



14 August 2003

Mr Tim Grimwade
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Adjudication
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Dear Mr Grimwade

Australian Stock Exchange Limited (ASX) and ASX Settlement and Transfer Corporation Pty Limited (ASTC)– Revocation and Re-Authorisation of CHESS Rules A 90596, A30180, A30181 and A30182

The purpose of this letter is to seek revocation of Authorisations A90596, A30180, A30181 and A30182, collectively referred to as the CHESS Authorisation and as explained below, to seek that an interim authorisation to be granted for a period of six months (or until such time as the new rules come into force, which, subject to regulatory issues, should be no later than March 2004).

BACKGROUND TO APPLICATION

The Australian Competition and Consumer Commission (**Commission**) last granted authorisation in respect of CHESS on 5 August 1998. Authorisation was sought in respect of:

- CHESS Units of Foreign Securities (CUFS);
- ASX Listing and Business Rules and the SCH Business Rules (being the operating rules of ASTC) as they were in force and as they may be amended from time to time, which governed participation in and the operation of CHESS;
- particular conduct that constitutes or may constitute the practice of exclusive dealing; and
- contract arrangement or understanding, a provision of which may be an exclusionary provision within the meaning of section 45 of the Act.

Authorisation was granted for a period of 5 years to remain in force until 27 August 2003.

Since 1998, various amendments have been made to the rules the subject of the Authorisations, however ASX does not consider these to have a material effect upon the Authorisations.

REQUESTED REVOCATION AND INTERIM AUTHORISATION

Given the current review of the ASX Business Rules and the ASTC Rules and the restructure of the clearing and settlement functions as set out below, ASX and ASTC request revocation of the Authorisations in respect of CHESS and seeks that the Commission grant ASX and ASTC interim authorisation for a six month period or until such time as the new rules come into force. The granting of an interim authorisation will ensure that ASX and ASTC can provide the Commission with complete information as to any amendments to the Business Rules, the SCH Rules and the Listing Rules and the manner in which each of these apply.

ASX and ASTC wish to reserve the right to present additional information to the Commission which may be relevant to this application as a result of this review process.

Whilst ASX and ASTC do not consider that the rules the subject of the Authorisations are now anti-competitive, given the changes in the environment that have occurred since 1998 and the changes to the rules to foster competition that have taken place, ASX and ASTC do however seek to maintain the status quo in respect of the current rules until such time as the new rules come into force.

REVIEW OF ASX AND ASTC RULES

As outlined in our telephone conversation with Ms Danielle Staltari on 13 August 2003, and as explained in greater detail below, ASX and ASTC's Rules are currently being reviewed in response to changes to the *Corporations Act*. This review process is expected to be completed over the next few months.

ASX holds an Australian market licence and is subject to the conditions set out under section 792(A) of the *Corporations Act* which was introduced in March 2002. ASX is in the process of reviewing, and where necessary re-drafting, its operating rules to comply with the terms of its licence and the March 2002 amendments to the *Corporations Act*. ASX expects to lodge its new rules, together with its licence application, with the Australian Securities and Investments Commission (ASIC) within the next few weeks. ASX must ensure that it complies with current legislative requirements regarding operating rules and written procedures by March 2004.

ASTC holds a CS Facility Licence in accordance with Section 1425(2) of the *Corporations Act*. ASTC has undertaken the process of reviewing, and where necessary re-drafting, its operating rules to comply with the March 2002 amendments to the *Corporations Act*. The new ASTC rules have recently been informally lodged with ASIC, together with an application to vary its licence as a CS Facility.

Subject to the regulatory requirements of ASIC, it is anticipated that new rules for both ASX and ASTC will be in place no later than March 2004.

LISTING RULE AMENDMENT

ASX will, on and from 27 August 2003, be providing a general waiver from the Listing Rules requiring a listed entity to have CHESS as its sub-register, instead providing listed entities the ability to use any approved sub-register system. The Listing Rules will also be amended to reflect this, and it is anticipated that this will occur in the next few months.

CLEARING AND SETTLEMENT RESTRUCTURE

The ASX Group has decided to restructure its clearing and settlement functions to create a single counterparty (CCP) that will provide contract guarantee support for clearing across all ASX markets. Accordingly, ASTC's functions will be to provide settlement services for equities, warrants and fixed interest products, as well as payment and delivery services across all ASX markets. Australian Clearing House Pty Limited (ACH), which is currently known as Options Clearing House Pty Limited, will provide clearing services in respect of equities, warrants and fixed interest products as well as options and futures. Attached is ASX media release dated 22 November 2002 setting out the ASX Group's proposal.

CURRENT STATUS OF THE BUSINESS RULES, LISTING RULES AND SCH RULES

No material amendments for the purposes of the CHESSE Authorisation have been made to the ASX Business Rules, ASX Listing Rules or the SCH Rules since the 1998 Determination. The role of TNS Clearing Pty Limited (TNSC) as the CCP, however, has since been replaced by OCH.

