

30 August 2000

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Mr John O'Neill  
Senior Assistant Commissioner  
Australian Competition & Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

FILE No:
DOC /

Dear Sir

## **JB Were Equity Finance Limited - Notification**

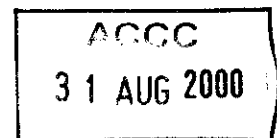
We act for JB Were Equity Finance Limited.

Our client wishes to offer limited recourse finance to clients, secured by Telstra instalment receipts / shares, on the condition that the customer also acquire sponsoring services from Were Stockbroking Limited in respect of the instalment receipts / shares provided as security.

As this may result in a technical contravention of section 47(6) and (7) of the *Trade Practices Act 1974 (Cth)* ('TPA') our client lodges the attached notification pursuant to section 93(1) of the TPA.

We enclose a cheque for \$1,000, as payment of the necessary fees.

A brief submission in support of the notification is set out below.



### **1. Background**

- 1.1 JB Were Equity Finance Limited intends to offer limited recourse finance to clients who hold Telstra instalment receipts for the purpose of enabling those clients to pay the second instalment due on such receipts on 2 November 2000 to be repaid over the following 12 months.
- 1.2 Security for the loan will be by way of a mortgage over the Telstra instalment receipts / shares held by the client.
- 1.3 As a condition of the loan provided by JB Were Equity Finance Limited, clients will be required to:
  - (a) enter into a Sponsorship Agreement with Were Stockbroking Limited by which the client appoints Were Stockbroking Limited as its 'Controlling Participant' for the purposes of the SCH Business Rules; and

- (b) enter into a Security Agreement between the client, JB Were Equity Finance Limited and Were Stockbroking Limited under which the client consents to Were Stockbroking Limited restricting the sale, transfer, conversion or other dealing with the client's Telstra instalment receipts / shares without the consent of JB Were Equity Finance Limited.

## **2. The Notified Conduct**

- 2.1 JB Were Equity Finance Limited intends to provide limited recourse finance secured by Telstra instalment receipts / shares to clients on the condition that the client also appoint Were Stockbroking Limited to provide sponsoring services in respect of those instalment receipts / shares.
- 2.2 Because the two services are being offered by different JB Were & Son entities, a third line forcing issue arises under section 47(6) and (7) of the TPA. Accordingly JB Were Equity Finance Limited is lodging the accompanying notification under section 93(1) of the TPA.

## **3. Competition Issues**

- 3.1 We submit on behalf of our client that the Commission should not serve a notice under section 93(3A) of the TPA because:
  - (a) the conduct in question will not adversely affect competition in the markets for financial or stockbroking services; and
  - (b) the conduct in question will result in significant public benefits and no public detriment.
- 3.2 We consider that the relevant markets for assessing this notification are the markets for providing financial services and stockbroking services.
- 3.3 We believe that all these markets are highly competitive. They are characterised by low levels of market concentration and diverse services. The level of competition for these markets is likely to remain highly competitive for the foreseeable future. Further information in relation to these markets can be provided if requested by the Commission.
- 3.4 JB Were Equity Finance Limited wishes to make the provision of finance conditional on the appointment of Were Stockbroking Limited to provide sponsoring services in order to enable it to maintain control over the instalment receipts / shares that are provided as security for the loan. The most efficient and effective way to achieve this outcome is for Were Stockbroking Limited to be appointed as the client's Controlling Participant within the CHESS system (ie for the client to appoint Were Stockbroking Limited as its sponsoring participant in respect of the instalment receipts / shares offered as security).
- 3.5 Our client does not believe that its conduct can have any adverse effect on competition in either of the relevant markets. This is because we do not believe our client's conduct would foreclose opportunities in the financial or stockbroking services markets in any material way. Our client's market share is not significant and all markets are characterised by aggressive competition and continuing innovation in product offerings. Our client is simply providing an innovative lending product to the market and seeks to implement appropriate measures to ensure that it has good security over the Telstra instalment receipts / shares provided as security for the loan.

