

# BURRELL STOCKBROKING

STOCKBROKERS & INVESTMENT ADVISORS  
MEMBER FIRM OF AUSTRALIAN STOCK EXCHANGE LTD

19 September 2003

FILE No.
DOC.
MARS/PRISM:

The General Manager  
Adjudication Branch  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

Dear Sir/Madam

### Australian Stock Exchange (ASX) Business and CHESS Rules

Our firm is a small stockbroking firm of some 30 people which has been in existence since 1937. The reason for corresponding with you is that we have been attempting for some time to have some competition issues associated with the Business and CHESS Rules considered by the ASX but to no avail.

The ASX is of course a natural monopoly. It conducts an efficient market and the CHESS system is the best system for holding securities in Australia in terms of efficiency and security.

The difficulty occurs where the ASX uses its monopoly position to impose rules on small broking firms such as ours.

A current example is that of a case known as ASX v Burrell re Kienzle which concerns the appointment by us of an authorised representative pursuant to the Corporations Law and in accordance with our Dealers License issued under the Corporations Law and by ASIC. The enclosed papers outline the facts in more detail but briefly, Mr Kienzle has conducted an accounting practice which has been in existence in Brisbane since the early 1900's. He undertakes, as an incidental part of his business, some advising for clients of his accounting practice with superannuation funds in respect of securities. Mr Kienzle requires to operate under a Dealers License and because of our long association with him, the fact that he is properly accredited pursuant to ASIC accreditation PS146 and that he attends our training sessions etc means that we have been pleased to have him as an authorised representative.

AUST. COMPETITION &  
CONSUMER COMMISSION  
24 SEP 2003

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The difficulty arises in that the ASX have sought to impose an additional rule known as 5.6 which is that we may only appoint an authorised representative where that authorised representative is carrying on a branch office. Our firm has a number of branch offices in South-East Queensland but Mr Kienzle is not one of them. He has his own office and we have no interest in being responsible for clients of his accounting firm who might slip and hurt themselves or in other respects. We are of course liable under the Corporations Law in respect of the advice which he gives.

It will be seen in paragraph 9 of our letter to Mr Lee Newton of the ASX on 20 February 2003 that we set out the view that the Business Rule 5.6 is contrary to Government competition policy. The effect of ASX Business Rule is to exclude our firm from appointing accountants as authorised representatives so as to gain additional revenue to cover our fixed costs. Larger stockbroking firms have overcome this rule by obtaining a second dealers license from ASIC for their financial planning businesses and then issuing in some cases hundreds of authorised representatives from their second license. Being a small firm we have no desire to incur the additional cost of a second license. Nor from a management point of view do we wish to create management silos, rather we seek to have a team approach within the one firm.

Further to our letter detailed 20 February 2003, the ASX has recently considered this matter in some detail and decided to charge our firm in respect of the Kienzle matter.

It is interesting to note that the ASX papers are in no sense balanced in terms of the submission made to the National Adjudatory Tribunal. For example, there is no mention of the competition policy issues and our submission in paragraph 9 referenced above. Nor is there any reference to the fact that Mr Kienzle is an accredited representative pursuant to PS146. In fact, the ASX completely ignores the fact that the only level of certification which they will accept for Mr Kienzle is that appropriate to a full licensed dealer as there are only two levels of certification now available – PS146 and the full broking certification applicable to principals of broking firms. The interpretation taken by the ASX therefore will exclude us from appointing authorised representatives in situations such as that of Mr Kienzle because accountants will simply take the course of being appointed by other firms who do not have the restriction applicable to Burrell Stockbroking.

This matter is set down for hearing on 2<sup>nd</sup> October 2003 and so if the ACCC were minded to take an interest we would of course be grateful. We have asked for a stay for two months, so that submissions might be made to the ACCC and government.

In the broader sense, the above is merely an example of some principles which should be applicable to ASX Business Rules and CHES rules in order for such to not impede competition. In particular, it would be our submission as follows:

- that the ASX Business Rules and CHESS Rules should be reviewed for unnecessary and overly prescriptive rules which have the impact of raising costs or impeding competition and are not necessary for the conduct of the business of the ASX.
- that where the Corporations Law and ASIC have already legislated and have responsibility for a matter, that it is not appropriate for the ASX to impose additional costs on broking firms by way of duplicate provisions.

Yours truly  
Burrell Stockbroking



C T Burrell  
BComm(Hons), LLB (Hons), MFM, FCA, ASIA  
Managing Director