



Level 23, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

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Matthew Deane
Banking and Capital Markets Regulation Unit
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Matthew

Chi-X Australia's Submission on the Final Recommendations of the Financial System Inquiry

Chi-X Australia Pty Ltd (Chi-X) is grateful to Treasury and ASIC for the opportunity of providing a submission on the draft Cost Recovery Implementation Statement (CRIS) for ASIC Market Supervision.

Chi-X is appreciative of the context in which Treasury and ASIC has issued the draft CRIS. The methodology, if any, to be used for wider ASIC cost recovery is yet to be determined. In these circumstances, the eventual methodology for wider cost recovery may require that a new methodology for market operators and participants to be overhauled shortly after it is implemented. Hence Treasury and ASIC are reluctant to change the existing methodology for market operators and participants.

However Chi-X retains fundamental concerns about the nature of the existing recovery measures. The Financial Systems Inquiry stated in its Final Report that "[cost recovery] fees and levies have the potential to increase barriers to entry and potentially limit competition"¹. Chi-X supports the view of the Financial Systems Inquiry that any cost recovery model must therefore be:

- subject to careful implementation and inclusion of an appropriate transparency and accountability framework; and

¹ The Financial System Inquiry, Final Report, November 2014, page 253, retrieved on 2 June 2015 from http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf.

- structured to create a close relationship between the incidence of fees and levies and the costs of regulating the relevant activity².

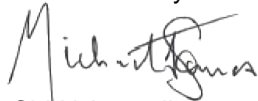
The current cost recovery model to which Chi-X is subject does not satisfy these requirements. In particular Chi-X notes the following issues with the current cost recovery regime:

- (i) The current cost recovery regime is not user pays: it is based upon metrics that do not properly identify the entities creating the need for regulation or accurately measure the appropriate contribution of those entities that are identified. For example, the ASIC reports on the supervision and surveillance of Australia's financial markets confirm that the supervision paid for by cost recovery measures includes disclosure by listed entities³ and yet ASIC cost recovery does not take into account the "need for regulation" generated by issuer disclosure. This is notwithstanding that income from issuers continues to be the most significant income stream generated by ASX in respect of the trading activities that are subject to ASIC cost recovery⁴.
- (ii) The systems used to monitor Australia's markets are also used to monitor and take action concerning trading activity by persons and industry sectors which are not the subject of cost recovery⁵.

Chi-X currently pays nearly fifty percent of its gross trading revenue to ASIC under a cost recovery regime that commenced at around the same time the Chi-X market was launched. Chi-X is grateful that steps have been taken to partially address the share of cost recovery borne by the Chi-X market under proposals in the CRIS that are more aligned with the cost recovery principles. However, anomalies persist and Chi-X remains of the view that the current cost recovery proposals should be amended to more accurately align the entities generating the need for specific ASIC regulation with the entities from which ASIC's costs, for that regulation, are being recovered.

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

Yours faithfully



Chi-X Australia

² See the basic requirements set out in Department of Finance 2014, *Australian Government Cost Recovery Guidelines, Resource Management Guide No. 304*, Commonwealth of Australia, Canberra and page 253 of the Financial System Inquiry, Final Report, retrieved on 2 June 2015 from http://fsi.gov.au/files/2014/12/FSI_Final_Report_Consolidated20141210.pdf

³ See paragraph 56 of ASIC Report 405 – accessed on 22 August from [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep405-published-21-August-2014.pdf/\\$file/rep405-published-21-August-2014.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep405-published-21-August-2014.pdf/$file/rep405-published-21-August-2014.pdf)

⁴ See the ASX Full Year Results Annual Report for 2014 retrieved on 25 August 2014 from http://www.asx.com.au/documents/asx-news/ASX_Ltd_Full-Year_Results_Annual_Report_August_2014.pdf

⁵ See for example the following ASIC press releases: *New South Wales man jailed for market manipulation*, retrieved on 25 August 2014 from <http://www.asic.gov.au/asic/asic.nsf/byheadline/14-131MR+New+South+Wales+man+jailed+for+market+manipulation> and *Healthzone directors charged with market manipulation*, retrieved on 25 August 2014 from <http://www.asic.gov.au/asic/asic.nsf/byheadline/14-205MR+Healthzone+directors+charged+with+market+manipulation>