

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
23 APR 2004

Postal Address:
PO Box R126
Royal Exchange, NSW 1223, Australia

Tel: +61 2 9225 0200
Fax: +61 2 9225 1595
DX: 218 SYDNEY
www.bakernet.com

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23 April 2004

Tim Grimwade
General Manager
Adjudication
Australian Competition & Consumer Commission
Level 7, Angel Place
123 Pitt Street
SYDNEY NSW 2000

Our Ref: 663575-v1\LAK\RWA

FILE No:
DOC:
MARS/PRISM:

Dear Mr Grimwade,

Exclusive Dealing Notification – UBS Securities Australia Limited

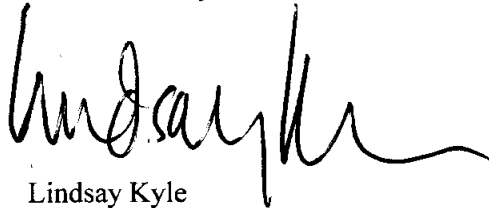
We act for UBS Securities Australia Limited.

We enclose an exclusive dealing notification by UBS Securities Australia Limited pursuant to section 93 (1) of the *Trade Practices Act 1974*. This notification is lodged in respect of conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. This notification is given in the prescribed form and should not be taken as an admission that the conduct would contravene the statutory prohibition.

We also enclose a cheque made payable to the Commission in the sum of \$1000, being the prescribed lodgment fee.

Please do not hesitate to contact me should you require any further information or if you have any queries about the notification.

Yours sincerely,

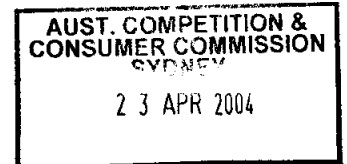


Lindsay Kyle
Partner
+61 2 9225 0282
lindsay.kyle@bakernet.com

Encl

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(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

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

UBS Securities Australia Limited (ABN 33 104 195 057) ("UBS")

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

UBS supplies investment banking services.

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

Baker & McKenzie
Solicitors & Attorneys
AMP Centre
50 Bridge Street
Sydney NSW 1223
Australia

Telephone: (02) 9225-0282

Facsimile: (02) 9225-1595

Attention: Lindsay Kyle

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

A separately managed account facility to approved wholesale clients under which UBS will invest client funds on a discretionary basis in accordance with a defined investment strategy ("SMA Facility").

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

The SMA Facility is provided on the basis that the customer enters into an agreement with an Authorised Margin Lender. At present, ANZ Margin Services Pty Limited (ANZ) is the only Authorised Margin Lender because it is able to provide administrative services for the SMA Facility which will assist keeping costs at a minimum. Users of the SMA

Facility are required to enter into an agreement with the ANZ under which the following services are provided:

- a "nominee" or "custodial" service whereby ANZ will hold the SMA Facility investments on a bare trust on behalf of users of the SMA Facility; and
- an optional margin lending facility which is available to clients that wish to leverage their investment in the SMA Facility.

The nominee or custodial service is essential to the administration of the fund because it allows UBS to manage the SMA Facility in accordance with its defined investment strategy.

The nominee or custodial service is also essential to the proper functioning of the optional margin lending facility, as it enables legal ownership of the uncertificated and certificated securities to be transferred to the Authorized Margin Lender as mortgagee of the securities.

While the terms of the SMA Facility allow consumers to use a margin lender other than the Authorized Margin Lender (subject to certain conditions), it is unlikely that other margin lenders would be willing to provide this service because the rules of the SMA Facility require that an ANZ nominee company must hold legal ownership of the shares, options and other positions comprised in the SMA Facility for the benefit of the investors. This will make it difficult for other margin lenders to obtain adequate control over those assets for the purposes of the mortgage that would be required to support their margin loan. Legal title needs to be concentrated in one nominee account to facilitate trading on the ASX in an efficient manner.

ANZ will also provide a sophisticated record keeping and reporting service which allows clients to keep track of their investments in the SMA Facility and also allows UBS to comply with certain of its obligations under the ASX Business Rules. However, UBS has entered into a subcontract with ANZ in respect of these services and therefore provides the services direct to users of the SMA Facility.

A copy of the current draft of the proposed brochure for the SMA Facility is attached.

The conduct will be of benefit to the public and will not be of detriment because it:

- creates a product which is able to be provided at a lower cost to consumers than would be possible if the services were provided by UBS alone;
- promotes competition in the relevant markets by exerting pressure on competitors to offer similar innovative financial products;

- increases the range of wholesale financial products available to wholesale consumers thereby providing greater choice;
- creates an innovative financial product which includes a sophisticated record keeping and reporting service which UBS would be unable to provide itself; and
- is not commercially or administratively practical to allow the nominee/custodial services to be provided by several persons.

The conduct will not lessen competition in the markets for the relevant products and services and will be pro-competitive as:

- competition in investment banking markets is vigorous and there are many competitors;
- consumers may acquire comparable products and services from a range of other suppliers;
- consumers will be provided with a further incentive to purchase SMA Facilities, thus increasing competition in the markets for investment banking services; and
- it will promote competition in the relevant markets by exerting pressure on competitors to offer similar innovative financial products.

The applicant believes that the likely benefits from the conduct outlined above will outweigh any possible detriment considered to arise from the conduct.

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

Existing and future wholesale clients of UBS.

(b) **Number of those persons
(i) at present time and (ii) estimated within the next year**

Not applicable.

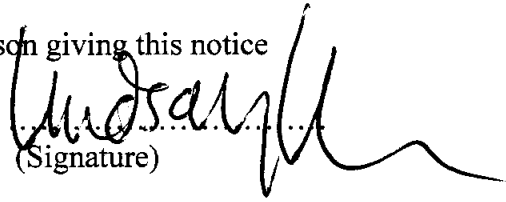
(c) **Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses**

Not applicable.

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

Lindsay Kyle
Partner
Baker & McKenzie
AMP Centre
50 Bridge Street
Sydney NSW 1223
Australia

Dated 23 April 2004 Signed by/on behalf of the person giving this notice


(Signature)

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CONSUMER COMMISSION
23 APR 2004

Lindsay Kyle
Partner, Baker & McKenzie