regulatory burden. The analysis contained in the certified reviews highlights the benefit to market participants and providers, as well as the broader Australian economy, of the proposed reforms. The reforms establish a robust framework to manage competition in the provision of clearing and settlement services, should it arise, and to seek competitive outcomes in the event that a monopoly continues to exist.

A regulatory offset has not been identified. However, Treasury is seeking to pursue net reductions in compliance costs and will work with affected stakeholders and across government to identify regulatory burden reductions where appropriate.

Regulatory burden estimate table

Average annual regulatory costs (from business as usual)

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0.27m	\$0	\$0	\$0.27m

Accordingly, I am satisfied that the attached report is consistent with the Australian Government Guide to Regulatory Impact Analysis.

Regards



James Kelly
Acting Deputy Secretary
Markets Group
The Treasury

Attachment A – Analysis of continuing applicability of certified reviews

The CFR reviews were conducted in a context in which ASX was the monopoly provider of clearing and settlement for cash equities in Australia. In its 2015 Review, the CFR found that the threat of competition alone may not exert sufficient discipline on ASX. CFR therefore recommended that the relevant regulators be able to impose enforceable requirements on ASX where the Regulatory Expectations were either not being met or not delivering the intended outcomes. The CFR also found that ASX will have incentives to discriminate in favour of its own operations when providing monopoly CS services to its competitors in related markets, and recommended introduction of an arbitration regime administered by the ACCC.

The market structure that prompted the CFR's review and recommendations remains the case today. ASX continues to operate a vertically integrated cash equities listing, secondary market and CS facilities, and remains the monopoly provider of clearing and settlement for cash equities in Australia. ASX competes against other market operators in the trading of cash equities, who rely on the ASX for CS services. While the CFR has published Regulatory Expectations setting out expectations for ASX's conduct in operating cash equities clearing and settlement, regulators do not have powers to impose them as enforceable requirements, nor powers to arbitrate material disputes between ASX and parties seeking to access its facilities.

In the 2015 Review, the CFR recommended the Government adopt a stance of openness to competition, consistent with the legislative settings in the *Corporations Act 2001* and the potential benefits competitive discipline could provide. The CFR also found there are a number of potential costs and risks associated with there being multiple operators of clearing or settlement. CFR therefore recommended the regulators should have the power to make rules to facilitate safe and effective competition.

Regulators indicated they could not approve a licence application from another provider of cash equity CS services until this legislation is in place. The Regulators continue to hold this position. In the absence of this legislation, prospective competitors do not have the certainty required to make long-term investments in developing this infrastructure.