

Applications for Authorisation

**ASX Settlement and Transfer Corporation Pty Limited,
Australian Stock Exchange Limited, and Australian
Payments Clearing Association Limited**

**in relation to the Clearing House Electronic Subregister
System (CHES) arrangements**

Date: 5 August 1998

Authorisation nos:

A90596

A30180

A30181

A30182

File nos:

CA96/13

CA97/5

CA97/6

CA97/7

Commissioners

Fels

Asher

Smith

Bhojani

Lieberman

Shogren

Handicott

Summary

The Commission has considered a number of applications for authorisation lodged by ASX Settlement and Transfer Corporation Pty Ltd (ASTC), Australian Stock Exchange Ltd (ASX), and Australian Payments Clearing Association Ltd (APCA) relating to the operation of the Clearing House Electronic Subregister System (CHES). CHES is operated by ASTC as the Securities Clearing House (SCH) approved under the Corporations Law.

Authorisation has been sought for the SCH Business Rules in their entirety as well as selected ASX Listing Rules and Business Rules.

The CHES arrangements were previously authorised by the Commission in two phases, in June 1994 and December 1995. These authorisations expired in July 1997, when the Commission granted interim authorisation, in respect of the new applications, for the CHES arrangements as previously authorised.

The current applications also include new Rules for the introduction of CHES Units of Foreign Exchange (CUFS), which enable the transfer and settlement through CHES of transactions involving the securities of foreign companies domiciled in countries that do not recognise uncertificated holdings or the electronic transfer of legal title. In addition, the current applications include new Rules dealing with the establishment of a 'holding lock' mechanism in the event of the death or bankruptcy of a holder and new Rules dealing with brokers' sponsorship agreements. Interim authorisations for these new Rules were granted by the Commission in June 1996 and June 1997 respectively.

The Commission has considered the current applications in light of the proposed demutualisation of ASX, which would be a significant change to the environment in which CHES operated under the previous authorisations granted by the Commission.

CHES is an electronic system for the registration of legal title to, and the clearing and settling of transactions in, ASX listed securities. CHES provides for Delivery versus Payment (DvP) settlement which enables ASTC to cause the irrevocable transfer and registration of legal title to securities in tandem with the irrevocable transfer of funds between participants in a CHES transaction.

The Rules for which authorisation is sought govern participation in and the operation of CHES and include provisions that enable ASTC and ASX to exclude individuals and organisations from participating in CHES. The Rules enable ASX to require all brokers and all issuers listed on ASX to acquire services from ASTC irrespective of the fees charged by ASTC for those services. The Rules also enable ASTC to require all CHES participants to acquire services from a recognised payments provider to enable DvP settlement.

The Commission accepts that there are substantial efficiency gains associated with the CHES arrangements. The Commission notes in particular: the reduction of delays achieved by the removal of paper certificates from the transfer and settlement system; the increased security resulting from the introduction of DvP settlement; and the creation of a capacity to move to a T+3 settlement regime.

The Commission also notes, however, that the extent to which these efficiency gains result in benefits to the public is dependent upon the fees ASTC charges for CHES

services. In particular, the exclusive dealing arrangements between ASTC and ASX give ASTC considerable power to charge unreasonable fees for mandatory CHESSE services. The existence of adequate checks and balances to protect CHESSE users from the introduction of extortionate compulsory fees is, therefore, an important factor in the Commission's consideration of the applications for authorisation.

In its original authorisation of the CHESSE arrangements, the Commission considered that ASTC's Articles of Association 59A (which requires the ASTC board to operate in the interests of the securities industry generally) and 86 (which prohibits ASTC from paying dividends or otherwise transferring income to its owner, ASX), were likely to provide adequate safeguards against the introduction of extortionate compulsory fees by ASTC's board.

The applicants have, however, requested that the Commission evaluate the current applications for authorisation on the basis that ASX is demutualised and Articles 59A and 86 are removed. The applicants argued that it would be difficult for ASX to operate as an effective commercial enterprise where one of its key subsidiaries is unable to distribute any of its profits to ASX. They further argued that even in the absence of Articles 59A and 86 there remained sufficient checks and balances in the form of competition from overseas exchanges and the Commission's power to revoke authorisation on the grounds of changed circumstances, for the Commission to be satisfied that ASTC would not introduce extortionate compulsory fees.

The Commission noted that the proposed removal of Articles 59A and 86 would have to be approved by the Treasurer under the Corporations Law, and that such approval was not assured at this stage. The Commission therefore considered the applications for authorisation on the basis that: (1) Articles 59A and 86 remain; and (2) these Articles are removed.

The Commission concluded that should Articles 59A and 86 remain, many of its concerns in respect of the need for adequate checks on ASTC's power to charge extortionate compulsory fees would be allayed. However, the Commission noted that it would be necessary for ASTC to reconsider the assumptions on which the current CHESSE tariffs are based as it appears that the company may, over a seven year period of operation, accumulate operating surpluses at levels above that required to cover its costs plus the redevelopment of CHESSE at the end of that period.

If Articles 59A and 86 are removed, the Commission noted that the ASTC board would be obliged to adopt a tariff policy that would optimise profits for its owner, ASX. Under this scenario, the Commission formed the view that the existence of a competitive environment has the potential to provide the most efficient mechanism for ensuring that CHESSE tariffs are kept at levels that will enable the public benefits associated with CHESSE to be realised.

The Commission noted that currently there is little or no competition in the clearing and settlement of securities transactions, and that this lack of competition is supported by the CHESSE arrangements. The Commission concluded that it should grant authorisation subject to the following conditions which aim to reduce the barriers, within the CHESSE arrangements, to competition in the clearing and settlement of securities transactions:

- the applicants alter their Rules 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;
- the applicants not use any power under their Rules to prevent an entity from competing with ASTC or unreasonably constrain an entity's ability to compete with ASTC in the provision of clearing and settlement services;
- the applicants provide a means through which the counterparties to an ASX market transaction can efficiently communicate their desire to have a transaction cleared and settled through an alternative facility; and
- the applicants remove the current exclusion of ASX market transactions in debt securities from clearing and settlement in CHES.

