

Friday, 16 May 2025

Karen Webb
Head of Issuer Services,
Securities & Payments
Australian Securities Exchange
Exchange Centre, 20 Bridge Street
Sydney NSW 2000

By email: issuers@asx.com.au

Dear Karen,

Re: ASX Settlement Operating Rule amendments – Depositary Nominee services

Computershare welcomes the opportunity to provide our feedback on ASX's Consultation Paper, *ASX Settlement Operating Rule amendments – Depositary Nominee services*.

Computershare is responsible for the registry services of more than 600 ASX listed companies, including 50% of the S&P/ASX 200 and has deep experience in cross border transactions, supporting over 75% of the total Issuers with CHESS Depositary Interests (CDIs) trading on ASX.

Rule Amendments

We are broadly supportive of the proposed Rule amendments, many of which provide an opportunity to make sensible changes, and we note our specific comments below.

Regulatory Impact of Nominee Terms for Issuers

With respect to the introduction of the Nominee Terms, we have also noted our comments on the content below. We are broadly concerned with how these Terms will be incorporated into the regulatory structure and applied to existing Issuers, and request ASX to provide a more detailed explanation and justification of its approach.

Page 4 of section 1.1 of the Consultation Paper states that the Nominee Terms are specified under the Procedures and may only be varied in accordance with the Nominee Terms and the Procedures, and failure of an Issuer to comply with the Nominee Terms if a Rule requires it is a contravention of the Rules. From this brief description, we take it that the Nominee Terms are specified by the Procedures **to apply with respect to any Depositary** that offers Depositary Nominee services for CDIs, whether that is CDN or a commercial provider.

In our view, ASX needs to clarify this regulatory architecture before taking further steps to implement the amended Rules. Consideration should be given the competitive implications of ASX specifying the terms that will be applicable to a Depositary other than CDN.

This option for Issuers to appoint other Depositary Nominees is an important differentiator between Australian CDIs and the Euroclear UK & International ('EUI') variant of CREST DIs, which do not accommodate choice of depositary. However, it is important to note that foreign Issuers listing in the UK can appoint other entities (usually share registries) to issue Depositary Interests (DIs) into CREST on behalf of the Issuer, instead of CREST DIs, and the terms of issuance of DIs are not specified by EUI in the manner that ASX is apparently intending.

We are concerned that ASX therefore appears to intend to impose these new Nominee Terms on all existing CDI Issuers without affirmative consent from the Issuers, while including new exclusions to CDN's liability and the potential for introduction of new fees on Issuers, and without provision for Issuers to terminate the appointment of CDN and appoint a successor Depositary Nominee should they so choose.

Accordingly, while we appreciate the drivers for setting more specific terms around the role of CDN, we urge ASX to consider this structure further to ensure it appropriately addresses the impact on Issuers and the requirement to support competition in provision of the Depositary Nominee function.

We would be pleased to speak with ASX at your convenience on the contents of this submission.

ASX Settlement Operating Rules – Section 13

13.3.4: This clause refers to circumstances in which the Depositary Nominee may refuse to accept a transfer of Principal Financial Products; however, it does address what the Depositary Nominee would do if it refused to accept a transfer of Principal Financial Products. We recommend that ASX consider adding guidance to this clause stating what Issuers should expect if this circumstance were to arise.

13.4.1: We would like to clarify the definition of *Title*, which currently only includes beneficial ownership when the Principal Financial Products can only be held in that form. We note that there are circumstances where it is technically possible for the Depositary Nominee to hold direct legal title, but the use of a custodian delivers efficiencies in processing transfers to and from the Depositary Nominee's position. We therefore propose that the definition of *Title* should be expanded to include beneficial ownership under custody relationships. As such, ASX should consider amending the introductory sentence in this clause as follows: '*When Title to, or beneficial ownership under a custody relationship of Principal Financial Products is vested in a Depositary Nominee all right, title and interest in those Principal Financial Products is held by the Depositary Nominee (or by its appointed custodian)...*'

13.5.1 (a) (i): We query, in line with our observations regarding 13.4.1, whether this clause should be expanded to include custody arrangements. If so, ASX should consider the below amendment: '*a Principal Register (including custody arrangements of the Depositary Nominee), that properly records...*'

13.5.2: Clause 13.4.3 (a) (ii) refers to where a custody account in a CSD is to be treated as the Principal Register under the Rules. For consistency, we query whether this clause needs to be expanded to include any holdings held by a custodian for the Depositary Nominee.

