

Karen Webb
Head of Issuer Services
Securities & Payments
By email: issuers@asx.com.au

Dear Karen,

Consultation Paper Submission: ASX Settlement Operating Rule amendments – Accessing ASX Settlement Services through Depositary Nominee Services

The National Stock Exchange of Australia (NSX) commends the ASX for consulting on rules and proposals that seek to provide access for non-ASX Approved Listing Market Operators (ALMOs) to the critical Australian settlement services necessary for some issuers located in offshore jurisdictions.

The critical settlement services include those relating to CHESS Depositary Nominees Pty Ltd (CDN).

Unfortunately, the CP has been published:

- (a) over eight years and five months since the ASX wrote to NSX stating “*We advise that CDN will cease providing services as Depositary Nominee for NSX CDIs*”¹.
- (b) when, in the immediate business days prior to this CP being published on 15 April 2025, ASX has listed and commenced trading in the shares of Marimaca Copper Corp, on the basis that ASX was providing the critical CDN services to that issuer ‘on a no fee for service basis’, so that the issuer could access ASX settlement services²;
- (c) after a period in excess of eight years in which NSX, on behalf of prospective NSX issuers, has sought and been denied by ASX, the same access to ASX settlement services and CDN as ASX has provided to Marimaca Copper Corp.

These events diminish the position and credibility of the ASX in relation to the proposals and many statements in the CP.

For example, some of the proposals in the CP seek to entrench the deeply embedded discrimination within ASX clearing and settlement functions, by repeatedly naming CDN in the rules and procedures as a provider of depositary nominee services, inherently undermining any semblance of a level playing field for entities seeking to compete with CDN, or non-ASX ALMOs seeking to access critical settlement services for some prospective issuers in offshore jurisdictions.

In these circumstances, while NSX does support ASX in finally publishing proposals in this important area, it cannot support the proposals in their current form and is strongly of the view that:

¹ Letter Tim Hogben, ASX, to NSX, dated 29 November 2016.

² See Marimaca Copper Corp announcements on the ASX listing: [Marimaca Commences Trading on the Australian Securities Exchange - Marimaca](#) and the related prospectus on CDN operating on a no fee for services basis

- (a) As currently drafted, and given the context in which they have been proposed, there are real and genuine concerns over whether the rules will operate to provide fair and effective CDN and settlement services;
- (b) ASX must re-consult with proposals that properly take account of the competition outcomes and discrimination that is inherent in the current draft proposals and how ASX has previously provided access to its settlement and CDN services;
- (c) In the interim, ASX must immediately provide prospective issuers on the NSX with the same access to settlement services and CDN it currently provides to prospective issuers on the ASX.

Attachment One to this submission outlines:

- 1. Background:
 - 1.1 A brief outline of NSX;
 - 1.2 How Relevant Offshore Corporate Issuers Access Australian settlement services;
 - 1.3 How ASX Used CDN to Deny New NSX Issuers Access to Australia's settlement systems.
- 2. Observations on the ASX use of the term 'commercial' in the context of CDN services.
- 3. Observations on CP Text.
- 4. Observations on proposed ASX Rules.

Please do not hesitate to contact us with any queries, we are committed to supporting ASX in the important area of providing all ALMOs with the same access to its settlement/CDN services.

NSX intends to make this submission public and authorises ASX to act accordingly.

Yours sincerely

Max Cunningham
Managing Director and CEO
National Stock Exchange

Attachment One – NSX Submission to ASX on its CP Concerning Access to ASX Settlement Services and CDN

1. Background: the NSX and Australia's Settlement System

1.1 NSX

- 1.1.1 The NSX holds a Tier 1 Australian Market Licence ("AML") that enables the public listing of equity securities, debt securities, managed investment schemes and associated securities including company issued options, preference shares and property trust units.
- 1.1.2 The NSX is the second largest corporate listing venue in Australia, with over 50 companies currently listed and an ambitious program to become the natural public listing exchange for SMEs, by providing a vibrant capital raising and secondary trading platform.