The Commission also noted that under the current CHES arrangements access to CHES DvP settlement is limited (to ASX market transactions and to transactions that support ASX market transactions), although ASTC has the discretion to extend access to other classes of transactions. The Commission formed the view that the discretion ASTC has under these arrangements to exclude competitors of ASX from the efficiencies of CHES DvP settlement was anti-competitive and not justified on public benefit grounds. The Commission concluded that the authorisation granted should be subject to the conditions that:

- the applicants amend SCH Business Rule 7.1 to provide that a transaction is eligible for CHES DvP settlement if the transaction is of a class of transaction 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; and
- that such objective criteria and appeal mechanism are formulated to the Commission's satisfaction by ASTC within three months of the date that this determination comes into force.

To ensure that financial institutions are not unreasonably restricted from participating in payments settlement under the CHES arrangements, the Commission further concluded that the authorisation granted should be subject to the condition that:

- the payments provider criterion that an entity must maintain an exchange settlement account 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 authorisation granted by the Commission is limited to a period of five years.

List of abbreviations

AAPBS	Australian Association of Permanent building Societies
ACCC	Australian Competition & Consumer Commission
AFIC	Australian Financial Institutions Commission
APCA	Australian Payments Clearing Association Ltd
ASA	Australian Shareholders' Association
ASC	Australian Securities Commission
ASTC	ASX Settlement and Transfer Corporation Pty Ltd
ASIC	Australian Securities & Investments Commission
ASX	Australian Stock Exchange Limited
BBS	Broker to Broker Settlement
CHESS	Clearing House Electronic Subregister System
CLERP	Corporate Law Economic Reform Program
CUFS	CHESS Units of Foreign Securities
CUSCAL	Credit Union Services Corporation (Australia) Ltd
DvP	Delivery versus Payment
ESA	Exchange Settlement Account
FAST	Flexible Accelerated Securities Transfer
G30	The Group of Thirty
HIN	Holder Identification Number
NBP	Non-Broker Participant
NGF	National Guarantee Fund
RBA	Reserve Bank of Australia
RITS	Reserve Bank Information and Transfer System
SCH	Securities Clearing House
SEATS	Stock Exchange Automated Trading System
SFE	Sydney Futures Exchange
SFECH	SFE Clearing House
SPPD	Standard Payments Provider Deed
TNSC	TNS Clearing Pty Ltd

Contents

1. Introduction.....	1
Previous authorisations	1
Current applications	1
2. Background.....	4
ASX	4
Developments in the settlement of securities transactions	5
CHESSE	6
CUFS.....	7
Other clearing and settlement facilities in Australia	8
Demutualisation of ASX.....	8
3. The applications.....	10
ASX Listing Rules	10
ASX Business Rules	11
SCH Business Rules.....	12
4. Statutory tests	25
5. Submissions	26
Submissions by the Applicants	26
Submissions by interested parties and applicants' responses	37
6. Pre-decision conference and submissions received following the draft determination	52
Pre-decision conference	52
Submissions received following the draft determination	55
7. Commission evaluation	59
Introduction.....	59
Issues arising from the Commission's previous authorisation of the CHESSE arrangements.....	61
New Rules included in the current applications.....	62
ASTC's dominant position and the pricing of CHESSE services.....	63
Articles 59A and 86 and the demutualisation of ASX.....	65
Global Competition	69
Domestic competition.....	70

Direct price monitoring by the ACCC	77
Access to CHESSE DvP settlement by ASX competitors.....	78
Competition among payments providers	82
Brokers and NBPs.....	86
Small investors' concerns.....	87
Registry service providers.....	88
Other relevant issues raised by interested parties.....	89
Time Limit	92
8. Clearing and settlement of financial market transactions	93
Financial markets.....	93
Clearing and settlement facilities	97
Competition in financial markets - some CLERP observations	99
Competition for clearing and settlement services.....	101
Clearing and settlement facilities in the US and UK markets.....	103
9. Determination	106

Attachment A - ASX Listing Rules submitted for authorisation

Attachment B - ASX Business Rules submitted for authorisation

Attachment C - Proposed amendments to the definition of payments provider

Attachment D - List of parties that provided submissions

1. Introduction

Previous authorisations

Phase 1

1.1. In January 1994, Australian Stock Exchange Limited (ASX) and ASX Settlement and Transfer Corporation Pty Ltd (ASTC), a wholly owned subsidiary of ASX, jointly lodged two applications (A30160 and A30161) for the authorisation of ASTC's proposed Securities Clearing House (SCH) Business Rules and proposed changes to the ASX Listing and Business Rules relating to the first phase of the introduction of the Clearing House Electronic Subregister System (CHESS). The phase 1 arrangements established the CHESS subregister of securities and enabled the electronic transfer of CHESS approved securities. On 28 June 1994, the Commission's predecessor, the Trade Practices Commission (TPC), granted an authorisation for the phase 1 arrangements. Authorisation was granted subject to the condition that ASTC's Articles of Association contain provisions that authorise members of ASTC's board to act in the interests of the securities industry generally, including investors. This authorisation was limited for a period of three years from the time the determination came into force on 20 July 1994.

Phase 2

1.2. In August 1995, two applications were lodged for authorisations to support the second phase of the introduction of CHESS. One was lodged by ASTC (A90579) and the other (A90580) was lodged jointly by ASTC and the Australian Payments Clearing Association Ltd (APCA).¹ In October 1995, ASTC lodged a further application for authorisation (A90587) in relation to the CHESS phase 2 arrangements. The phase 2 arrangements enabled the electronic settlement of securities transactions to be conducted on a delivery versus payment (DvP) basis. The DvP system enables ASTC to cause the irrevocable transfer and registration of legal title to securities in tandem with the irrevocable transfer of funds between participants in a CHESS transaction. On 13 December 1995, the Commission authorised the CHESS phase 2 arrangements until 20 July 1997, which coincided with the expiration of the phase 1 authorisation.

Current applications

1.3. On 11 June 1996, ASTC lodged an application for authorisation (A90596) under sub-section 88(1) of the *Trade Practices Act* (the Act) for the authorisation of amendments to the SCH Business Rules to accommodate the introduction of CHESS Units of Foreign Securities (CUFS) in so far as they may constitute an arrangement that has the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act. On 12 June 1996, the Commission granted an interim authorisation for this application until 20 July 1997, when the existing authorisations for the CHESS arrangements were due to lapse.

¹ APCA is owned and controlled by Australia's banks, building societies and credit unions. It is responsible for the co-ordination and management of Australia's payments clearing and settlement systems and procedures.

