

# Deacons



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Partner: Stan Kalinko

19 January 2001

**BY COURIER**

Mr Tim Grimwade  
Adjudication Division  
Australian Competition & Consumer Commission  
C/- Level 5  
Skygarden Building  
77 Castlereagh Street  
SYDNEY NSW 2000

Dear Sir

## **AOT SECURITIES PTY LIMITED - EXCLUSIVE DEALING NOTIFICATION**

We advise that we act for AOT Securities Pty Limited which has made applications to the Australian Securities & Investments Commission and the Australian Stock Exchange Limited ("ASX") to establish and conduct a stockbroking business.

Our client's application to the ASX is on the basis that it be admitted as a Trading Participant of the ASX to enable it to execute trades on behalf of its clients. Our client will not be permitted to clear and settle those trades and therefore, must appoint a Clearing Participant to undertake those functions.

Due to the ASX Business Rules with which our client must comply if its application for admission as a Trading Participant of the ASX is approved, our client may only appoint a single Clearing Participant to clear all of our client's trades.

Accordingly, this necessitates our client's notice seeking authorisation for the proposed conduct under Section 93(1) of the *Trade Practices Act*.

We now enclose the following:

1. Notice under Section 93(1) of the Trade Practices Act.

### **Lawyers**

1 Alfred Street  
Circular Quay  
Sydney Australia  
GPO Box 3872  
Sydney NSW 2001  
Telephone 02 9330 8000  
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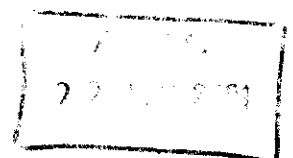
### **Other Offices**

Brisbane  
Canberra  
Melbourne

### **Independent Affiliated Firms**

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

FILE No:
DOC:




2. Cheque for \$100 in payment of the relevant fees.

Please forward your receipt for the enclosed cheque in due course.

We await the Commission's consideration of this matter. If you have any queries or require any further information, please do not hesitate to contact the writer.

Yours faithfully



Suzie Losanno  
Senior Associate  
Deacons

Encl

**COMMONWEALTH OF AUSTRALIA  
TRADE PRACTICES ACT 1974 - Subsection 93(1)  
EXCLUSIVE DEALING: NOTIFICATION**

**TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION:**

Notice is hereby given, in accordance with subsection 93(1) of the **Trade Practices Act 1974**, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

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- (a) Name of person giving notice:

AOT Securities Pty Limited  
ACN 095 593 909  
Level 7  
5 Elizabeth Street  
SYDNEY NSW 2000 (**"the Broker"**).

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

Provision of services relating to the execution of equities trades on the Australian Stock Exchange.

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

Level 7  
5 Elizabeth Street  
SYDNEY NSW 2000

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

Services relating to the clearing of executed trades in the market for quoted securities traded on SEATS (**"the equities market"**).

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

The supply, or offer to supply, by the Broker of services relating to the execution of trades on the Australian Stock Exchange on the condition that the client acquiring those services also acquire clearing services from a particular Clearing Participant, as nominated by the Broker.

For further information, please refer to the Submission in support of Notification, annexed to this form.

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- (a) Class or classes of persons to which the conduct relates:

Clients of the Broker and potential clients of the Broker, being persons seeking to have equities trades executed and cleared on the Australian Stock Exchange ("ASX").

- (b) Number of those persons.
- (i) At the present time, approximately zero;
- (ii) Estimated within the next year, approximately 5,000.
- (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:

Mr Mark Evans Morris  
Level 7  
5 Elizabeth Street  
SYDNEY NSW 2000  
Tel: (02) 8224 0602

Dated: 17 January 2001

Signed on behalf of the person giving this notice:

  
.....  
**Mark Evans Morris**  
Director  
AOT Securities Pty Limited

## DIRECTIONS

- 1 If there is insufficient space on this form for the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
- 2 If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
- 3 In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
- 4 If particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4), (5), (6), (7), (8), or (9) of the **Trade Practices Act 1974** have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
- 5 In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
- 6 In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

## NOTICE

If this notification is in respect of conduct of a kind referred to in subsection 47(6) or (7), or paragraph 47(8)(c) or (9)(d), of the *Trade Practices Act 1974* (“**the Act**”), it comes into force at the end of the period prescribed for the purposes of subsection 93(7A) of the Act (“**the prescribed period**”) unless the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under subsection 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under subsection 93(3A) of the Act. The notification comes into force when the decision is made.

If this notification is in respect of conduct of a kind referred to in subsection 47(2), (3), (4) or (5), or paragraph 47(8), (a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.