1.2 How Relevant Offshore Corporates Access Australia's Settlement Systems

- 1.2.1 The size of Australia's superannuation funds and their need for asset diversification that includes offshore exposure, has been well documented. The nature of Australian markets makes them a natural home for some offshore corporate issuers³.
- 1.2.2 Unfortunately some offshore issuers are confronted with competing local and Australian requirements:
 - (a) They are located in jurisdictions that prohibit the issue of non-paper based shares (ie dematerialised interests); and
 - (b) Australia's Tier 1 market licensees must, however, trade in dematerialised shares, which can only be settled in ASX's CHESS.
- 1.2.3 An offshore corporate seeking to list on a Tier 1 market, can manage these competing requirements by using an entity known internationally as a depositary nominee to:
 - (a) issue dematerialised interests for trading and settlement on Australian markets, and
 - (b) issue, on a back-to-back basis, paper shares that are linked to each dematerialised interest issued in Australia, including by providing the holder of the dematerialised interest, with the ownership rights associated with the issued paper shares.
- 1.2.4 Given the monopoly ASX has on settlement services, and its dominant position in corporate listings, it is not surprising that in Australia the depositary nominee services referenced above, have been integrally intertwined with the settlement function operated under a statutory mandate by ASX⁴. The nominee services have only ever been provided by CDN, which is a wholly owned subsidiary of ASX Settlement Pty Limited (ASX Settlement).
- 1.2.5 CDN was created over 20 years ago to act as a depositary nominee as part of the CHESS settlement process. The CDN service was provided free of charge to all issuers, including those listing on the NSX.

³ See for example, [Canadian miners flocking to the ASX - MINING.COM](#), retrieved 15 May 2025

⁴ This settlement function is currently a statutorily mandated monopoly for ASX – see Division 4 of Part 7.11 of the Corporations Act.

- 1.3 How ASX Used CDN To Prevent New NSX Issuers Accessing Australia's Settlement Systems
- 1.3.1 NSX currently has five issuers who have issued CHESS Depository Interests (CDIs) utilising the service provided by CDN.
- 1.3.2 In November 2016, ASX Group wrote to NSX stating:
- We advise that CDN will cease providing services as Depository Nominee for NSX CDIs*
- The following transitional arrangements will apply:*
- *CDN will accept appointment as Depository Nominee for NSX CDIs until 28 February 2017;*
 - *CDN will provide services as Depository Nominee for NSX CDIs until 29 November 2017.*
- ...
- Under the ASX Settlement Operating Rules, the Depository Nominee for CDIs can be any person admitted as a General Settlement Participant of ASX Settlement*
- 1.3.3 Since that date, NSX has proactively sought to reintroduce the provision of CDN services for prospective NSX issuers, highlighting the demonstrable discrimination inherent in the ASX position up to and including 11 business days prior to the publication of the CP.
- 1.3.4 Relevantly, and most recently, NSX corresponded with the ASX on 20 December 2023, advising there were identified prospective issuers who were precluded from listing on the NSX because of the lack of access to ASX settlement systems that at that time, could only be provided by CDN. NSX also noted to the ASX Group that during the period 29 November 2017 to 20 December 2023, ASX had listed 19 CDI issuers on a no fee for service basis. During this period, NSX had, of course, been unable to list any offshore corporates subject to local requirements prohibiting the issue of dematerialised securities.
- 1.3.5 ASX advised on December 2023 that: *"CDN services are to be provided as a commercial offering across all AMOs, which is a change from the current non-commercial basis they are offered to ASX listed issuers and NSX (pre-2017) listed issuers"*
- 1.3.6 Throughout 2024, NSX continued to unsuccessfully press ASX on making ASX settlement services available to prospective NSX issuers located offshore.
- 1.3.7 As outlined elsewhere in this submission, as recently as 11 business days prior to the publication of the current CP on 15 April 2025, ASX listed an offshore issuer using CDN to access ASX settlement services, with CDN being provided on a 'no fee for service basis'.
- 1.3.8 Throughout this process, ASX has always been aware that until it precluded prospective NSX issuers from having access to CDN and ASX's settlement services, a higher percentage of NSX corporate listings were from offshore jurisdictions with local requirements requiring the use of CDN to list and trade in Australia.

2. ASX use of 'commercial' in the context of CDN services

- 2.1.1 ASX has previously stated that under the current ASX Settlement Rules, *"the Depository Nominee for CDIs can be any person admitted as a General Settlement Participant of ASX Settlement"*.⁵
- 2.1.2 It is important to note that this option (an alternative provider) was an important basis on which ASX precluded new NSX issuers from having access to CDN and ASX settlement services.

⁵ Letter Tim Hogben, ASX, to NSX, dated 29 November 2016.