1.4. On 18 March 1997, an amended application for authorisation A90596 was lodged by ASX and ASTC. This application was amended to cover the ASX Listing and Business Rules and the SCH Business Rules, as presently in force and as they may be amended from time to time, governing participation in and the operation of CHESS, including those SCH Business Rules designed to accommodate CUFS.

1.5. In addition, three applications for the re-authorisation of the CHESS arrangements were lodged.

(1) Application A30180 was lodged by ASX and ASTC under sub-section 88(8) of the Act for authorisation to continue to engage in conduct that constitutes or may constitute the practice of exclusive dealing. The applicants describe the conduct that may constitute exclusive dealing as:

- (i) ASX requiring brokers to acquire clearing, settlement and registration services from ASTC in respect of transactions between brokers in quoted securities and quoted rights effected through a stock market of ASX and refusing to deal with them if they do not agree;
- (ii) ASX requiring issuers to acquire from ASTC services in relation to the establishment of CHESS subregisters 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; and,
- (iii) 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.

(2) Application A30181 was lodged by ASTC under sub-section 88(1) of the Act for authorisation to continue 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. ASTC identifies SCH Business Rules 7.33.1, 9.20, 19.2.1 and the definition of payments provider in section 21 of the Rules as being relevant to this application.

These 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 (Rule 9.20), and the power of ASTC's board to restrict, suspend or terminate participation in CHESS (Rule 19.2.1).

(3) Application A30182 was lodged by ASTC and APCA under sub-section 88(8) of the Act for authorisation to continue to engage in conduct that constitutes or may constitute the practice of exclusive dealing. The applicants describe the conduct that may constitute exclusive dealing by ASTC as:

- (i) requiring all broker participants to establish payment facilities with payments providers in order to be accredited;
- (ii) restriction, termination or suspension by ASTC for failure to be accredited;

- (iii) requiring each payments provider, and the CHESSE Bank, to become and remain a member of the Inter-Bank Payments System, the CHESSE Payments Provider User Group and APCA (or to have given a non-member undertaking to APCA); and,
- (iv) suspension of a payments provider and the CHESSE Bank under circumstances specified in the Standard Payments Provider Deed (SPPD).

The applicants describe the conduct that may constitute exclusive dealing by APCA as:

- (v) requiring each payments provider to become and remain a member of the Inter-Bank Payments System;
- (vi) requiring each payments provider to become and remain a member of the CHESSE Payments Providers User Group; and,
- (vii) the suspension of a payments provider under circumstances specified in the SPPD.

1.6. On 2 May 1997, the board of ASTC adopted new Rules in sections 9A and 11 of the SCH Business Rules. These changes related to the provisions of broker and Non-Broker Participant (NBP) sponsorship agreements and the operation of a 'holding lock' mechanism in the event of the death or bankruptcy of a holder. On 25 June 1997, the Commission granted interim authorisation for these amendments with the intention that this interim authorisation would be re-assessed in the Commission's draft determination in respect of the re-authorisation of the CHESSE arrangements.

1.7. On 17 July 1997, the Commission granted interim authorisation for the CHESSE arrangements (applications A90596, A30180, A30181 and A30182). Interim authorisation was granted on the basis that Articles 59A and 86 remain as currently drafted in ASTC's Articles of Association and on the basis that the interim authorisation would be re-assessed in the Commission's draft determination in respect of the re-authorisation of the CHESSE arrangements.

2. Background

ASX

2.1. ASX was formed in 1987 to amalgamate the six separate stock exchanges that had previously operated in each state capital. Under the Corporations Law, the principal role of ASX is to provide efficient, fair, honest, competitive and informed markets for trading Australian and overseas financial securities. ASX is the only stock exchange operating in Australia, although it is possible for other corporations to establish a stock exchange if they are approved under the Corporations Law.

2.2. Stockbrokers act as agents for clients in the sale and purchase of securities and charge a brokerage fee which usually varies with the size of the transaction. Only member organisations of ASX may carry on a stockbroking business, and trading on the exchange ("on-market" trading) is limited to member organisations and their representatives. A member organisation may be a corporation, a partnership of corporate members or a partnership of natural person members. There are currently 102 member organisations of ASX.

2.3. Non-stockbrokers may trade in securities outside the arrangements of the stock exchange ("off-market" trading), however, the difficulties in communicating with other potential buyers and sellers limit such trading activity.

2.4. ASX plays an important role in regulating the trading activities of stockbrokers. Member organisations of ASX are obliged to comply with the Articles of Association and Business Rules of ASX. Corporations must also comply with the ASX Listing Rules before their securities can be traded on the exchange. These Rules must fulfil the regulatory responsibilities imposed by section 769 of the Corporations Law.²

2.5. The pricing mechanism of the stock exchange in Australia is based on a continuous auction system operated during daily trading sessions. By placing orders with stockbrokers, buyers and sellers indicate the particulars of the securities they wish to trade, including the quantity and the price at which they are prepared to buy or sell. In Australia, securities trading is conducted on a computer based electronic trading system known as the Stock Exchange Automated Trading System (SEATS). SEATS links stockbrokers throughout Australia and creates a single national market in ASX listed securities. The computer matches buying and selling orders, which are prioritised according to the time they were entered into SEATS. The trading floors formerly associated with the stock market in Australia ceased operation in September 1990. The Commission granted authorisations in respect of the SEATS arrangements in November 1992 and February 1998.

² Section 769 requires an exchange to have in place Business Rules that provide for the carrying on of the business of the exchange with due regard to the interests of the public. These Rules must make provision for such matters as: qualifications for membership, the exclusion from membership of persons who are not of good character and the expulsion, suspension or disciplining of members for inequitable business practices as well as provisions for the monitoring of compliance with and the enforcement of the body's Business Rules. The exchange must also adopt Listing Rules that set out the conditions under which securities can be traded on the exchange and provide for the protection of the interests of the public.

Developments in the settlement of securities transactions

2.6. Traditionally, holders of securities were issued with paper certificates to indicate title to those securities. Securities transactions on the stock exchange were settled by the exchange of such certificates (and transfer forms) for payment. This paper based settlement system was slow and expensive, and acute delays would occur at times of high volume market activity. ASX has reported that in 1987, during a period of high volume trading, trades were taking an unacceptable six weeks to settle.

