



ASX

AUSTRALIAN STOCK EXCHANGE

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To Michael Green

Company Australian Competition and Consumer Commission

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From Anna Campbell

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Date 30 January 2004

Subject APPLICATIONS FOR REVOCATION AND SUBSTITUTION LODGED BY ASX AND ASTC RELATING TO CHESS RULES

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 30 JAN 2004

**ASX**

AUSTRALIAN STOCK EXCHANGE

30 January 2004

Mr Tim Grimwade
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Adjudication
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Dear Mr Grimwade

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

We refer to your letter of 16 December 2003, which notes the amendments made to the Commonwealth Inscribed Stock Act 1911 (CIS Act) by the Commonwealth Inscribed Stock Amendment Act 2002 (the Amendments). It is noted that the likely intention of the Amendments is to provide for the electronic creation, issue and recording of Commonwealth Government Securities (CGS) and to facilitate competition in the clearing and settlement of CGS by allowing the appointment of non-government bodies as Registrars under the CIS Act, in addition to, or instead of, the Reserve Bank. In particular, Section 14(3) of the CIS Act allows the operator of a licensed clearing and settlement facility (under Part 7 of the Corporations Act 2001) to be appointed as a Registrar.

In respect of the questions raised in your letter we note the following:

- **The effect of these amendments on ASX's operations**

ASX welcomes the amendments as it provides opportunities for competition not previously available to clearing and settlement facilities, in particular the ability to provide greater access by the retail sector to government instruments. ASX has explored possibilities with Treasury however, to date, entry has not been feasible due to a number of reasons including technological infrastructure.

- **Action that ASX has taken in order to comply with condition 4 of the 1998 authorisation and remove the exclusion of ASX market transactions in debt securities from clearing and settlement**

Condition 4 of the CHES Authorisation required that SCH Business Rule 7.1 should provide that a transaction that 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 determination by ASTC is subject to an appeal mechanism.

Please see attached SCH Business Rule 7.1, currently in operation, which provides for this. We note also that the new ASTC Rules, which will come into force no later than 11 March 2004, also contain provisions which are similar. A copy of the new rules will be provided to the Commission shortly.

- Whether or not ASTC, as the clearing and settlement facility for ASX, has been appointed as Registrar under section 14(3) of the CIS Act.

ASTC is not as yet a Registrar under section 14(3) of the CIS Act.

If you have any questions with respect to the above please do not hesitate to contact me.

Yours Sincerely



Anna Campbell
Legal Counsel, Corporate & Commercial

SECTION 7: SETTLEMENT TRANSFERS**7.1. Scheduled Settlement Conventions**

7.1.1. A Participant is only entitled to settle transactions in Scheduled Settlement if the Participant is a Settlement Participant.

7.1.2. All CHESS Approved Securities are eligible to be settled in Scheduled Settlement.

Note: Transactions in CHESS Approved Securities quoted by an Exchange other than ASX may be settled in Scheduled Settlement with the agreement of SCH.

7.1.3. A transaction is eligible for DvP Net Settlement under Section 7 if the transaction is:

- (a) an On Market Transaction;
- (b) an Off Market Transaction that is:
 - (i) a Wholesale Loan or a Wholesale Return Loan, where at least one of the counterparties to the transaction is a Broker; or
 - (ii) a Wholesale Loan or a Wholesale Return Loan, between two NBPs that is entered into solely to facilitate settlement of a transaction of the kind referred to in Rule 7.1.3(b)(i);
 - (iii) an FDI Transaction
- (c) an SLS Loan or an SLS Return Loan under these Rules; or
- (d) any other class of transaction that SCH may determine from time to time.

Note: An on-market transaction includes a transaction between two entities that are not Participating Organisations, where the transaction is entered into solely for the purpose of facilitating settlement of a transaction with a broker, where the transaction with the broker is of a kind referred to in subclause (a) or (b) of the definition of On-Market Transaction.

7.1.3A.1 An Entity may apply to SCH in the form prescribed by SCH to have a class of transactions included in DvP Net Settlement.

7.1.3A.2 Upon receipt of an application under Rule 7.1.3A.1, SCH shall within a reasonable time process the application and make a decision to either:

- (a) admit the class of transaction the subject of the application to DvP Net Settlement; or
- (b) reject the application.

7.1.3A.3 SCH will admit a class of transactions to DvP Net Settlement if SCH forms the reasonable opinion that:

- (a) where it is necessary that the Entity communicates reliably with CHESS, the entity meets any technical and/or performance requirements;

