



Our Ref: 287135/1  
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30 April 2001

## BY COURIER

Mr Tim Grimwade  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
470 Northbourne Avenue  
DICKSON ACT 2602

Dear Mr Grimwade

## ASGARD CAPITAL MANAGEMENT LTD - NOTIFICATION

We act for ASGARD Capital Management Ltd ("ASGARD").

ASGARD wishes to offer investors a service that will provide consolidated reporting of securities transactions and enable investors to buy and sell Australian Stock Exchange ('ASX') listed securities that are CHESS approved. To become a client of the ASGARD Share Portfolio Account ('ASPA') service, an investor must agree to certain terms and conditions that include ASGARD opening a trust account for them with a bank, and agreeing to use an ASPA Panel Broker. We are lodging on behalf of our client the **enclosed** notification pursuant to section 93(1) of the *Trade Practices Act 1974* ("the Act") as the proposed conduct may contravene sections 47(6) and (7) of the Act.

**Enclosed** is a cheque for \$1,000 being the prescribed fee payable to the Commission.

Our brief submissions in support of the notification are set out as follows.

### **Background**

ASGARD is a funds manager and offers to the investing public a range of trustee, managed investment, superannuation and insurance products. ASGARD is a wholly owned subsidiary of SEALCORP Holdings Limited (ABN 28 009 143 597), which is in turn a wholly owned subsidiary of St George Bank Limited (ABN 92 055 513 070) ("**St George**").

### **Lawyers**

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### **Independent Affiliated Firms**

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Bangkok  
Hanoi  
Ho Chi Minh City  
Hong Kong  
Jakarta  
People's Republic of China  
Singapore  
Taipei

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**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 engages or proposes to engage.

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

ASGARD Capital Management Ltd (ABN 92 009 279 592).

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

Financial services.

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

C/- David O'Reilly  
Deacons  
Level 5, 1 Hobart Place  
AMP Building  
CANBERRA CITY ACT 2600

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

Financial services, stockbroking and deposit accounts.

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

ASGARD offering to accept, or accepting, applications to participate in the ASGARD Share Portfolio Account on the condition that a deposit account, required to facilitate the settlement of all transactions, be opened on behalf of the client by ASGARD with St George Bank Limited and that investors agree to select from a limited panel of brokers for the execution of transaction instructions.

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

Individuals and companies wishing to utilise ASGARD's Share Portfolio account service.

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

**(i) At present time**

Zero.

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**(ii) Estimated within the next year**

Present and future clients of AGARD. It is not possible, at this time, to estimate the number.

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

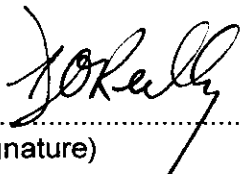
Not applicable.

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

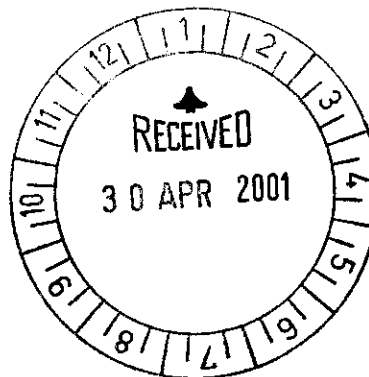
Mr David O'Reilly  
DEACONS  
Level 5, 1 Hobart Place  
AMP Building  
CANBERRA ACT 2600

Dated: 30 April 2001

Signed by/on behalf of the applicant giving notice



.....  
(Signature)



Mr David O'Reilly  
Special Counsel  
Deacons  
Solicitors for ASGARD

***Proposed Conduct***

ASGARD wishes to offer ASPA through financial advisers and in conjunction with existing ASGARD investment products. The principal benefit of ASPA is consolidated reporting that a client will receive where their listed securities are sponsored on CHESS by ASGARD. Where ASPA is used in conjunction with other ASGARD investment products clients can receive consolidated reporting for all investments held through ASGARD. This product is available to individuals, partnerships, companies, trusts and self-managed superannuation funds.

As part of opening an ASPA, ASGARD automatically opens for the client a trading cash account with a bank. Money held in the trading cash account is used to purchase shares bought through ASPA and to deposit dividends and money from the sale of shares bought through ASPA. An initial deposit of \$1,000 must be paid into the account but thereafter no minimum is specified for the account. However, before buying shares through ASPA a client must have sufficient money in the trading cash account to pay for the shares and associated costs. The trading cash account is an integral component for the operation of ASPA facilitating the settlement of all share transactions through ASPA.

The account is opened in ASGARD's name as trustee for the client. The client will be liable for all fees and charges on this account.

ASGARD intends to open all client trading cash accounts with St George. St George also provides the payment facility for ASGARD as a non-broker participant ('NBP') for CHESS. The Securities Clearing House Business Rules of the ASX ('**Business Rules**') require ASGARD as an NBP to establish a payment facility with a bank. There are clear operational efficiencies with having St George provide both the trading cash accounts for the clients and the payment facility to ASGARD for ASPA.

In order to provide an integrated and comprehensive share reporting and transaction service, ASGARD has entered into agreements with five stock brokers ('**Panel Brokers**') for the provision of execution only broking services to ASPA clients. ASPA clients can choose to place share trading orders through any of the Panel Brokers. The selection of brokers to be used for ASPA is based on their reputation and ability to provide a premium service. The ability of a client to choose from the Panel Brokers means that the client is not locked into any single broker. The Panel Brokers may change from time to time. The brokers trading fees are deducted direct from the clients trading cash account.