CHANGING ENVIRONMENT

It is important to note that since the Determination was granted in 1998 a number of significant changes have taken place, including:

- ASX demutualised and became a publicly listed company; and
- The introduction of the Financial Services Reform regime has provided the framework for greater competition

As the Commission is aware, ASX and OCH have during this period re-drafted their respective rules to provide greater competition. To that end, it is important to note that the ASX Business Rules provide that a Trading Participant may have trades cleared at any approved (appropriately licensed) CS Facility. Additionally, a Trading Participant on the ASX market does not have to be a Clearing Participant on the OCH or ASTC markets (and vice versa).

PUBLIC BENEFIT AND THE BUSINESS RULES, LISTING RULES AND SCH RULES

It is ASX's submission that the Business Rules, Listing Rules and SCH Rules are pro-competitive. In response to the Commission's concerns at the time of the CHESSE Phase 1 Authorisation, ASX and ASTC made a number of adjustments to their respective rules. Similarly, further changes were undertaken in 1998.

Even if the Commission were to identify any lessening of competition flowing from the relevant rules, the likely public benefits clearly outweigh any anti-competitive lessening of competition.

No material changes have been made to the Rules since the 1998 Determination. Accordingly, the public benefits flowing from the efficiency gains in the clearing and settling of securities transactions as found by the Commission in its 1998 Determination continue to exist and continue to be a basis for authorisation.

Should you require any further information, please do not hesitate to contact me.

Yours Sincerely



Anna Campbell
Legal Counsel, Corporate & Commercial



MARKET ANNOUNCEMENT

22 November 2002

ASX to form Australian Clearing House

Statement by the Managing Director and CEO, Mr Richard Humphry

“Following an extensive review, ASX has decided to restructure its clearing and settlement functions to create a single central counterparty (CCP) that will provide contract guarantee support for clearing across all ASX markets.

“The new body, to be called Australian Clearing House (ACH), will serve as a more capable and more flexible counterparty - one better able to manage risks across markets. We intend to implement the new structure in stages, subject to regulatory approval from a number of authorities, so that it is fully in place by March 2004.

“Clearing and settlement of exchange transactions are increasingly recognised as vital components of the infrastructure of Australia’s financial system. These reforms are designed to further enhance the reliability and integrity of ASX’s markets, and as such will contribute to Australia’s continued systemic stability and international economic competitiveness.

“They are designed to be consistent with the regulatory requirements of the Australian Securities and Investment Commission and the Reserve Bank of Australia under the new Financial Services Reform (FSR) legislation.

“Under the proposed new structure:

- “ACH will consolidate ASX’s current licences for clearing of equities, warrants and fixed interest products (in place of the current licensee, ASX Settlement and Transfer Corporation (ASTC), and options and futures (in place of the current licensee, Options Clearing House (OCH)).
- “At the same time, the responsibility of the ASTC, which currently provides settlement services for equities, warrants and fixed interest products, will be expanded to embrace payment and delivery services across all ASX markets.

“This realignment will implement what ASX believes are the major organisational principles adopted in world-best clearing and settlement systems: horizontal layering including creation of a single CCP structure; asset class integration; and operational alignment of like functions.

“While a number of details remain to be finalised, including the governance and capital structure of the new body, we are making this announcement now because we believe it is in

the interests of participants to understand the overall purpose and design of this reform, and thereby to facilitate a seamless transition with minimal impact on participants and operations.

“One of the major advantages of the new structure is that, as the central counterparty, ACH will have direct and immediate access to sufficient capital to manage its counterparty risk in the event of a clearing participant default.

“Currently this capital backing is provided by the National Guarantee Fund (NGF). The NGF is administered by the Securities and Exchanges Guarantee Corporation (SEGC), an independent subsidiary of ASX, providing both a clearing guarantee and investor protection funding. This arrangement will continue until the new structure is in place.

“The NGF has served the industry well to date. The FSR legislation now provides for a more appropriate and enduring means of performing those twin functions.

“ASX intends that ACH will take on the clearing guarantee function and capital backing currently provided by the NGF. Next year ASX will seek, in line with Section 891A of the Corporations Act, the Parliamentary Secretary to the Treasurer’s approval for this transfer commensurate with the clearing guarantee liabilities being taken on by ACH. ASX understands there will be a period of public consultation before any final decision by the Government.

“Additionally, the Government is considering the issue of investors’ compensation arrangements in the financial services sector and has released a discussion paper that ASX will respond to shortly.

“Today’s announcement follows an extensive review within ASX by Chris Hamilton, Executive General Manager, Clearing and Settlement. ASX also commissioned external advice from CapCo, a recognised specialist consultant in market infrastructure.

“ASX has been consulting relevant regulators – including the RBA, ASIC and the Commonwealth Treasury - since June. These consultations continue. I would like to acknowledge the constructive atmosphere with which all parties are approaching what is a technically complex and, ultimately, very important project.”

As an interim step in this restructuring, ASX is giving effect to the following three initiatives, all effective around 2 December 2002:

- The replacement of TNS Clearing Pty Ltd (TNSC), the current CCP for CHES approved securities, primarily equities, with OCH, thus ensuring OCH is the sole CCP for all assets traded on the ASX; in this role OCH will over time transition to the new ACH;
- The approval and receipt of a C&S facility license variation covering both options and futures under FSR, and
- The introduction of the OCH Derivatives Clearing rules which replace the existing OCH and ASX business rules relating to options and futures.

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