

**Revocation of authorisations  
Australian Stock Exchange Limited  
Articles of Association and Business Rules  
and  
Australian Financial Futures Markets**

**Authorisation nos:**

A90442, A90443, A90458, A90462,  
A90544, A90554, A90564, A90583,  
A90584, A90585, and A90586

**Commissioners**

**Fels  
McNeill  
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Martin  
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**Public Register:**

C2003/82

**Date**

**11 June 2003**

## Summary

On 28 November 2002 the Australian Stock Exchange Limited (ASX) requested that the Commission revoke authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586 granted under the *Trade Practices Act 1974* (the Act). These authorisations relate to the ASX's Articles of Association and Business Rules, and the Australian Financial Futures Market.

In requesting that the Commission revoke the immunity previously granted to it, the ASX has advised that, following a general review of its conduct, it has concluded that:

- the conduct that previously has been afforded the protection of an authorisation is no longer occurring; or
- the conduct afforded protection under an authorisation has since become subject to a new authorisation; or
- the conduct authorised would not breach the Act if authorisation were revoked.

Section 91B of the Act provides that a person to whom authorisation was granted may apply to the Commission for the revocation of the authorisation. On receipt of such an application, the Commission is required to write to interested parties advising them of the application for revocation, its basis and inviting submissions in respect of the application for revocation.

If an interested party objects to the proposed revocation, the Commission may not revoke the authorisation unless it is satisfied that the public benefit is outweighed by the public detriment from any lessening of competition associated with the conduct.

After considering the submissions received from interested parties following the request for revocation, the Commission is satisfied that there is no objection to the proposed revocations. The Commission therefore revokes Authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586.

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## **Introduction**

- 1.1 Organisations who engage, or propose to engage, in certain anti-competitive business conduct that might breach the Trade Practices Act (the Act) may apply to the Australian Competition and Consumer Commission (the Commission) for authorisation of such conduct. If granted, authorisation provides immunity from legal action under the Act in respect of the relevant provisions of the proposed conduct.

## **Revoking an authorisation**

- 1.2 Section 91B of the Act provides that a person to whom authorisation was granted may apply to the Commission for the revocation of the authorisation. On receipt of such an application, the Commission is required to write to interested parties advising them of the application for revocation, its basis and inviting submissions in respect of the application for revocation.
- 1.3 If any submission objects to the proposed revocation, the Commission may not revoke the authorisation unless it is satisfied that the public benefit is outweighed by the public detriment from any lessening of competition associated with the conduct.
- 1.4 Decisions of the Commission to revoke an authorisation may be reviewed by the Australian Competition Tribunal (the Tribunal) provided the person dissatisfied with the determination applies to the Tribunal for a review within 21 days of the date of the determination.

## **Request for revocation**

- 2.1 On 28 November 2002, the Australian Stock Exchange (ASX) requested that the Commission revoke authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586. These authorisations relate to the ASX Articles of Association and Business Rules, and the Australian Financial Futures Market.

## **Background**

- 2.2 The ASX was formed in 1987 as a mutual organisation of stockbrokers following the amalgamation of the six independent state based stock exchanges. The ASX was subsequently demutualised on 13 October 1998 and become a listed company. This process required modification to the ASX Constitution (then known as Articles of Association) and the introduction of new business rules.

- 2.3 As part of the demutualization process, the following occurred:
- provisions in the Articles were transferred to the Business Rules;
  - changes in terminology and structure were undertaken in the Articles and Business Rules; and
  - minor revisions of the Rules were undertaken for clarification and other incidental reasons.
- 2.4 In 2002 the ASX conducted a general review of its procedures that are the subject of authorisation under the Act. As a result of this review the ASX has concluded that in some circumstances:
- the conduct that has previously been afforded the protection of an authorisation is no longer occurring; or
  - the conduct that has previously been afforded protection under an authorisation has since become subject to a new authorisation; or
  - the conduct that has previously been afforded protection under an authorisation would not breach the Act if authorisation were to be revoked.

*Authorisation A90442 and A90443*

- 2.5 Authorisations A90442 and A90443 were lodged by The Stock Exchange of Melbourne Ltd on 17 June 1986 and 27 June 1986 respectively, and relate to the Australian Financial Futures Market (AFFM) Articles and Regulations. Authorisation was granted by the Commission on 2 September 1986.
- 2.6 The AFFM subsequently changed its name to ASX Futures Exchange Pty Limited and commenced trading in January 2002. The rules governing the ASX Futures Exchange trading are the subject of Notification N90875.

*Authorisations A90458 and A90462*

- 2.7 Authorisations A90458 and A90462 were lodged by the ASX on 8 December 1986 and concern a range of ASX requirements, including criteria for membership, membership fees, conduct of business requirements, appeal and disciplinary provision and capital liquidity requirements. Authorisation was granted by the Commission on 15 May 1987.
- 2.8 The ASX has advised that the conduct authorised by A90458 and A90462 has subsequently been amended and, where relevant, this conduct is the subject of a new authorisation (A90657<sup>1</sup>), or was

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<sup>1</sup> Application for authorisation A90657 in relation to the ASX's capital liquidity requirements (Business Rule 1A) was granted by the Commission on 28 April 1999. This authorisation will expire on 28 April 2004.

amended such that the revised conduct did not require authorisation, or alternatively the ASX has now formed the view that the conduct no longer requires authorisation.