2.7. Australia was not alone in allowing settlement efficiencies to lag significantly behind improvements in trading capacity achieved through deregulation and improvements in technology. Worldwide concern developed at the level of risk inherent in securities markets jammed with paper certificates. In 1989, the Group of Thirty (G30), an independent organisation with a charter to raise awareness of major international economic and financial issues, recommended urgent improvements in securities settlement practices. The G30 report concluded that risk in the securities settlement process could be contained by shortening the time between trade date and settlement, promoting trade guarantees and assuring the simultaneous exchange of payment and securities. Efficiency could be promoted by eliminating the movement of physical certificates, encouraging the use of netting systems where appropriate, and standardising communications methods and settlement schedules. The G30 recommendations were generally accepted by the securities and banking industries internationally.

2.8. In 1989, ASX adopted the following three stage strategy for implementation of the main G30 recommendations:

- Stage 1 - Introduction of optional uncertification ("dematerialisation") of equity securities through the Flexible Accelerated Securities Transfer (FAST) system.
- Stage 2 - Introduction of T+5 fixed period settlement discipline.
- Stage 3 - Realisation of a central clearing house facility to provide paperless transfer of securities, delivery versus payment (DvP) settlement, and the capacity to move to a T+3 fixed period settlement (this stage subsequently became known as CHESS).

FAST

2.9. Introduced in 1989, the FAST system enabled shareholders to hold eligible securities in uncertificated form. Shareholders who elected to have uncertificated holdings were issued with statements (similar to bank statements) at the end of each month if a record change occurred (eg, as the result of a purchase, sale, dividend reinvestment, etc). Under FAST, title to securities that were uncertificated could be electronically transferred across the country to satisfy delivery requirements.

2.10. With the introduction of phase 1 of CHESS in September 1994, securities on the FAST system were progressively converted to CHESS. The FAST system was decommissioned by ASX in October 1995.

T+5 Settlement

2.11. Prior to March 1992, ASX operated a demand settlement system where the timing of settlement was determined by the delivery of securities by a seller's stockbroker to the buyer's stockbroker. In March 1992, ASX implemented T+5 settlement. Under the T+5 regime, settlement for most broker-to-broker transactions is due on the fifth business day after the sale.

2.12. To achieve T+5, changes were made to the ASX broker-to-broker settlement (BBS) system. These changes meant that a subsidiary of ASX became the buyer for every selling broker and the seller for every buying broker. This enabled broker's payment obligations and delivery of securities obligations to be set off and netted. On settlement day, broker's either pay a net sum to, or receives a net sum from, the subsidiary of ASX. Similarly, broker's net obligations to deliver or right to receive securities is satisfied by delivery of securities to, or receipt of securities from, another broker in accordance with net delivery orders issued through the BBS system. All ASX brokers, irrespective of their physical location, settle inter-broker transactions through the BBS system. The T+5 settlement system was granted authorisation by the Commission in July 1993.

CHESS

2.13. Following the introduction of FAST and T+5, the key remaining limitations of the transfer and settlement processes in Australia were that:

- although FAST had been successful in dematerialising a significant proportion of the equity capital of major Australian issuers of securities, the majority of security holdings were still held in certificated form;
- the process of transfer and registration of securities still involved paper documentation, and so remained susceptible to delays in periods of high market activity; and,
- the system did not offer guaranteed delivery versus guaranteed payment in the settlement of securities transactions.

2.14. CHESS was introduced to address these limitations. CHESS establishes a central clearing facility to provide:

- (i) paperless transfer of securities and an electronic subregister for uncertificated holdings of each class of CHESS approved securities;
- (ii) delivery versus payment settlement of ASX transactions between brokers and between brokers and Non-Broker Participants (NBPs) in CHESS; and,
- (iii) the capacity to move to a T+3 fixed period settlement.

The demand for the fastest possible transfer and settlement system and the security provided by DvP were the key motivations for the introduction of CHESS.

2.15. CHESS was implemented in two phases.

Phase 1

2.16. Phase 1, which was introduced in September 1994, established the CHESSE subregister and created a system for the electronic transfer of CHESSE approved securities. Unlike most central clearing systems operated by overseas stock exchanges, holdings recorded on the CHESSE subregister are recognised at law as if they were maintained by the company on its own share register. This enables CHESSE to effect delivery of legal title, whereas overseas clearing systems that operate a central depository deliver only beneficial ownership.

2.17. ASTC operates as the Securities Clearing House (SCH) approved under Part 7.2A of the Corporations Law. As an approved SCH, ASTC is exempt under section 779J from the requirements of the Law that govern the conduct of a securities business, the offer of securities for subscription or purchase, and the invitation to subscribe for or buy securities. As the approved SCH, ASTC is also exempt from Part 7.13 of the Corporations Law which requires the transfer of legal titles to securities to be executed in a paper based form.

2.18. To gain approval, ASTC had to put in place suitable Business Rules to govern the operation of CHESSE. These SCH Business Rules formed part of the phase 1 applications for authorisation.

Phase 2

2.19. Phase 2 of CHESSE provided for the electronic settlement of transactions on a DvP basis - one of the main G30 recommendations. The objective of DvP settlement is to provide for the irrevocable transfer of good title to securities in exchange for the irrevocable transfer of payments, and to do this in as short a time as possible. The elimination of document movement from the transfer and settlement processes through phases 1 and 2 of CHESSE will enable the introduction of a T+3 settlement regime.

2.20. In CHESSE, settlement occurs when securities movements are effected on the CHESSE subregister between participants (brokers and NBPs) and, in conjunction, ASTC instructs relevant financial institutions through an electronic interface to effect payment to or from each payment facility maintained on behalf of a participant. DvP settlement is effected by transferring net amounts of funds to or from each participant's payment facility, and net movements of securities to or from nominated holdings on the CHESSE subregister controlled by participants.

2.21. DvP settlement in CHESSE is supported by two main principles

- (i) ASTC has direct control (as an agent of the issuing companies) over registering the transfer of legal ownership of a company's securities; and,
- (ii) ASTC is able to cause the irrevocable transfer of funds between participants via the financial institutions that are eligible to participate in the DvP settlement process.

CUFS

2.22. CHESSE cannot be used directly for the transfer and settlement of ASX transactions in securities of companies domiciled in countries that do not recognise uncertificated holdings or electronic transfer of legal title. To overcome this difficulty,

ASX has developed a new type of depositary receipt, known as CHESSE Units of Foreign Securities (CUFS), to enable the holding and transferring of such foreign securities in CHESSE.

