

Gilbert Jewel

From: Staltari Danielle
Sent: Thursday, 21 August 2003 5:10 PM
To: Gilbert Jewel
Subject: FW: CHESS Authorisation



Letter to

CC_CHESS Authoris



Relevant Rules.pdf

(12 KB)

Hi Jewel

Could this be trimmed etc for the ASX (CHESS revocations)
-----Original Message-----

From: Anna Campbell [mailto:Anna.Campbell@asx.com.au]
Sent: Thursday, 21 August 2003 5:07 PM
To: 'danielle.staltari@accc.gov.au'
Subject: CHESS Authorisation

Danielle

As discussed earlier today, attached is a letter (with attachment) highlighting the rules identified in respect of the interim authorisation application together with a response to the conditions precedent.

<<Letter to ACCC_CHESS Authorisation_21Aug03.pdf>> <<Relevant Rules.pdf>>

Regards
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21 August 2003

Mr Tim Grimwade
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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

I refer to discussions with Danielle Staltari of the Australian Competition and Consumer Commission (“the Commission”) seeking confirmation of the particular rules that are subject to this application for revocation of the CHESS Authorisation and substitution by interim authorisation for a period of 6 months or until such time as the new rules come into force.

I note that there are four authorisations which comprise what is referred to as the CHESS Authorisation. The relevant rules for which immunity is being sought are addressed in respect of each authorisation. I have addressed each in the same manner as set out in the 1998 Determination and where relevant, have made comments in respect of the current status.

As you are aware, ASX and ASTC are in the process of re-drafting their respective operating rules. Relevant changes will also be made to the Listing Rules. In light of the clearing and settlement restructure proposed, together with the framework of the legislative changes arising from FSR reform and other relevant factors that have taken place since the matter was last before the Commission, the parties currently do not consider that authorisation will be required in respect of CHESS once the new rules come into force.

For the purposes of the 1998 CHESS Application I note that the entirety of the SCH Business Rules were sought for authorisation, together with certain ASX Business Rules and SCH Rules. For the purposes of this interim authorisation application, to retain the status quo, the parties submit the entirety of the SCH Rules, together with select ASX Business Rules and Listing Rules. Not all the SCH Business Rules will be relevant for this interim authorisation application and accordingly, particular rules are identified for the Commission’s ease of reference.

1. AUTHORISATION A90596

ASX Listing Rules and SCH Rules which apply to CHESS Units of Foreign Securities (CUFS) (referred to as CHESS Depository Interests (CDIs) in the rules), were authorised insofar as any of them may constitute a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect of substantially lessening competition within the meaning of section 45 of the Act.

Relevant Rules are contained in the attached document.

Although the parties do not consider that effect of the rules in their current form require authorisation in the manner set out, the parties seek interim authorisation in respect of the above until the new rules come into force.

1. AUTHORISATION 30180

This authorisation identified three types of conduct:

- (a) continuing to engage in conduct that constitutes or may constitute the practice of exclusive dealing. ASX required brokers to acquire clearing settlement and registration services from ASTC in respect of transactions between brokers in quoted securities and quoted rights effected through ASX.

This is no longer relevant, as the rules have been modified such that brokers are able to remove clearing and settlement of trades by way of cancellation from the system to an "Acceptable Clearing and Settlement Service" as defined in the rules. (see SCH Rule 7.1.4A). Accordingly interim authorisation is not sought in respect of this matter.

- (b) ASX requiring issuers to acquire from ASTC services in relation to the establishment of CHESS sub-registers for issuers' quoted securities and quoted rights or issuers' securities and rights which are the subject of an application for quotation on ASX and refusing to deal with them if they do not agree.

Note that on and from 26 August 2003, ASX will be providing issuers with a blanket waiver in respect of being able to use any approved sub-register. ASX will also be amending the relevant Listing Rules to effect this in the next few months. In the interests of retaining the status quo however, interim authorisation is sought until the new rules come into force.

- (c) ASTC making its services available only to companies (as defined in the ASX Listing Rules) on condition that they are admitted to ASX's official list and refusing to supply its services to those not admitted.

The current SCH rules provide that ASTC may approve a class of an issuer's financial products which is to be quoted by "an Exchange". The definition of an Exchange in the SCH Business Rules is broad and allows ASTC to approve financial products which are quoted on an exchange or market other than ASX. Accordingly, authorisation is not required in respect of this.

3. AUTHORISATION 30181

Continuing to give effect to a contract, arrangement or understanding, a provision of which may be an exclusionary provision within the meaning of section 45 of the Act. At the time of the original application, ASTC identified SCH Business Rules 7.33.1, 9.20, 19.2.1 and the definition of Payment Provider in section 21 of the Rules as relevant. These references are the same in the current rules.

The Rules deal with the suspension of a CHESS Participant if a Payment Obligation is not authorised by their Payment Provider (Rule 7.33.1), the requirement that all brokers establish a Payment Facility to facilitate DvP settlement (9.20) and the power of ASTC's Board to restrict, suspend or terminate participation in CHESS (Rule 19.2.1).

I note that appeal rights to the Appeal Tribunal are available.

Interim authorisation is sought for the above rules until the new rules come into force, however ASTC does not consider that the rules in their present form require authorisation as an exclusionary provision.