#### *Authorisation A90544*

- 2.9 Authorisation A90544, lodged by ASX on 12 October 1992, relates to ASX Business Rules which set out the requirements for approved representatives. Authorisation was granted by the Commission on 31 March 1994.
- 2.10 In their letter dated 5 March 2003 the ASX has advised that it does not consider that the Rules have the effect of substantially lessening competition within the meaning of the Act. Accordingly it is the ASX's view that authorisation is no longer required in relation to these arrangements.

#### *Authorisation A90554*

- 2.11 Authorisation A90554 was lodged by the ASX on 24 September 1993 and relates to the rule amendment intended to clarify the term "prohibited conduct" for the purposes of the ASX disciplinary provisions. Authorisation was granted by the Commission on 26 October 1994.
- 2.12 In requesting that the Commission revoke this authorisation the ASX has advised that it does not consider the conduct to be anti-competitive and as such has formed the view that the conduct no longer requires authorisation.

#### *Authorisation A90564*

- 2.13 Authorisation A90564 was lodged by ASX on 26 May 1994 and relates to crossings and dealings affected by brokers and the closure of Normal Trading. Authorisation was granted by the Commission on 7 September 1994. These Rules were re-written and are now subject to Authorisation A90623<sup>2</sup>.

#### *Authorisations A90583 and A90584*

- 2.14 Authorisations A90583 and A90584 were lodged by ASX on 3 October 1995 and relate to amendments to the Business Rules concerning capital liquidity requirements of ASX member organisations

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<sup>2</sup> Application for authorisation A90623 in relation to the ASX's Business Rules for SEATS (open interface) and the SEATS Access Agreement and Derivatives Access Agreement was granted by the Commission on 1 April 1998 and expired on 23 April 2003. The arrangements that were the subject of authorisation A90623 are now the subject of application for authorisation A90872 lodged by the ASX on 16 May 2003 which is currently under consideration by the Commission.

and agents providing settlement services on behalf of participating organisations. Authorisation was granted to the arrangements by the Commission on 22 May 1996.

- 2.15 The capital adequacy rules were revised following demutualisation on 13 October 1998 and are now subject to Authorisation A90657.

#### *Authorisation A90585 and A90586*

- 2.16 Authorisations A90585 and A90586 were lodged by the ASX on 3 October 1995 and relate to amendments to the Articles of Association of ASX concerning the educational requirements for natural person members. Authorisation was granted on 13 March 1996.
- 2.17 The ASX has advised that, following demutualisation, the rules governing ASX membership criteria were removed from the ASX Articles of Association and were incorporated into the ASX Business Rules.

### **Submissions**

- 3.1 On 14 January 2003 the Commission wrote to 34 interested parties advising of the ASX's request for revocation in relation to authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586 and inviting submissions in relation to this request.
- 3.2 The Commission received two submissions in response to this invitation. Copies of these submissions are available from the Commission's public register. In summary:
- the Reserve Bank of Australia submitted that it had no objections to the proposed revocations; and
  - the Australian Securities & Investments Commission advised that it appeared unlikely that the proposed revocations would impact on the ASX's ability to comply with its obligations as an Australian market licensee, particularly in relation to maintaining the integrity of the relevant markets in which it operates. Accordingly, ASIC advised that it had no objection to the proposed revocations.

### **Commission evaluation**

#### **Statutory Tests**

- 4.1 Under section 91B of the Act, a person to whom an authorisation was granted may apply to the Commission for a revocation of the authorisation.
- 4.2 On receipt of such an application, the Commission must, by notice in writing given to any persons who appear to the Commission to be interested:

- indicate that the revocation of the authorisation has been applied for; and
  - indicate the basis on which the revocation has been applied for;
  - invite submissions in respect of the revocation within a period specified by the Commission.
- 4.3 After considering any submissions received, the Commission may make a determination in writing:
- revoking the authorisation; or
  - deciding not to revoke the authorisation.
- 4.4 Under section 91B(5) if any submission objects to the proposed revocation, the Commission may not revoke the authorisation unless it is satisfied that the public benefit is outweighed by the public detriment from any lessening of competition associated with the conduct.

### **Evaluation**

- 4.5 The ASX requested revocation on 28 November 2002 on the basis that it considered that there was no longer any need for immunity under the Act as the conduct that is authorised is no longer relevant to its operations, or alternatively the ASX considered that the conduct for which authorisation was granted would not be in breach of the Act.
- 4.6 The Commission wrote to potential interested parties on 14 January 2003 advising that the revocation had been requested and the basis on which the revocation had been applied for. The Commission requested submissions be lodged by 19 February 2003.
- 4.7 After considering the submissions made, the Commission is satisfied that there is no objection to authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586 being revoked.

### **Determination**

- 5.1 The Commission revokes Authorisations A90442, A90443, A90458, A90462, A90544, A90554, A90564, A90583, A90584, A90585, and A90586.
- 5.2 This determination is made on 11 June 2003. Pursuant to section 101 of the Act, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 2 July 2003.
- 5.3 If an application is made to the tribunal, the determination will come into force:

- where the application is not withdrawn – on the day on which the Tribunal makes a determination on the review; or
- where the application is withdrawn – on the day on which the application is withdrawn.

5.4 If no application to review is lodged by this date, the Commission's determination will come into force on 3 July 2003.