- 3.6 In order to achieve the same degree of protection for JB Were Equity Finance Limited where the client's instalment receipts / shares are controlled by another controlling participant would require more complex legal documents involving the third party controlling participant. Our client believes that this is impractical and inefficient in the context of this financial product and would significantly add to the cost, and therefore the attractiveness, of this product.
- 3.7 Conversely, by enabling JB Were Equity Finance Limited to simply and effectively achieve control over the trading of Telstra instalment receipts / shares via a standard Security Agreement with Were Stockbroking Limited (as described above), our client will be able to compete more effectively against large incumbents in the financial services market. New entry and expansion of competition in this segment of the market can only be of benefit to consumers generally.
- 3.8 Our client believes this conduct has little, if any, public detriment. The only possible detriment is that some potential clients may regard their choice as being limited to some extent, because they are required to accept sponsoring services from Were Stockbroking Limited. However, clients will still be able to use their stockbroker of choice to buy or sell securities – the only restriction is that in the case of the Telstra instalment receipts / shares provided as security, the client's broker would need to settle the transaction with Were Stockbroking Limited. We believe this limitation on choice is inconsequential, having regard to the limited nature of the restriction and the range of alternative margin lending products and services available to consumers.
- 3.9 We also note that the proposed conduct would not contravene the third line forcing provisions of the TPA if all the described services were provided by the one company. For a number of commercial and regulatory reasons JB Were & Sons has elected to conduct its business through separate companies. Notwithstanding this, they form part of a larger organisation competing against other businesses offering a similar range of financial and stockbroking services. In this context it would be unfortunate to restrict the competitive activities and innovations of our client while another organisation with an alternative corporate structure would be free to engage in the same activities.

#### 4. Conclusion

- 4.1 For the reasons set out above we believe the Commission should not serve a notice under section 93(3A) of the TPA. This is because the conduct in question will cause little, if any, public detriment and will generate significant public benefits.
- 4.2 If you have any questions in relation to this matter or require any further information, please do not hesitate to contact Geoff Carter of our office.

Yours faithfully

**MINTER ELLISON**



Contact: Geoff Carter (03) 9229 2944 [geoff.carter@minters.com.au](mailto:geoff.carter@minters.com.au)  
Partner responsible: Michael O'Bryan (03) 9229 2944  
Our reference: MHOB 1353197

## FORM G

## COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)***EXCLUSIVE DEALING  
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given in accordance with sub-section 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice engaged or proposes to engage.

**1. (a) Name of person giving notice:**

*JB Were Equity Finance Limited ACN 008 614 122*

**(b) Short description of business carried on by that person:**

*Provision of loan facilities to clients investing in equity markets.*

**(c) Address in Australia for service of documents on that person:**

*N C/- Geoff Carter  
Minter Ellison Lawyers  
525 Collins Street  
MELBOURNE VIC 3000*

**2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:**

*JB Were Equity Finance Limited ACN 008 614 122: Offering loan facilities to clients secured by Telstra instalment receipts and / or shares.*

*Were Stockbroking Limited ACN 006 797 897: Providing to clients the service of being a participant sponsor within the CHESS system under the SCH Business Rules.*

**(b) Description of the conduct or proposed conduct:**

*JB Were Equity Finance Limited offering to provide loan facilities to clients on the condition that the borrower also acquire sponsoring services from Were Stockbroking Limited.*

**3. (a) Class or classes of persons to which the conduct relates:**

*Individuals wishing to borrow funds from JB Were Equity Finance Limited secured by Telstra instalment receipts and / or shares.*

**(b) Number of those persons-**

(1) At present time:

*None*

(2) Estimated within the next year:

*Up to 20,000.*

**(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:**

*Not applicable.*

**4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:**

*Geoff Carter,  
Minter Ellison Lawyers  
Level 23  
525 Collins Street  
MELBOURNE VIC 3000*

**DATED** this 28<sup>th</sup> day of August, 2000

**SIGNED** by/on behalf of JB Were  
Equity Finance Limited

*R Fell*  
.....  
(Signature)

*ROWAN FELL*  
.....  
(Full Name)

*HEAD OF JB WERE EQUITY*  
.....  
(Description) *FINANCE LTD.*