The trading cash account and Panel Brokers are an integral feature of ASPA and allow ASGARD to provide a fully integrated product offering of reporting, cash management and transactional services through one contact point.

***Affect on competition***

The market for financial services is very competitive. Recently there has been substantial growth in this area with numerous investment products and similar share services being launched in the market place.

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As a manager of investor funds and provider of financial services ASGARD has a limited market share and submits that its product is a competitive response to the innovations currently occurring within the financial services market. Further, there are numerous competing products in the market that adopt similar arrangements as the one proposed. We note in this context, that the Commission has not revoked immunity for a third line forcing application made by Norwich Navigator Union Limited for a product offering a similar share service which was conditional on investors acquiring the services of a specified panel of brokers and acquiring deposit account services from an unrelated financial institution (Refer N90764).

ASGARD does not believe the requirements for a trading cash account with a bank and the execution of transactions through CHESS being limited to Panel Brokers would result in or be likely to result in any lessening of competition in the market for these financial services.

### ***Analysis of the Proposed Conduct***

Section 93(3A) of the Act states that if:

- (a) a corporation has notified the Commission under subsection (1) of conduct or proposed conduct described in subsection 47(6) or (7) or .....; and*
  - (b) the Commission is satisfied that the likely benefit to the public from the conduct or proposed conduct will not outweigh the likely detriment to the public from the conduct or proposed conduct;*
- the Commission may give the corporation a written notice stating that the Commission is so satisfied.*

We submit that the proposed conduct will result in substantial benefits to the public, which outweigh any public detriment arising from the requirement for a trading cash account to be opened for the client by ASGARD with a bank or restricting the execution of trades to a select Panel of brokers.

ASPA is an innovative financial service. The service allows clients who wish to trade in all CHESS approved securities the benefits of an efficient transaction and reporting service. Clients will receive from ASGARD the following comprehensive and consolidated reports:

- (a) Investor Report - a single easy-to-read report covering all ASGARD conducted investment activities;
- (b) Annual Tax Report - a comprehensive report and guide to assist clients in completing their income tax return;
- (c) Quarterly or Annual PAYG statements, on request;
- (d) Monthly Tax Invoices, on request;
- (e) Portfolio Valuation Statements, on request; and
- (f) Account Transaction Histories, on request.

All reports can be provided to clients:

- (i) in hard copy printed form;
- (ii) by sending them by electronic means; or
- (iii) by giving electronic access to them.

These reporting services are likely to result in efficiencies and cost savings for ASPA clients, who would otherwise have to commit further time and money to consolidating investment records. Additionally, the efficiencies of the transaction service with consolidated reporting is likely to result in clients maintaining a higher level of information management and record keeping for the purposes of financial planning and taxation reporting.

Our client submits that for logistical reasons it is necessary that all deposit accounts are held at a single financial institution. Accessing different accounts held with a variety of financial institutions, each being administered separately, while possible would necessarily increase the cost of providing a fully integrated financial service of the kind ASGARD intends to offer. There are clear cost efficiencies for ASGARD in being able to deal with a single financial institution. These efficiencies allow the product to be offered in the market to prospective clients at more competitive rates than would otherwise be possible.

ASPA does not require clients to use a single stockbroker to execute trading instructions. ASGARD have selected a panel of leading stockbrokers based on their ability to offer a competitive and quality service. For logistical reasons, it is not feasible for ASGARD to enter into arrangements with all listed brokers.

We note that the Business Rules only allow the broker who sponsors an acquisition of certain shares to settle those shares upon sale. As ASGARD is the client's sponsor, the client is able to change between brokers without the need to transfer sponsorship. By having arrangements in place with a panel of stockbrokers, as opposed to a single stockbroker, ASPA enables clients to use more than one broker in relation to their shareholdings.

We submit that no public detriment would arise from the proposed conduct. The proposed conduct is unlikely to reduce competition in what is already a very competitive market. Instead, the introduction of new and innovative services to the market will only increase competition.

If any public detriment is possible it could only arise from ASPA's clients being limited to the use of a St George bank account to facilitate settlement of share trading transactions and the restriction for the execution of trading instructions to Panel Brokers. However, it should be noted that subsequent to the initial deposit to the trading cash account there is no requirement for a specified minimum balance for the account and clients will receive a competitive interest rate on money held in the account. Therefore, it is unlikely in our view to be detrimental to ASGARD's clients. Further the panel brokers were selected to ensure clients are offered competitive rates. The panel ensures that there is scope for competition among the panel members. It should be noted that panel members may change from time to time and consequently the brokers will need to provide a competitive and efficient service to remain on the panel.

For the reasons stated above, we submit that the ACCC should not issue a notice under section 93(3A). We submit that the proposed conduct results in significant benefits to the public that substantially outweigh any detriment, or perceived detriment, to the public.

Should you have any questions or require further information in relation to this matter, please do not hesitate to contact Peter Toy or David O'Reilly of our office.

Yours faithfully



Peter Toy  
Partner  
Deacons



David O'Reilly  
Special Counsel  
Deacons