4. AUTHORISATION A30182

This authorisation related to conduct that constitutes or may constitute exclusive dealing conduct:

- Requiring all broker participants to establish payment facilities with Payments Providers in order to be accredited
- Restriction termination or suspension by ASTC for failure to be accredited
- Requiring the payments provider and the CHESS Bank to become and remain a member of the Interbank payments system and the CHESS Payments Provider User group and ACPA (or to give a non member undertaking to ACPA)

The relevant rules are contained in Chapter 2 of the rules and the CHESS Payments Interface Standard Client Payment Provider Deed. Note that rights of appeal are available (see Chapter 18).

As the Commission is aware, a number of amendments were made as a result of the 1998 authorisation process. Accordingly, the parties do not consider that there is a need for continued authorisation of this, however, interim authorisation is sought in respect of the conduct until such time as the new rules come into force.

5. CONDITIONS PRECEDENT TO AUTHORISATION

- Rules to be altered to explicitly permit brokers to use the services of a clearing and settlement facility other than that operated by ASTC to clear and settle ASX market transactions

As noted above, SCH Rule 7.4.1A provides for this.

- Parties not to use any power under the rules to prevent an entity from competing with ASTC to unreasonably constrain an entity's ability compete with ASTC in the provision of clearing and settlement services.

This is a matter of fact. ASX and ASTC have, since the time of the determination, been active in considering ways in which competition could be enhanced.

- The parties to provide a means through which counterparties to an ASX market transaction can efficiently communicate their desire to have a transaction cleared and settled through an alternative clearing facility

As the costs of systems changes have to date been prohibitive, ASTC has established manual procedures for brokers to use an approved alternative clearing facility. Participants are able to cancel trades prior to netting (parties have up until 7 p.m on the day following the day on which the trade was executed in which to decide) and direct the trade to an approved alternative clearing and settlement facility.

- Business Rule 7.1 to be amended to provide that a transaction is eligible for CHES DvP settlement if the transaction is of a class of transactions determined by ASTC in accordance with objective criteria to be so eligible, and that any such determination by ASTC is subject to an appeal mechanism

Business Rules 7.1.3A.1 and 7.1.3E &F set this out.

- The objective criteria and appeal mechanism of condition 4 above are formulated to the Commission's satisfaction by ASTC within 3 months of the date that the determination came into force.

At this stage I am unable to advise when the rules were amended and I cannot comment on the Commission's position.

- The applicants remove the current exclusion of ASX market transactions in debt securities from clearing and settlement through CHES.

SCH Rule 7.1.3 contains the relevant transactions that are eligible. Note that 7.1.3(d) provides for "any other class of transaction that SCH may determine from time to time." Note that ASTC is limited to the provisions of the Corporations Act in respect of what it may do (Regulation 7.11.03).

- the proposed Payments Provider criterion that an entity must maintain an ESA or similar settlement account with the RBA in its own name not be further qualified so as to exclude particular types of institutions with such settlement facilities.

The definition of Payments Provider is located in Chapter 21. Any restrictions placed relate to the technical and operational capacity to ensure the integrity of the system.

Yours Sincerely



Anna Campbell
Legal Counsel, Corporate & Commercial

Relevant Rules

1. Authorisation A90596

SCH Business Rules

- Section 3A

ASX Listing Rules

- Definitions, (as relevant for rules set out below)
- (condition 7)
- Appendix 1A Part 3, Conditions 10, 11, 12, 13
- Appendix 1B, Part 3, Conditions 10, 11, 12, 13
- Appendix 1C Part 3, Conditions 11, 12, 13, 14
- 2.16
- 4.10.16
- 8.2
- 8.5
- 8.6
- 12.4
- 14.2A

2. Other authorisations

SCH Rules

- Section 2
- Section 3B
- Section 7A
- Section 8
- 9.20
- 10.21
- Section 21, to the extent that a definition is required for the purposes of a rule.

ASX Listing Rules

	Current Rule	Description
1	1.1 (condition 3)	imposes an obligation on the Issuer to issue an information memorandum that complies with Appendix 1A
2	Rule 1.7	
3	Appendix 1A	As a result of Appendix 1A which imposes an obligation on the entity to comply with the SCH Business Rules – refer to clause 10

4	Rule 1.9	As a result of Part 3 of Appendix 1B which imposes an obligation on the debt issuer to comply with the SCH Business Rules
5	Appendix 1B	As a result of Part 3 of Appendix 1B which imposes an obligation on the debt issuer to comply with the SCH Business Rules
6	Rule 1.14	As a result of part 3 of Appnedix 1B which imposes an obligation on an exempt foreign entity to comply with the SCH Business Rules
7	Appendix 1C	As a result of part 3 of Appendix 1C which imposes an obligation on an exempt foreign entity to comply with the SCH Business Rules
8	Rule 2.1, in particular condition 3	
9	Rule 2.2	
10	Rule 2.5, in particular condition 9	
11	Explanatory Note on the first page of Chapter 8	
12	Rule 8.1	
13	Rule 8.2	
14	Rule 8.10	
15	Rule 8.11	
16	Rule 8.14	
17	Chapter 19	The definitions to the extent that the Listing Rule definition rely on the like term in the SCH Business Rules

ASX Business Rules

	Rules	Description
1	Rule 3.8, (2A)	
2	Rule 4.43	