- 2.1.3 However, ASX now states in the CP that the further ASX Settlement Rule changes being proposed are to enable CDN to provide its service in a commercial setting to issuers from all Approved Listing Market Operators (ALMOs), not just to issuers from ASX Limited as an ALMO.
- 2.1.4 The ASX further states in the CP that:
- The terms on which the Depositary Nominee services are currently provided are limited to those in Section 13 of the Rules. Those terms do not reflect the terms on which a commercial provider of such services would provide those services.*⁶
- 2.1.5 The outcome of this statement is that an alternative depositary nominee provider could not, in 2016, under the ASX Rules as then drafted, provide those nominee services on a commercial basis.
- 2.1.6 In any event, it is disingenuous of ASX, 8 years after the access to CDN and ASX settlement services was terminated by ASX on the grounds that an alternative depositary provider could step in for potential NSX issuers to issue CDIs, for the ASX Consultation Paper to state that the proposed amendments are necessary for those very services to be provided on a commercial basis. The two ASX positions cannot be simultaneously maintained.

3. General Observations on ASX Consultation Paper

- 3.1.1 NSX notes that the CP text:
- (a) Fails to acknowledge the proven track record of NSX Issuers using CDN services for many years.
 - (b) Fails to acknowledge the removal of new NSX issuers accessing CDN and settlement services in November 2017 and which clearly damaged the NSX business in terms of its ability to attract foreign issuers who required CDN to access Australia's settlement systems. Coincidentally, this occurred at about the same time that NSX requested access to the Trade Acceptance Service (TAS) to have securities traded on its market cleared and settled the same way as securities traded on ASX Limited. TAS was a service built for Chi-X Australia and subsequently available for all Approved Market Operators to access. NSX was granted access to TAS 3.5 years after it lodged its application.
 - (c) Does not contain any proposed commercial details, which previous ASX statements have outlined as the reason why access to CDN and settlement services was being precluded. NSX expects that pricing put forward would require regulatory clearance, given that this is a service by a subsidiary of ASX S. Furthermore, the pricing framework should be at arms-length to any reference to ASX Limited as an independent, competing ALMO and to avoid any perceive linkage to its listing service.
 - (d) Confuses the documentary framework for CREST in a way that creates unnecessary ASX rules/procedures that may require changes (eg the introduction of a competing depositary nominee) to be formally approved and signed off under the Corporations Act⁷.

⁶ Refer ASX CP: ASX Settlement Operating Rule amendments – Depositary Nominee Services – ‘Background’, paragraph 4.

⁷ CREST Rules on depositary interests go for two and half pages (see rule 9 on page 61 - [2025-02-24-CREST-Rules-Issuer-SAF-updates..pdf](#), retrieved on 15 May 2025), in contrast to the 37 pages of ASX Rules and 21 pages of ASX Procedures. The CREST Manual consists of six document sets, including the Rules, but other documents, including the CREST International Manual ([2025-04-09 CREST International Manual - cash distribution clarificatory changes - clean version](#)), that seek to describe systems and operations. The CREST Deed Poll is on pages 76 to 98 of the CREST International Manual and can be changed by CREST without it being required to pass the requirements that may apply to changes in the ASX Rules/Procedures.

4. General Observations on the Proposed Rules/Procedures

4.1.1 NSX notes that the proposed rules/procedures:

- (a) embed CDN as the (default ASX linked) commercial provider of the Depositary Service (see the definition of Depositary Nominee) and at the same time offer CDN more control over issuers in the future;
- (b) are proposed without any accompanying text explaining why these controls and risk management practices are not already in place for new issuers on ASX Limited (Were they unnecessary? If so why are they now required?);
- (c) fails to outline, in any meaningful way, what the costs and benefits of these proposed changes may be for the current NSX issuers using CDN;
- (d) impose unnecessary bureaucracy and red tape on market operators seeking to innovate and enhance Australia's markets by bringing offshore issuers to Australian markets;
- (e) include CHESS Depositary Terms when there is no clear reason or rule based consequences for doing so;
- (f) confuse provisions in the CREST Rules and Manuals as a basis for inserting CREST Manual content into the ASX Rules – a better home for CREST Manual content is the ASX Procedures;
- (g) do not objectively set out criteria that must be met by all depositary nominees (without mentioning CDN as a nominee that has already satisfied these requirements) so that the rules are neutral with respect to providers;
- (h) do not clearly set out the perimeter of ASX activities covered by the Settlement Rules so that it is clear what are covered services, whether under the CS Rules or otherwise;
- (i) in the case of a competing provider to CDN emerging, will require ASX approval of a change in the terms offered by that competitor without any transparent procedures to resolve conflicts and other competition issues that may arise in respect of that approval process.

4.1.2 Each of these observations creates serious concerns on the part of NSX about the fairness and effectiveness of the proposed rules, particularly taking into account the context provided by events outlined elsewhere in this submission.