13.5.8 (b): The responsibilities of the Principal Issuer have been extended to include the revocation of a trust, with the text '*by resolution of its board of directors*' being removed from clause 13.5A.1 (which we view as a positive operational change). If events under clause 13.5.A.1 (a) occur, could you please clarify what next steps ASX will expect the Principal Issuer, empowered by the Depositary Nominee under 13.5.8, to take to effect the revocation of the trust (and communicate this to ASX if necessary), in addition to advising CDI holders the revocation of trust has occurred?

13.5A.5 (d) (i) and (ii): We are concerned with the proposed narrowing of circumstances under which the Depositary Nominee will be liable for acts or omission of persons acting as its custodian or agent, subject only to the Depositary Nominee having acted with due care in selecting that person. It appears the implication of these changes is to transfer risk of the Depositary Nominee's selected agent to the Issuer. We note that there are circumstances where the Issuer has no control over the selection, terms of engagement or oversight of CDN's agents, e.g. if a custodian is appointed to hold the Principal Financial Products in a foreign market.

We therefore urge ASX to re-consider the appropriate apportionment of responsibility in these provisions.

13.8: We query whether Voting Arrangements should be expanded to clarify how the Depositary Nominee would be expected to act should a CDI holder request the Depositary Nominee to requisition a meeting of the Issuer.

13.13.2 (c): Can ASX advise how Issuers (and other parties) will be informed of the identity and contact details of the officers of the Depositary Nominee at any given time, so that those officers can be notified to provide them with 'actual knowledge, actual awareness or actual notice' of that 'thing'?

Nominee Terms for Principal Financial Products other than Government Bonds

5.4: This clause states the '*Depositary Nominee or ASX Settlement may from time to time publish a schedule specifying such fees and charges...*'

If the Depositary Nominee or ASX Settlement propose to introduce charges in connection with acting as Depositary Nominee in respect of a class of Principal Financial Products, we expect that ASX will be required to ensure there is appropriate consultation with the market, including to address how current issuers with CDIs will be affected by any such charges.

Can you please clarify ASX's intentions in this regard? We also recommend that '*may from time to time publish*' be amended to '*must publish*' (our emphasis added) in relation to fee schedules. Further, any proposed future changes to fees, once introduced, should be subject to industry consultation.

As with our introductory comments on the Nominee Terms, we also strongly urge that this clause is re-visited from the perspective of a Depositary Nominee other than CDN being appointed by the Issuer. If the Nominee Terms are specified in the Procedures for all Depositary Nominees, it is highly anomalous that ASX Settlement should have a power to specify fees and charges in connection with the Depositary Nominee's services.

6.1: It is not equitable that the Depositary Nominee is only responsible for due care in the selection of a custodian or agent and not for their conduct/omission whereas the Principal Issuer must exercise due care in its selection but also responsibility over the actions of a delegate in 13.5.9. Why does the standard of liability differ between CDN and the Principal Issuer? Again, we urge ASX to re-consider the appropriate apportionment of responsibility in these provisions.

7.1: We interpret this clause as the Depositary Nominee being able to use the assets of the Trust (belonging to Holders) to defend itself in any proceeding brought against it, with limited exceptions for bad faith, negligence or wilful default. If our interpretation is correct (or otherwise), could ASX explain how this would work in practice? We would like to reserve our position here until we gain more insight into the mechanics of the clauses within section 7, and the potential impact on investors and Issuers.

8: We note the rights of the Depositary Nominee to cease to act for an Issuer. However, the Nominee Terms do not include a correlating right for the Issuer to elect to terminate their appointment of the Depositary Nominee and to appoint a successor Depositary Nominee (if another provider should offer such services). In our view, it is essential that the Nominee Terms include such a right for Issuers.

Computershare appreciates ASX's consideration of our comments. Should you have any questions in relation to this submission, please contact me on 0413 005 728 or via email, marnie.reid@computershare.com.au.

Yours sincerely,



Marnie Reid

CEO, Issuer Services, Australia and New Zealand

About Computershare Limited (CPU)

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