Other clearing and settlement facilities in Australia

2.23. CHESSE is not the only clearing and settlement facility for securities in Australia. While CHESSE provides a clearing and settlement facility for ASX listed equity securities, Austraclear Limited (Austraclear) and the Reserve Bank Information and Transfer System (RITS) provide clearing and settlement facilities for debt securities in Australia.

2.24. Austraclear, which is owned by a number of major financial institutions, is the central depositary for securities traded in the Australian money market. Its major function is the operation of an electronic system for the recording, clearing and settlement of transactions between professional traders in bank bills, semi-government debt securities and corporate debt securities.

2.25. RITS was developed by the Reserve Bank in conjunction with Austraclear and began operations in 1991. The RITS system allows Commonwealth Government bonds to be transferred and settled simultaneously on a trade-for-payment basis. RITS accounts for about 80 per cent by number of total transactions in Commonwealth Government debt securities.

Demutualisation of ASX

2.26. ASX is currently a non-profit organisation limited by guarantee. ASX is owned collectively or "mutually" by its members with each member of ASX having an equal interest in ASX. Membership of ASX is limited to brokers and member corporations who have access to the securities-related services provided by the exchange. On 18 October 1996, the members of ASX passed a special resolution requiring the board to seek the enactment of legislation by the Commonwealth Parliament that would enable ASX to demutualise and become a company limited by shares. In return for ceding mutual membership, ASX members would be allocated shares in ASX. Under a corporate structure, ASX would be run as a commercial enterprise, focused on earning an adequate return for its shareholders.

2.27. To enable the demutualisation of the ASX, Commonwealth Parliament passed the *Corporations Law Amendment (ASX) Act 1997*. Under the current timetable, ASX intends to demutualise in mid-1998. Before this can occur, changes to the ASX Listing Rules and Business Rules will need to be approved by the relevant Minister.

2.28. The proposed demutualisation would break the nexus between membership of ASX and access to ASX trading facilities. Anyone, not just member brokers, could hold shares in ASX and brokers need not hold shares in, and so be members of, ASX to participate as brokers in the ASX market. ASX shares could be freely traded, subject to the maximum holding limit of 5% introduced into the Corporations Law (section 766E). It is intended that as a corporation, the ASX Articles of Association would not contain any matters relating to the qualifications of brokers and their business dealings. Instead, the Articles of Association would be brought more into line with normal commercial Articles of Association. To ensure that ASX continues to fulfil its regulatory

responsibilities, Rules regulating stockbrokers would be moved to the Business Rules of the ASX.³

³ See generally, ASX Ltd, Members' Information Package: Arguments for and against a Proposal to Convert ASX from a Company Limited by Guarantee to a Company Limited by Shares, 24 September 1996. Submitted as part of attachment 'E' (Demutualisation Information Package) to the CHESSE re-authorisation and CUFS authorisation applications.

3. The applications

3.1. The current applications relate to the ASX Listing Rules, ASX Business Rules and the Securities Clearing House (SCH) Business Rules governing the operation of and participation in CHESS, including those SCH Business Rules designed to accommodate CHESS Units of Foreign Securities (CUFS).

ASX Listing Rules

3.2. To be admitted to the 'Official List' and have shares listed and traded on the Australian Stock Exchange, an entity must comply with the ASX Listing Rules. The Listing Rules specify such matters as minimum levels of capitalisation and minimum numbers of shareholders, standards of public disclosure, as well as operational requirements.

3.3. The Listing Rules also include Rules to support CHESS. The specific Listing Rules relating to the applications are identified in Attachment A to this determination. These Rules primarily require issuers to participate in CHESS and to comply with the SCH Business Rules. A brief outline of the Rules most pertinent to the applications is provided below.

3.4. To be admitted to the official ASX list, an entity must agree, to satisfy the SCH technical and performance requirements and meet any other requirements SCH imposes in connection with CHESS approval of the entity's securities. The entity must also authorise SCH to establish and administer a CHESS subregister in respect of the securities for which quotation is sought (Rules 1.1, 1.7 and clause 10 of part 3 of the form set out in Appendix 1A). These requirements are mirrored for admission to the Official List as a debt issuer (Rule 1.9 and Appendix 1B) and for admission as an exempt foreign entity (Rule 1.14 and Appendix 1C). Similar agreements must also be made when an entity pays its annual listing fee (Rule 16.5.1 and Appendix 16A) and ASX will suspend quotation of the entity's securities (Rule 17.6) and remove it from the Official List (Rule 17.15) if the entity fails to comply within the specified time periods.

3.5. An entity (except an entity established in a jurisdiction that prevents the entity participating in CHESS) must comply with all CHESS requirements relating to its securities for its securities to be quoted (Rules 2.1, 2.2, 2.5, and 2.14).

3.6. For an entity's securities to be CHESS approved it must:

- (i) comply with the SCH Business Rules (Rule 8.1); and,
- (ii) provide for, in addition to the CHESS subregister, an issuer sponsored subregister, or a certificated subregister, or both (Rule 8.2).

Rule 8.1 makes the SCH Business Rules part of the Listing Rules. The effect of this is to enable ASX to suspend an entity's securities (Rule 17.3.1) or remove an entity from the Official List (Rule 17.12) if it "is unable or unwilling to comply with, or breaks, a Listing Rule" by failing to comply with the SCH Business Rules.

3.7. Except for the limited circumstances listed in Rule 8.10.1, which enable the creation of a 'holding lock' to prevent an SCH transfer, an entity must not prevent, delay or interfere with a proper SCH transfer (Rule 8.10).

3.8. Rule 8.14 prevents an entity charging a fee for a range of routine actions such as registering proper SCH transfers, issuing certificates, noting transfer forms, and issuing routine transactions statements. Rule 8.14.1 enables an entity to charge “a reasonable fee” for:

- issuing a certificate to replace one that is lost or destroyed;
- marking a transfer form, or marking a renunciation and transfer form, within 2 business days after the form is lodged; and,
- a special transaction statement.

3.9. By the operation of Rule 15.11 and Appendix 15A if applicable, the constitution of entities admitted to the Official List must be consistent with the Listing Rules and so must be consistent with the CHESS arrangements to the extent that this is required by the Listing Rules.

ASX Business Rules

3.10. The ASX Business Rules contain ASX procedures and the Rules that govern the behaviour of stockbrokers and their employees. The specific Business Rules relating to the applications are identified in Attachment B to this determination. The effect of many of these Rules is to impose a requirement to comply with the SCH Business Rules. A brief outline of the Rules most pertinent to the applications is provided below.

