

GETCO AUSTRALIA  
Mailing Address:  
20 Anson Road #19-01  
Singapore 079912

getcollc.com

December 16, 2011

Manager, Financial Markets Unit  
Corporations and Capital Markets Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Australia



GETCO

**Stakeholder Feedback on the Council of Financial Regulators (Council)  
Proposals for Reform of the Framework for Financial  
Market Infrastructure in Australia**

Ladies and Gentleman:

GETCO Australia Pty Ltd (“GETCO Australia” or “GETCO”) appreciates the opportunity to comment on the proposals for the reform of the framework for financial market infrastructure in Australia.

**I. Introduction**

The GETCO group of companies has recently established GETCO Australia to trade on the Australian markets. GETCO Australia was admitted in 2011 as a trading participant of ASX, ASX 24 and Chi-X Australia.

GETCO Australia supports the Council’s efforts to improve the regulatory framework for (Financial Market Infrastructure (FMI) in Australia to ensure that this framework is as robust as those of other international financial centers.

GETCO Australia will focus our comments on Section 11 of the consultation paper relating to the National Guarantee Fund (NGF) and Section 12 relating to clearing and settlement (“Consultation Paper”). GETCO Australia believes our comments are consistent with the Council’s goals of creating a market framework that is as transparent and competitive as that of other major financial centers.

**II. National Guarantee Fund (Section 11)**

*Key Points:*

- The NGF should be split from ASX Ltd (ASX) and controlled by an independent entity. A more representative and transparent governance regime will enhance the perceived and actual independence of the NGF.

- The NGF needs to expand market coverage beyond ASX's markets or needs to be incorporated into a broader compensation regime.

## 1. Independence of NGF

We support the Council's proposal to introduce a more representative and transparent governance regime to the NGF to enhance the perceived, and actual, independence of the NGF.

The NGF was established in 1987 from the amalgamation of state and territory fidelity funds following a long history of stock exchanges operating their own fidelity funds. The purpose of establishing the NGF was to instil confidence and encourage participation in the Australian securities market. Since 1987, the markets have changed dramatically, with competition to ASX emerging, including by new market operators, as well as other pools of liquidity that are accessible by retail and wholesale investors. NGF needs to evolve beyond ASX to be more in line with where the market is today.

ASX is the only member of the Securities Exchanges Guarantee Corporation Ltd (SEGC). As noted in the Consultation Paper, as the only member of the SEGC, ASX has the sole power to appoint SEGC board members. Currently, ASX appoints two directors to the SEGC board, and those two directors in turn appoint three other directors. The company secretary and legal counsel for SEGC are also employees of the ASX group.

This governance arrangement makes it unrealistic to expect new market entrants, such as Chi-X, to become participating members of SEGC because it would expose them to direct regulation by persons associated with their major competitor. Moreover, SEGC as trustee of the NGF, might well require production of, or otherwise receive information that is regarded by the new entrant as confidential or commercially sensitive.

In addition to the potential conflicts of interest associated with ASX's control of the governance of SEGC, there is a long standing perception that the NGF is "an ASX fund" and treated by ASX as such. This perception was exacerbated by the decision in 2004 to transfer (albeit with Ministerial approval) nearly \$70m from the NGF to ASX Clear, as capital to support new clearing obligations.

## 2. Expanded Market Coverage

Based on the above, the NGF either needs to expand to cover activities on other markets, or needs to become part of a broader compensation regime.

Chi-X was, in effect, forced to establish its own compensation regime, which meets the requirements of the Corporations Act, principally as a fidelity fund.

The creation of multiple funds creates the risk that there will be gaps or inconsistent compensation coverage depending on the market on which a trade is executed. The potential for disparate compensation treatment based on execution venue does not promote fairness, market integrity or transparency. Furthermore, with the recent introduction of best execution obligations, stockbrokers are required to transmit orders to the market where the best price is available. For that to be mandated in circumstances where there may be different compensation arrangements depending on the venue, is not consistent with best execution requirements.



