



ASX

AUSTRALIAN STOCK EXCHANGE

Facsimile	
To	Michael Green
Company	Australian Competition and Consumer Commission
Fax number	(02) 6243 1199
From	Anna Campbell
Business unit	Legal, Corporate & Commercial
Date	3 October 2003
Subject	APPLICATION AND REVOCATION OF CHESS AUTHORISATION
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Australian Stock Exchange Limited
 ABN 98 006 624 691
 Exchange Centre
 Level 9, 20 Bridge Street
 Sydney NSW 2000

PO Box H224
 Australia Square
 NSW 1215

Telephone 61 2 (02) 8298 8072
 Facsimile 61 2 (02) 9227 0431
 Internet <http://www.asx.com.au>
 DX 10427 Stock Exchange Sydney

Please see attached letter.

FILE No:
DOC:
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Regards

Anna Campbell
 Legal Counsel, Corporate & Commercial

AUST. COMPETITION &
 CONSUMER COMMISSION
 CANBERRA
 7 OCT 2003

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2 October 2003

Joanne Palisi
Director
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

Australian Stock Exchange Limited
ABN 98 008 624 691
Exchange Centre
Level BS-9, 20 Bridge Street
Sydney NSW 2000

PO Box H224
Australia Square
NSW 1215

Telephone 61 2 8298 8072
Facsimile 61 2 9227 0432
Internet <http://www.asx.com.au>
DX 10427 Stock Exchange Sydney

Dear Ms Palisi,

APPLICATIONS FOR REVOCATION AND SUBSTITUTION AUTHORISATION BY AUSTRALIAN STOCK EXCHANGE (ASX) AND ASX SETTLEMENT AND TRANSFER CORPORATION PTY LIMITED (ASTC) RELATING TO THE RULES GOVERNING THE CLEARING HOUSE SUBREGISTER SYSTEM

We refer to letter from the Australian Competition and Consumer Commission (the Commission) dated 25 September 2003, which attached a submission from Burrell Stockbroking (Burrell) dated 19 September 2003.

Business Rule 5.6(2)

Burrell's letter to the Commission relates to a matter in respect of an alleged breach of ASX Business Rule 5.6(2), as it existed between 9 August 2000 and 15 July 2002, in respect of certain alleged conduct on the part of Burrell during that period. The provision stated: "*A Participating Organisation shall notify the Exchange in advance, of the address, and every change of address, of each place at which the Participating Organisation carries on a securities business.*"

The matter is to be heard by the National Adjudicatory Tribunal (NAT) in November 2003, a body established under the ASX Business Rules. NAT is a peer review body, comprised of non-ASX industry members. Decisions by NAT are also appellable to the Appeal Tribunal, a body chaired by Senior Counsel of the Sydney bar with members also comprised of non-ASX industry members.

ASX Business Rule 5.6(2) is not a rule relevant to CHES or the CHES Authorisation of SCH Business Rules. The ASX Rule was deleted effective 15 July 2002, when a new "Responsible Executive" framework of supervision by brokers of their internal arrangements was put in place. The purpose of the former rule (and its subsequent replacement) was to facilitate an appropriate market regulatory function and accordingly, ASX does not consider that the rules in either form present any anti-competitive issues.

We do not consider it is appropriate to discuss the facts of the Burrell matter as part of this application for revocation and substitution. However, we do consider that it is appropriate to discuss ASX's role as market operator and how it deals with its participants.

ASX as Market Operator

Pursuant to the *Corporations Act* ASX acts as a co-regulator of market activity through productive collaboration with the government regulator the Australian Securities & Investment Commission (ASIC). As a market licensee ASX is required to undertake a number of regulatory and reporting functions.

Under section 792(A) of the Act, ASX is obliged, *inter alia*, to:

- ensure an orderly, fair and transparent market (paragraph a);
- comply with conditions of its licence (paragraph b);
- have adequate arrangements for supervising the market including monitoring the conduct of participants and enforcing compliance (paragraph c); and
- have sufficient resources to operate the market properly and with required supervisory arrangements (paragraph d).

In particular, ASX's role in relation to market participants is to:

- Set standards for participants, including prudential and systemic risk management through the ASX Business Rules.
- Supervise compliance with the ASX Business Rules and relevant provisions of the Corporations Act.
- Supervise compliance with the SCH Business Rules (the business rules governing the operation of CHESS).
- Investigate breaches and presentation of appropriate cases for disciplinary action.

Application of Rules

The development of ASX's Business Rules and other aspects of its supervisory structure are in response to both legislative requirements and the understanding that adequate supervision of ASX's markets creates confidence in Australian capital markets to the benefit of Australian companies, Australian investors, the Australian economy as a whole, as well as to ASX itself.

Rules are amended from time to time as required. This is done via an extensive review process. ASX rules, before coming into operation, undergo a process of review and industry consultation and cannot come into force unless the appropriate lodgement process is followed which involves ASIC, Treasury and the Minister, which leads to the non-disallowance of the rules. Only when the time for non-disallowance has expired are the rules able to come into force.

Whilst not all rules may apply to all participants, this is done on the basis of objective criteria. Most rules do however apply across the board and apply to participants in the same manner irrespective of their size; ie ASX applies compliance and enforcement of the rules fairly across the board and does not discriminate against any particular type of broker. Accordingly, ASX refutes the statement in Burrell's submission that it "*uses its monopoly power to impose rules on broking firms such as ours*". ASX, as a market operator, must have adequate rules in place to ensure the integrity of the market and must

appropriately enforce those rules. We note that rule 5.6(2) applied across the board to all participants.

Disciplinary Process

The disciplinary process under the rules is fair and impartial. ASX believes that it is important to apply an effective and fair mechanism for monitoring and, where appropriate, sanctioning participant activity.

The ASX department known as Investigations and Enforcement (I&E) is responsible for impartially reviewing evidence and deciding whether to bring an action against a participant and, if so, for arguing the case before NAT. I&E is subject to rigorous Chinese Wall arrangements to quarantine it from any commercial activities of ASX, in keeping with the statutory obligations to have arrangements in place to guard against conflicts of interest, and to ensure the integrity of the process. The disciplinary process is based upon review of participant behaviour by a tribunal of peers drawn from the broking industry and ASX believes that this is an effective way of ensuring fair and proportionate disciplinary responses. As described above, the tribunal operates independently of ASX. Burrell's matter has been scheduled to be dealt with as a "fast track" which means that the process is expedited and based upon the report of ASX and Burrell's response to it. If Burrell is not satisfied with the outcome of the initial adjudication, it may seek a full hearing of the matter by NAT. Additionally, as described above, a party may appeal a decision of NAT to the Appeal Tribunal.

Re-drafting of Rules

As the Commission is aware, the ASX Group is undertaking a review of the rules relating to the operation of the market and clearing and settlement facilities in the context of the changes arising from the Financial Services Reform legislation. New rule books will be in place in respect of each function (ie trading, clearing and settlement) on or before March 2003. As part of the application process in respect of this matter and the SEATS re-Authorisation, ASX is keeping the Commission informed of progress.

Should you wish to discuss this matter further, please contact Anna Campbell on (02) 8298 8072.

Yours sincerely,



Anna Campbell
Legal Counsel, Corporate & Commercial