CHESS participation

3.11. Rule 4.1C specifies that all ASX member organisations must participate in Delivery versus Payment (DvP) settlement through CHESS and must comply with the SCH Business Rules.

Sponsorship Agreements

3.12. Traditionally, brokers’ sponsorship agreements have been governed by ASX Business Rule 3.17. These provisions have now been imported into the SCH Business Rules and will be discussed below at paragraphs 3.43 to 3.46.

Warrants

3.13. If warrants are to be admitted to trading status, the warrant-issuer must satisfy the SCH technical and performance requirements and authorise SCH to establish and administer a CHESS subregister in respect of the warrants (Rule 8.5.2 and clause 24 of Appendix 6.16). If the warrants are CHESS approved, they must be transferred and registered in accordance with the SCH Business Rules (Rule 8.18.1) and the warrant-issuer must comply with the SCH Business Rules (Rule 8.18.1D).

Contract Notes

3.14. All contract notes relating to the sale or purchase of CHESS approved securities must specify that they are issued subject to the SCH Business Rules (Rule 3.8(2A)(ii)).

Other requirements to comply with SCH Business Rules

3.15. Settlement agents must comply with the SCH Business Rules (4.51(6)) and contracts relating to the loan of securities under the Securities Lending Service must

comply with the SCH Business Rules (Rule 4.43). The taker and the writer of underlying securities must also effect the transfer in accordance with the SCH Business Rules (Rule 10.13.4.4).

SCH Business Rules

3.16. The applicants have submitted all of the SCH Business Rules for authorisation. SCH is controlled by the board of ASTC which operates SCH as the Securities Clearing House approved under section 779B of the Corporations Law. The primary function of SCH is to provide facilities for the electronic clearing and settlement of transactions in CHES approved securities and to establish and administer electronic CHES subregisters of CHES approved securities.

3.17. The SCH Business Rules provide the basic framework for the operation of CHES. These Rules are enforceable under sections 779G and 1114 of the Corporations Law. As the approved securities clearing house, SCH must notify the ASC of any amendments to the Business Rules. Section 779C of the Corporations Law gives the Minister the power to disallow amendments.

Composition and powers of the ASTC board

3.18. ASTC is a wholly owned subsidiary of ASX and ASTC's directors are appointed by ASX. The SCH Business Rules provide the ASTC board of directors with a number of powers, including the power to make special Rules to apply in a state of emergency (Rule 1.6), to waive the Rules (Rule 1.3.5), and to specify fees and charges payable for facilities and services provided by SCH (Rule 1.9). Some Rules cannot be waived by the board, including Rules relating to the admission of participants, Non-Broker Participant (NBP) sponsorship, disciplinary proceedings, and the restriction, suspension or termination of participation.

Principle registers and CHES subregisters

3.19. Part 2.5 of the Corporations Law requires a company to keep a register of its members containing specified information, and confers rights to inspect the register. The Law also provides for the electronic recording of information and the division of the register into subregisters.

3.20. When a class of an issuer's securities becomes CHES approved, the issuer irrevocably authorises SCH to establish and administer a CHES subregister for that class of securities on behalf of the issuer (Rule 8.2.1). All market transactions in such securities must be settled by electronic transfer through CHES.

3.21. The CHES subregister is the register of legal ownership of securities held on that subregister. However, the issuer retains the obligations to keep a register of its securities in accordance with the Corporations Law. Unless otherwise agreed between the issuer and SCH, in addition to the CHES subregister, the issuer must maintain a certificated subregister and/or an issuer sponsored subregister for each class of CHES approved securities (Rule 8.2.2). Thus, the legal record of holding balances for CHES approved securities must be recorded on at least two of the following subregisters:

- CHES subregister (uncertificated).
- Issuer sponsored subregister (uncertificated).

- Issuer certificated subregister.

3.22. The CHESSE subregister is electronically linked to the issuer and to CHESSE participants. Delay between settlement and registration is, therefore, practically eliminated.

Communications with SCH

3.23. Under section 4 of the Rules, each CHESSE participant and issuer of CHESSE approved securities is required to maintain computer data communications with SCH in accordance with the External Interface Specifications (which detail the protocol used to communicate with SCH, security arrangements and the format and content of messages).

3.24. CHESSE participants and issuers of CHESSE approved securities can request SCH to provide 'standing reports' or 'demand reports' concerning relevant CHESSE holdings or securities (Rule 4.8).

CHESSE approved securities

3.25. To participate in CHESSE, an issuer's securities must be CHESSE approved. With the exception of certain excluded classes of securities, all securities quoted on the Exchange are now CHESSE approved. Securities become CHESSE approved when the securities are quoted by ASX, unless otherwise determined by SCH or agreed with the issuer. Issuers must give notice to SCH of an application for quotation (Rule 3.3). SCH may require an issuer to undertake pre-commencement testing to establish whether an issuer meets SCH's technical and performance requirements (Rule 3.4).

3.26. The Rules enable SCH to suspend, for up to 60 business days, or revoke CHESSE approval of an issuer's securities (Rule 3.5). This can occur if:

- (i) an issuer is unable or unwilling or in any respect fails to comply with the SCH Business Rules or ASX Listing Rules that relate to the settlement, transfer or registration of CHESSE approved securities;
- (ii) ASX suspends trading in an issuer's securities; or
- (iii) SCH considers it necessary or desirable for the integrity, reliability and efficiency of CHESSE, or to protect CHESSE participants from risk of loss.

3.27. If SCH intendeds to suspend or revoke CHESSE approval, SCH is required to give reasonable notice to the issuer, in order to allow the issuer an opportunity to remedy the failure to comply with the Rules. At the same time, SCH must also give a copy of the notice to the Exchange (Rule 3.5.2). If SCH suspends or revokes CHESSE approval, SCH must give reasons for the suspension or revocation of CHESSE approval to the issuers, ASX and where necessary other CHESSE users (Rule 3.5.3). SCH is required to remove a suspension of CHESSE approval if it is satisfied that the circumstances that give rise to the suspension no longer exist (Rule 3.6.4). If suspension of an issuer's CHESSE approved securities continues for 60 business days, SCH is required to revoke CHESSE approval for that class of securities (Rule 3.6.6).

