

APPENDIX 4

**TRIAL ARRANGEMENTS BETWEEN BETWEEN ASIC AND ASX
FOR HANDLING CONFLICT AND PERCEPTIONS OF
CONFLICT IN RELATION TO THE SUPERVISION OF ASX
INTERNATIONAL SERVICES (AIS) AS A PARTICIPATING
ORGANISATION OF ASX.**

INFORMATION SUPPLIED TO THE COMMITTEE BY THE ASX

4 FEBRUARY 2002.



4 February 2002

Mr Peter Hallahan
Committee Secretary
Senate Economics Reference Committee
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Parliament House
CANBERRA ACT 2600

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Dear Mr Hallahan,

Inquiry into the framework for the market supervision of Australia's stock exchanges

At the inquiry hearing on 31 January the Committee asked us to provide the interim arrangements for the supervision role which ASIC will play in relation to monitoring and enforcing compliance by ASX International Services Pty Ltd (AIS) with ASX business rules, in AIS' capacity as limited purpose participating organization.

Please see interim framework attached. As mentioned at the hearing, it is proposed that there be a 3 month trial period. We are continuing to work with ASIC to develop the framework, including operational procedures and protocols, for formal sign off by the Commission.

If you require any further information, please do not hesitate to contact me.

Yours sincerely,

Christine Jones
General Counsel and Company Secretary

Cc Mr Malcolm Rodgers
Ms Jennifer O'Donnell
Australian Securities and Investments Commission

TRIAL ARRANGEMENTS BETWEEN ASIC AND ASX FOR HANDLING CONFLICT AND PERCEPTIONS OF CONFLICT IN RELATION TO THE SUPERVISION OF ASX INTERNATIONAL SERVICES (AIS) AS A PARTICIPATING ORGANISATION OF ASX

The following provisional arrangement will be trialled for 3 months and will be reviewed not later than 30 April 2002.

Conflict

ASX and SCH have obligations to monitor and enforce compliance with their Business Rules. AIS is a limited purpose Participating Organisation and is therefore bound to comply with the relevant Business Rules of ASX. It is important that ASX and SCH are and are seen to be acting impartially in their oversight of AIS, and that no favourable treatment is given to AIS by virtue of its position as part of the ASX group.

In order to deal with issues or perceived issues of conflict, ASIC will have a role in the supervision of AIS as a Participating Organisation. It is a condition of the securities dealers licence issued to AIS on 12 November 2001 that AIS must at all times comply with all applicable rules of the ASX Business Rules, unless ASIC or its delegate consents otherwise in writing, and with any direction given to the licensee by ASIC or its delegate in respect of the administration or application of the ASX Business Rules to the licensee.

These arrangements are intended to supplement ASIC's powers to supervise AIS's compliance with its licence conditions.

Areas of Potential Conflict

Areas of significant potential for conflict or perception of conflict are:

- monitoring AIS' compliance with rules;
- administration of waivers and discretions in relation to AIS under the rules;
- investigating suspected breaches of rules by AIS; and
- taking disciplinary action in respect of suspected breaches of the Business Rules by AIS.

Exercise of Supervisory Powers

ASX's supervisory powers and duties are administered by various business units in ASX.

Supervisory powers in relation to ASX Participating Organisations are generally exercised by or monitored by the following business units within ASX:

- Compliance and Information;
- Risk Management;
- Investigations and Enforcement (*I&E*).

The Compliance Officer of AIS or the ASX World Link manager must notify Compliance and Information or Risk Management (in relation to financial matters) if he or she believes AIS has breached or is very likely to breach an ASX or SCH Business Rule. In addition to performing their ordinary supervisory functions, in relation to matters with respect to AIS, Compliance and Information or Risk Management will also act in accordance with the arrangements set out below.

Compliance and Information

Compliance and Information undertakes many categories of supervisory activity for all Participating Organisations and therefore AIS, including:

- recognition (in conjunction with Risk Management);
- self-assessment and inspection programs;
- monitoring ongoing compliance with the Business Rules (including granting of waivers);
- withdrawal/suspension of rights of Trading/Recognition;
- referral to I&E for potential breach;
- monitoring supervisory activity in relation to AIS across ASX.

Risk Management

Risk Management undertakes many categories of supervisory activity for all Participating Organisations and therefore AIS, including:

- recognition (in conjunction with Compliance and Information);
- monitoring capital returns (detailing liquid capital and risk requirements);
- approving repayment of subordinated debt;
- recommendation of withdrawal/suspension of rights of Trading/Recognition;
- monitoring ongoing compliance with the capital requirement regime (including the grant of waivers);
- fining for late returns;
- monitoring supervisory activity in relation to AIS' financial affairs (in accordance with the above proposal); and
- referral to I&E for potential breach.

In relation to each of the above, the arrangement is that:

- prior to a decision involving the possible suspension/withdrawal of trading rights/recognition, ASIC will be provided by ASX with all relevant documentation and be consulted in relation to any such decision. ASX agrees to act in accordance with any reasonable direction or instruction given by ASIC,;
- prior to Compliance and Information or Risk Management deciding whether or not to refer a matter to I&E, ASIC will be provided with all relevant documentation and be consulted in relation to any such decision. ASX agrees to act in accordance with any reasonable direction or instruction given by ASIC.
- prior to the exercise of any waiver, Compliance and Information or Risk Management will seek the consent of ASIC and will provide all such information and assistance as ASIC requires to decide whether to give that consent;

- in respect of all other supervisory activity, ASX will notify ASIC (with all relevant documentation) simultaneously with or as soon after the supervisory activity or trigger for this is possible.

Investigations and Enforcement

Investigations and Enforcement may undertake the following categories of supervisory activity in relation to AIS:

- consider referrals from other business units and whether to pursue an investigation;
- investigate a potential breach;
- formulate charges;
- bring disciplinary action for an alleged breach before the National Adjudicatory or SCH Disciplinary Tribunals.

The perception of conflict for ASX may be most acute at this stage of the supervisory process and therefore ASIC will have a consultation and direction role at all stages of this process:

- ASIC will be provided by ASX with all relevant documentation and be consulted in relation to any decision relating to a decision to pursue an investigation, the steps to be undertaken in the investigation and the formulation of the charges and the supporting evidence. ASIC will be provided with all relevant documentation on a timely basis and will be given timely oral or written updates by the investigating officer. ASX agrees to act in accordance with any reasonable direction or instruction by ASIC.
- if a matter is to be brought before a disciplinary tribunal, ASIC may nominate an officer to present the matter to the relevant tribunal, with all necessary and relevant support from ASX. It will be for ASIC to determine at what stage in the proceedings responsibility for control of those proceedings shall devolve to ASIC's nominated representative.

General

ASIC and ASX will agree detailed procedures for the efficient and effective implementation of the above arrangements, including the nomination of relevant ASIC and ASX officers in relation to each of the responsibilities outlined.