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A single industry-based compensation regime that covers all markets would address this concern. Such a compensation regime could be established by expanding NGF to include all markets or by creating a new industry fund into which NGF is incorporated.

### III. Competition in Clearing and Settlement (Section 12)

*Key Points:*

- GETCO urges the Australian Competition and Consumer Commission (ACCC) to continue to monitor closely the control by ASX of Australia's clearing and settlement facilities (CS facilities).
- Competition should be encouraged, including allowing for the entry of foreign CS facilities. Barriers to entry should be removed to facilitate competition.



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GETCO supports the Council's proposal to review competition aspects of clearing and settlement in Australia. Our thoughts relating to competition in clearing and settlement are set out below.

#### 1. ASX Control

Since the merger of ASX and SFE in 2006, which followed the merger of SFE and Austraclear in 2000, the four key regulated CS facilities in Australia (ASX Settlement, ASX Clear, Austraclear and ASX Clear (Futures)) have been under common ASX control.

There is clearly no real competition in this segment of the market. Evidence of this lack of competition is the fact that ASX's new competitor, Chi-X, had no choice but to enter into a long-term, expensive clearing and settlement arrangement with ASX Clear and ASX Settlement. There was no alternative and Chi-X was therefore forced into a commercial arrangement with the ASX group. That is not conducive to effective competition in financial markets.

The Chi-X arrangement should be closely monitored by the ACCC to ensure the full benefits of competition in securities markets are achieved.

#### 2. Promoting Competition

Competition drives innovation, efficiency and transparency and therefore GETCO supports initiatives that promote competition. Notwithstanding that all four key regulated CS facilities are under common ASX control, each facility continues to operate separately. The absence of competition means that there is less incentive for the incumbent to create greater efficiencies, cost savings and synergies in the market. For example, before the ASX-SFE merger, we understand there was extensive consideration given to inter-operability and cross-margining to create efficiencies in clearing and settlement across markets. In the five years since the merger, there have been few developments in consolidating infrastructure to achieve these efficiencies.

In our view, the introduction of competition would likely drive more innovation in this area. For this reason, the principal regulators of CS facilities in Australia (ASIC and RBA)

should ensure that regulatory and policy decisions do not unnecessarily discourage meaningful competition.

Given the monopoly the ASX group has on providing clearing and settlement services in Australia, competition from a new domestic CS facility is less likely. It is more likely that a global CS facility would be interested in establishing a competitive alternative to the ASX. For example, we are aware that LCH Clearnet expressed interest in clearing certain OTC derivatives in Australia.

As a participant in many markets around the world, GETCO would encourage the Council to actively work to facilitate the entry of well-regulated and capitalised global CS facilities. It would not be in the interest of all market participants if the policy or regulatory decisions drove offshore CS facilities to operate through Australian incorporated subsidiaries, rather than allow them to operate on a global basis with the full benefit of the global balance sheet and netting processes. It would certainly be reasonable to require offshore CS facilities to have an appropriate presence in Australia, in terms of infrastructure and personnel, but such a requirement should be limited to what is necessary to operate a competitive CS facility, and not impose an undue barrier to entry for such facilities to extend services to Australian users.

We recognise that allowing a foreign domiciled CS facility in Australia may result in some complexities associated with cross border regulation. We believe, however, that those complexities are easily manageable, particularly when you consider the benefits of developing vibrant competition in Australia for clearing and settlement services. Such competition will facilitate the growth of Australia as a financial centre in the Asia Pacific region.

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Please let us know if GETCO Australia can provide any additional assistance to the Council in connection with its proposals. I can be reached at 65 6722 8848 or at [RWeinrauch@Getcollc.com](mailto:RWeinrauch@Getcollc.com).

Regards,



Rebecca Weinrauch  
Regional Head, Legal and Compliance



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