3.28. If SCH suspends (for a period of at least 15 business days) or revokes CHESSE approval, the issuer may lodge an appeal to the appeal tribunal (Rules 3.5.5 and 3.5.6).

The hearing must be held within 10 business days of an appeal being lodged (Rule 3.5.9). The appeal tribunal may affirm the decision of SCH to revoke CHESS approval or direct SCH to remove the revocation (Rule 3.5.12). In the case of suspension, the appeal tribunal may reject the appeal or direct SCH to reinstate CHESS approval (Rule 3.5.12). Membership of the appeal tribunal is discussed below at paragraph 3.98.

3.29. The right to appeal to the appeal tribunal was inserted by ASTC as a response to the draft determination issued in May 1994 in respect of the CHESS phase 1 arrangements.

Participation criteria

3.30. Only CHESS participants have direct access to the electronic transfer, registration, clearing and settlement facilities of CHESS. Section 2 of the Rules provides for the admission of two types of participants: broker participants and non-broker participants.

3.31. To be admitted to participate in CHESS, both broker and non-broker participants must:

- (i) meet the technical and performance requirements (Rule 2.6);
- (ii) meet the stamp duty payment requirements (Rule 2.7); and,
- (iii) meet the payment facility requirements (Rule 2.12).

3.32. Under the payment facility requirements, participants must have in place at all times a payments facility with a 'payments provider'. A payment facility is a facility operated by a payments provider on behalf of the participant for the purpose of making and receiving payments in respect of DvP settlement. The CHESS arrangements do not mandate the form of agreements between payments providers and their client participants. The Standard Payments Provider Deed which sets out the obligations of payments providers is discussed below at paragraphs 3.60 to 3.68.

Brokers

3.33. Member organisations of ASX are automatically admitted as broker participants in CHESS upon fulfilment of the above three requirements (Rule 2.1.2). Brokers are also required to establish a payment facility under Rule 9.20.

Non-Broker Participants

3.34. To be admitted to participate in CHESS, non-broker participants must meet additional requirements (Rule 2.3). For a limited class of NBPs, the only significant additional requirement concerns the lodgement of a performance bond of at least \$250,000. This limited class includes holders of an 'unlimited' dealers licence or a futures brokers licence under the Corporations Law; Australian banks, and their wholly owned subsidiaries that provide nominee, custody and related services; insurance companies authorised under the *Insurance Act 1973* or the *Life Insurance Act 1945*; entities that are approved trustees or that are eligible to be appointed as a custodian of a superannuation entity under the *Superannuation Industry (Supervision) Act 1993*; and, trustee companies (Rule 2.3.1). Only NBPs that belong to this class of regulated entities may maintain sponsored holdings. The sponsorship arrangements are discussed below at paragraphs 3.41 to 3.51.

3.35. Under Rule 2.3.2, any other entity seeking to be admitted as an NBP in CHESS must, in addition to the performance bond and payment facility requirements, also satisfy:

- capacity requirements (for example, its Principals are not under insolvency administration, or, if natural persons, under the age of 18, Rule 2.9);
- business integrity requirements (for example, its Principles have not been convicted of serious fraud, see 2.10); and,
- local establishment requirements (the entity is formed in Australia and carries on business in Australia, see 2.11).

3.36. To be admitted as an NBP in CHESS, NBPs must agree to comply with the SCH Business Rules (Rule 2.21).

3.37. SCH may not reject an application to be admitted as an NBP unless notice is given to the applicant of the reasons why it is proposed to reject the application, and the applicant is given 10 business days to address the reasons stated in the notice. An applicant may appeal to the appeal tribunal against a decision to reject its application (Rule 2.13).

Non-compliance with participation requirements

3.38. The ASTC board may impose restrictions on, suspend or terminate participation, if it is satisfied that the participant (broker or NBP) has not continued to comply with the CHESS participation requirements (Rule 19.2).

3.39. A non-compliant participant may appeal against any determination of the ASTC board to restrict, suspend or terminate participation in CHESS unless the non-compliance arose because:

- (i) of a prohibition or restriction imposed by a State revenue authority against the participant paying stamp duty by lodgement of a periodic return;
- (ii) in the case of a broker, the broker ceased to be a member organisation of the ASX; or,
- (iii) in the case of an NBP, the NBP no longer complies with the capacity requirements (see above at paragraph 3.35).

Appeals are heard by the appeal tribunal which may affirm, vary or set aside and substitute the board's determination with another decision (Rule 19.8). Membership of the appeal tribunal is discussed below at paragraph 3.98.

3.40. A participant can be suspended for a period not exceeding 10 business days if their payments provider does not authorise a net obligation to make a payment from their payment facility identified in a DvP settlement instruction (Rule 7.33.1).

CHESS holdings

3.41. Brokers and NBPs, having direct electronic access to the system, may control holdings of securities on the CHESS subregister in their own name or in the name of wholly owned subsidiaries. Brokers and certain NBPs may control 'sponsored' holdings

of securities on the CHESS subregister in the name of another person (the sponsored holder, or owner, of the securities), provided there is a current sponsorship agreement in place (Rules 9A.2.1 and 9A.3.1). Under such an agreement, the sponsoring broker or NBP is appointed to provide transfer and settlement services as agent for the sponsored client in relation to the sponsored holding of securities.

3.42. Only NBPs that are securities dealers; futures brokers; Australian banks (and certain subsidiaries); trustees and custodians under the relevant superannuation legislation and insurance and trustee companies can establish sponsored holdings on CHESS (Rule 9A.3.2).

Sponsorship agreements

3.43. The new section 9A of the SCH Business Rules govern sponsorship agreements for both brokers and NBPs, replacing ASX Business Rule 3.17 for brokers and re-numbering SCH Business Rule 10.18. The new Rules were given interim authorisation on 25 June 1997.

3.44. Rule 9A.1 specifies that a breach of the sponsorship agreement constitutes a breach of the SCH Business Rules. Under this Rule, SCH can take action with respect to a breach of a sponsorship agreement even though it is not a party to the agreement.

3.45. The Rules specify both mandatory and optional terms for brokers' sponsorship agreements. The mandatory provisions include both a sponsored holder's right to withdraw instructions within a specified period of time and a broker's right to refuse to transfer securities or sell securities if the broker remains unpaid for a specified period of time. Unpaid broker's also have a right to maintain a lien over a holder record (Rule 9A.2).