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- (b) the inclusion of the additional class of transactions in DvP Net Settlement will:
 - (i) permit transactions the subject of National Guarantee Fund protection regime to be distinguished, and if necessary, segregated from, transactions in DvP Net Settlement which are not the subject of NGF coverage; and
 - (ii) not adversely affect the NGF coverage.
 - (c) Participants who will be parties to the additional transactions admitted to DvP Net Settlement, and the investors upon whose behalf they act, will be informed that the additional class of transactions are not covered by ASX's National Guarantee Fund;
 - (d) DvP Net Settlement of the class of transactions is likely to be commercially viable for SCH and will not adversely affect the integrity, reliability or efficiency of CHESS; and
 - (e) where the Commission requires that the class of transactions to be admitted to DvP Net Settlement be covered by an investor protection regime, and NGF coverage is not applicable to the class of transactions, there is an applicable investor protection regime which is acceptable to the Commission.
- 7.1.3A.4 If an Entity seeking inclusion of an additional class of transactions in DvP Net Settlement needs to be admitted as a Participant in CHESS, it shall make an application for admission as an NBP under Section 2 and SCH shall, subject to the Entity meeting the requirements of that Section, admit the Entity as an NBP.
- 7.1.3B If SCH refuses to admit the transaction or transactions of an applicant to DvP Net Settlement SCH shall give the applicant:
- (a) Notice of the reasons why it proposes to reject the application;
 - (b) a period of 15 Business Days after giving Notice in which to provide further information or to take steps which address the reasons stated in the Notice.
- 7.1.3C SCH may immediately remove a class of transactions from DvP Net Settlement if:
- (a) any of the requirements of Rule 7.1.3A cease to be met; or
 - (b) SCH forms the reasonable opinion that:
 - (i) the integrity, reliability or efficiency of CHESS will be significantly impaired by allowing the class of transaction to continue to be included in DvP Net Settlement; or
 - (ii) it is necessary for the protection of CHESS Participants from risk of loss.
- 7.1.3D If SCH removes a class of transactions from DvP Net Settlement under Rule 7.1.3C, SCH shall give Notice of the removal to:
- (a) the Entity, giving reasons for the removal; and

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(b) CHESSE Participants.

7.1.3E An applicant or Entity may appeal against the decision of SCH to:

- (a) not admit a class of transactions into DvP Net Settlement; or
- (b) remove a class of transactions from DvP Net Settlement,

by serving an Appeal Notice on SCH within 10 Business Days of receipt from SCH of Notice of the rejection of the application or removal of the class of transactions, whichever is the case.

7.1.3F If SCH receives an Appeal Notice under Rule 7.1.3D, it shall promptly give a copy of the Appeal Notice to the President of the Appeal Tribunal.

7.1.3G Upon receipt of the Appeal Notice from SCH under Rule 7.1.3E, the President shall convene an Appeal Tribunal in accordance with Rules 18.7.6 and 18.7.7, and the Appeal shall be conducted in accordance with Rule 18.10 with such modifications as are appropriate in the circumstances.

7.1.3H The Appeal Tribunal may in the case of a decision to:

- (a) not admit the class of transaction to DvP Net Settlement:
 - (i) affirm the decision; or
 - (ii) direct SCH to admit the class of transactions to DvP Net Settlement; or
- (b) remove a class of transaction from DvP Net Settlement:
 - (i) affirm the decision;
 - (ii) direct SCH to readmit the class of transactions to DvP Net Settlement.

7.1.3I The determination of the Appeal Tribunal including any determination as to costs payable by the applicant or SCH shall be final and binding.

7.1.4. Subject to Rule 7.1.4A, each Participant that is obliged to deliver or receive Securities shall deliver or receive those Securities:

- (a) if the obligation is in respect of a DvP Transaction, in DvP Net Settlement; or
- (b) for any other obligation, in Scheduled Settlement free of value.

Note: Where Participants agree to settle outside Scheduled Settlement, the Securities may be delivered or received using a Demand Transfer in accordance with Section 6 of these Rules.

7.1.4A If a Broker that is obliged to deliver or receive Securities:-

- (a) wishes to use an Acceptable Clearing and Settlement Service other than CHESSE to settle a Transaction;

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- (b) wishes to remove a Transaction from DvP Net Settlement or from Scheduled Settlement; or
- (c) wishes to settle a DvP Transaction on a Real Time Gross Settlement basis; and the Broker
- (d) obtains the consent of the counterparty to the Transaction; and
- (e) complies with the Rules relating to the removal of Transactions from DvP Net Settlement or, if relevant, Scheduled Settlement,

the Broker may remove the Transaction from DvP Net Settlement, may settle the Transaction under Section 7A or may use the Acceptable Clearing and Settlement Service to settle that Transaction, as the case may be.

7.2. Electronic Funds Transfer

7.2.1. Unless Rule 7.3 applies, the funds transfer procedures set out in the Standard Payments Provider Deed shall apply to payment in DvP Net Settlement.

7.2.2. In respect of DvP Net Settlement on a Business Day, a Participant shall discharge its obligation to make payment to each counterparty Participant, or satisfy its entitlement to receive payment from each counterparty Participant identified in each DvP Settlement Instruction included in DvP Net Settlement on that Business Day by payment or receipt in accordance with provisions of the Standard Payments Provider Deed as the case requires, of a net amount for each Payment Facility that is equal to the difference between:

- (a) the total of all amounts due and payable to the Participant's Payment Facility on that Business Day; and
- (b) the total of all amounts due and payable by the Participant's Payment Facility on that Business Day.

7.2.3. Each Participant authorises SCH and CCP to settle the Participant's obligations to make payment and entitlements to receive payment included in DvP Net Settlement, in accordance with these Rules and the terms of the Standard Payments Provider Deed.

7.3. Alternative Payment Arrangements

7.3.1. If, in the reasonable opinion of SCH, the funds transfer procedures set out in the Standard Payments Provider Deed are not available, SCH may specify alternative payment arrangements to enable payment or receipt to be made to and by Participants in relation to DvP Settlement Instructions scheduled for DvP Net Settlement.

7.3.2. If SCH specifies alternative payment arrangements under Rule 7.3.1, whether or not those arrangements involve the payment of cleared funds:

- (a) SCH shall give prior Notice of the alternative arrangements to each Participant and each Payments Provider; and
- (b) until the alternative arrangements are revoked by SCH by prior Notice to each Participant and each Payments Provider, those arrangements replace the funds transfer procedures set out in the Standard Payments Provider Deed.