**SUBMISSION IN SUPPORT OF EXCLUSIVE DEALING NOTIFICATION**  
**BY**  
**AOT SECURITIES PTY LIMITED (“the Broker”)**  
**DATED 17 January 2001**

**Background**

- 1 In May 1999, ASX introduced a third party clearing facility in the equities and derivatives markets which allows for the separation of trading and clearing functions in respect of equities and derivatives trades. Under this facility, Participating Organisations may elect either to execute trades, to clear and settle trades or to do both. This represents a significant change to the previous situation where all Participating Organisations were required to comply with a single set of admission requirements and possess the capability and resources to execute *and* clear trades.
- 2 The third party clearing facility contemplates two distinct categories of participation in the equities and derivatives markets of the Australian Stock Exchange. An organisation satisfying the requirements for admission as a Trading Participant is permitted to execute trades. An organisation satisfying the requirements for admission as a Clearing Participant is permitted to clear and settle trades. An organisation wishing to execute *and* clear trades is required to be admitted both as a Trading Participant and a Clearing Participant.
- 3 The primary feature of the third party clearing facility is that a Trading Participant wishing only to execute trades, but not to clear and settle those trades, may enter into an agreement for the clearing and settlement of its executed trades with a Clearing Participant of its choice.
- 4 It is currently necessary from a systems, prudential and risk management perspective to compel Trading Participants to clear their trades through a single Clearing Participant. The current ASX Business Rules therefore require Trading Participants (including the Broker), for the purposes of clearing their trades, to:
  - (a) be admitted as a Clearing Participant, thereby entitling the organisation to clear its own trades; OR
  - (b) enter into a Clearing Agreement with a Clearing Participant of its choice, pursuant to which all trades executed by that Trading Participant are required to be cleared by that Clearing Participant.

**The Broker**

- 5 The Broker has applied to the ASX to be admitted as a Trading Participant in the equities market, but has elected not to be admitted as a Clearing Participant. Once admitted as a Trading Participant, the Broker is able to execute equities trades on behalf of its clients, but is not permitted to clear and settle those trades.

**Conduct to which this notification relates**

- 6 This notification relates to the supply, or offer to supply, by the Broker of services relating to the execution of trades in the equities market on the condition that the client

acquiring those services also acquire clearing services from a particular Clearing Participant, as nominated by the Broker (“**the notified conduct**”).

- 7 Specifically, by virtue of Rule 3.1A of the ASX Business Rules (attached), a client in the equities market, upon placing an order with the Broker, is thereby deemed to have entered into a contract for the acquisition of clearing services from the Clearing Participant with whom the Broker has entered into a Clearing Agreement.
- 8 The notified conduct does not arise in circumstances where a Trading Participant is also admitted as a Clearing Participant and is thereby able to offer both trading and clearing services to the client.
- 9 Further, the notified conduct does not arise in the derivatives market, where a client may elect to have its trades allocated for clearing to a Clearing Participant of its choice, in accordance with the procedure for client-driven clearing prescribed in ASX Business Rule 10.4.2.

**Public Benefit arising from the notified conduct.**

- 10 There is significant public benefit arising out of third party clearing in respect of equities trades. However, in order to facilitate third party clearing in the equities market, it is necessary from an ASX systems perspective, at this stage, for the ASX to compel Trading Participants to clear their trades through a single Clearing Participant. Accordingly, it is also necessary, at this time, for Trading Participants to supply, or to offer to supply, their services on the condition that the client acquiring those services also acquire the clearing services of the Clearing Participant with whom the Trading Participant has entered into an agreement.
- 11 The separation of execution and clearing functions and responsibilities, as facilitated by the third party clearing system, will enhance competition in the market by allowing for greater specialisation in the services provided by Participating Organisations and by generating possible economies of scale in the provision of those services. Trading Participants will be able to outsource their back offices to specialist Clearing Participants, thereby converting a high fixed cost component of business into a variable cost based on actual usage. This should allow both for a higher level of competition between Trading Participants and for greater specialisation and cost efficiencies in the provision of clearing and settlement services.
- 12 The third party clearing system is also likely to promote competition through the lowering of barriers to entry. It is foreshadowed that the reduction in capital liquidity requirements for Trading Participant admission will encourage a wider range of organisations, such as financial planners, to enter the market as Trading Participants.
- 13 In addition, the clearing structure is likely to facilitate a more flexible approach to market participation. For example, executing brokers located overseas will be able to participate remotely in the market by relying on the services of domestic Clearing Participants.
- 14 The notified conduct will also ensure the security of the transaction conducted on behalf of the client. By requiring that the trade be cleared by the Clearing Participant with whom the Broker has a standing agreement, the Clearing Participant is able to assume the settlement risk *immediately* upon execution of the trade. The notified conduct also ensures certainty in relation to the identity of the party upon whom liability for the

discharge of the settlement obligation rests. From a risk management perspective this is significant, particularly to ensure the application of National Guarantee Fund cover in respect of the transaction.

- 15 In the unlikely event that some detriment to the public were considered to arise from the notified conduct, it would be outweighed by the significant benefits conferred on the public through the provision of more cost-effective and competitive services to clients and through the avoidance of uncertainty and unnecessary risk in relation to the assumption of settlement obligations for the trade.