3.46. Compared with the old ASX Business Rule 3.17, the new section 9A arrangements permit a far greater degree of flexibility in brokers' sponsorship agreements.

3.47. The Rules do not prescribe a form of sponsorship agreement for NBPs, however, Rule 9A.3 does specify that sponsorship agreements made by NBPs must contain certain information. The required information includes: the rights and obligations of the NBP and the sponsored holder; advice that the NBP's ability to satisfy any compensation claim will depend upon the financial circumstances of the NBP; and an acknowledgment that neither ASX nor SCH has any responsibility for supervising or regulating the relationship between the NBP and the sponsored holder.

3.48. The new section 9A provisions require the sponsorship agreement for both brokers and NBPs to contain an acknowledgment of the holder record lock provisions introduced into section 11 of the Rules, see below at paragraphs 3.72 to 3.74.

3.49. CHESS participants may establish and control any number of holdings within CHESS. Each holder on the CHESS subregister is identified by a Holder Identification Number (HIN) which is common across all holdings of CHESS approved securities that are held by that holder under the control of a particular participant. The name and address details associated with the HIN are used as the legal registration details of the holder.

3.50. A HIN can be controlled by only one CHESSE participant at any time. Only one broker or NBP can, therefore, sponsor a particular holding on the CHESSE subregister. Investors are free to have different holdings in his or her name sponsored by different brokers or NBPs and can transfer sponsorship. Rule 9A provides for the transfer of sponsorship from one broker to another on the instruction of the investor, provided that all outstanding fees are paid. Transfer of NBP sponsorship is governed by the contractual arrangements between the parties.

3.51. As noted above at paragraph 3.21, issuers can maintain an issuer sponsored subregister. Investors can maintain holdings on an issuer sponsored subregister without sponsorship by either a broker or an NBP.

CHESSE clearing and settlement

3.52. All transactions between brokers in quoted securities and quoted rights that are effected through ASX's markets must be cleared and settled through CHESSE. Section 7 of the SCH Business Rules governs settlement transfers.

3.53. DvP settlement is a fundamental part of CHESSE. Transactions that are eligible for DvP settlement are:

- (i) on market transactions;
- (ii) wholesale loans or returns where at least one of the parties to the transaction is a broker or the transaction is entered into solely to facilitate settlement of a wholesale loan or return involving a broker;
- (iii) a loan from a return to the Securities Lending Service operated by ASX; and,
- (iv) any other class of transaction that SCH may determine under Rule 7.1.5.

Facilities are also provided enabling participants to transfer CHESSE approved securities between each other free of payment (non-DvP Scheduled Settlement).

3.54. Eligible broker/broker transactions executed through ASX's automated trading system (SEATS) are electronically notified to CHESSE by ASX and scheduled by ASTC for settlement on the specified settlement day, currently T+5. While broker/broker transactions flow automatically to CHESSE following execution in SEATS, details of broker/non-broker transactions and other transactions between participants must be transmitted to CHESSE by the relevant participants and matched in CHESSE before settlement can be effected. Transactions are matched in CHESSE by comparing the details contained in messages transmitted by each counterparty participant.

3.55. In the settlement of eligible broker/broker transactions, the transactions are novated to TNS Clearing Pty Ltd (TNSC), a subsidiary of ASTC, so that the rights and obligations of selling and buying brokers are replaced by corresponding rights and obligations involving TNSC (Rule 7.8). The total amount that a broker is obliged to pay TNSC is then set off against the total amount the broker is obliged to receive from TNSC. Obligations to deliver and receive securities to and from TNSC are also set off (Rule 7.9). Settlement is then conducted according to net broker settlement instructions issued by ASTC once per day.

3.56. On each business day, ASTC calculates each participant's net obligations based on the settlement instructions that are scheduled for settlement on that day. Through

CHESS, it is possible for ASTC to determine the availability of securities for settlement purposes by reference to balances in CHESS holdings. If a holding has a securities shortfall on settlement day, ASTC fails sufficient transactions to eliminate the shortfall. Failed transactions are rescheduled for settlement on the following business day.

3.57. Once ASTC identifies the transactions that can be settled, it requests under clause 3 of the Standard Payment Provider Deed (SPPD) each participant's financial institution to authorise any required net payments into the relevant payment facility. The financial institutions must either authorise funds or refuse payment on behalf of their customers and notify CHESS by a specified time. If any payments are refused, ASTC may use its discretion to remove relevant transactions from the settlement process, and submit revised authorisation requests to participants' financial institutions.

3.58. After ASTC has been notified that all authorisation requests have been authorised, it instructs (under clause 4 of the SPPD) the participants' financial institutions to register net inter-bank payment instructions in the CHESS Payments Provider User Group. The CHESS Payments Provider User Group is a sub-system within the Inter-Bank Payments System established to enable financial institutions to satisfy the payment obligations of CHESS participants. The Inter-Bank Payment System is a system for transferring value between financial institutions by the debiting and crediting of exchange settlement accounts (or other similar accounts) maintained by the Reserve Bank. Currently, the Reserve Bank Information and Transfer System (RITS) is being used as the Inter-Bank Payments System.

3.59. When all net inter-bank payment instructions are registered, ASTC causes the CHESS bank to instruct the Inter-Bank Payment System to effect all those net inter-bank payment instructions simultaneously, while SCH effects the net security movements on CHESS holdings. This can only occur if "zero sum" is achieved (ie, the total of all credits minus the total of all debits is zero).

Standard Payments Provider Deed

3.60. The Standard Payments Provider Deed (SPPD) is a standard form agreement between ASTC, TNSC, the Australian Payments Clearing Association (APCA) and each Payments Provider. The SPPD enables an electronic link between CHESS and financial institutions to facilitate DvP settlement. The SPPD sets out the obligations of the Payments Provider in DvP settlement and the procedures to be followed for electronic funds transfer in DvP settlement under SCH Business Rule 7.2.

3.61. As noted above at paragraph 3.32, to be admitted as a participant in CHESS, participants must maintain a payment facility with one or more payment providers that have entered into an SPPD with ASTC.

3.62. Originally only banks could be payments providers, however, the definition of payments provider in the SCH Business Rules was amended with effect from 9 April 1996 to enable credit unions and building societies to operate as payments providers. Following a number of concerns raised by credit unions and building societies, the applicants have proposed further changes to the definition of payments provider. These amendments are set out in full in Attachment C to this determination.