

MALLESONS STEPHEN JAQUES

~~Private & Confidential~~

Regional Director
Australian Competition and
Consumer Commission
Level 35
The Tower
360 Elizabeth St
MELBOURNE VIC 3000

FILE No:
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29 October 2004

A Bodger
Partner

Direct line
(+61 3) 9643 4069



Dear Sir/Madam

National Australia Bank Limited - Notification of Third Line Forcing Exclusive Dealing

We act for National Australia Bank Limited (“National”).

We enclose for lodgement an exclusive dealing notification on behalf of the National under section 47 of the *Trade Practices Act 1974* (Cth). We also enclose a cheque for the applicable lodgement fee of \$1,000.00.

This covering letter sets out a short description of the transaction that gives rise to the relevant third line forcing conduct.

The National provides, amongst other things, wealth management and financial planning services to retail customers. Those customers are serviced by employees of the National. Often, the National’s employees are successful in developing the National’s wealth management and financial planning services. Sometimes in these circumstances, these employees resign from employment by the National in order to set up as self-employed financial advisers (“Employees”).

The National wishes to enter into termination and transfer arrangements with the Employees so that they can continue to provide wealth management and financial planning services to retail customers (including those customers whom they have serviced in the past and who wish to continue to be serviced by the Employees). As part of these termination and transfer arrangements, information and records will be provided to the Employees so that they can continue to service certain National customers, if the customers so choose.

As you would know, to provide financial services, or advice in relation to financial products, advisers must operate under the licensing regime of the *Financial Services Reform Act 2001* (Cth) (“FSRA”). Various subsidiaries of the National (Godfrey Pembroke Limited (ABN 23 002 336 254), Apogee Financial Planning Limited (ABN 28 056 426 932), National Australia Financial Planning Limited (ABN 12 004 044 937) and GWM Adviser Services Limited (ABN

Level 28 Rialto 525 Collins Street Melbourne VIC 3000 Australia

DX 101 Melbourne ABN 22 041 424 954 mel@malleasons.com www.malleasons.com

T +61 3 9643 4000

F +61 3 9643 5999

96 002 071 746) are already licensed as providers of financial services and financial product advice (“**Relevant Subsidiaries**”). These subsidiaries may be willing to engage the Employees as Authorised Representatives so as to allow them to operate under its AFSL.

In order to be confident that the Employees comply with their statutory and client obligations under the FSRA regime, the National proposes to provide to them certain information and records on condition that they acquire licence-related services from a Relevant Subsidiary. This will facilitate the Employees complying with the relevant financial services legislation and will make the transfer as seamless as possible for the retail customers of the National who have in the past been serviced by the Employees and who wish to continue to be serviced by the Employees after the transfer.

Please contact Amanda Bodger of this office should you have any queries or comments.

Yours faithfully

Melissa Stephen Jacques

Encl 1

FORM G**Regulation 9**

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 proposed conduct of a kind referred to in sub-section 47(6) or (7) of that Act in which the person giving notice engaged or proposes to engage.

1. (a) Name of person giving notice:

National Australia Bank Limited (ABN 12 004 044 937) of Level 24, 500 Bourke Street, Melbourne, Victoria ("**National**").

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

The National provides banking services, products and systems, and specifically provides wealth management advisory services and financial planning services to retail customers.

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

C/- Amanda Bodger
Mallesons Stephen Jaques
Level 28, Rialto
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:

Products and services supplied by the National being provision of certain information and records and client service rights related to its wealth management and financial planning business ("**National Services**").

(b) Description of the conduct or proposed conduct:

National proposes to enter into agreements with employees who have ceased employment with the National (or their new employers) ("**Employee**") pursuant to which, the National will:

- (i) supply or offer to supply National Services to the Employee on the condition that the Employee acquire or agree to acquire Services (as defined below) from one of the following National subsidiaries (Godfrey Pembroke Limited (ABN 23 002 336 254), Apogee Financial Planning Limited (ABN 28 056 426 932), National Australia Financial Planning Limited (ABN 12 004 044 937) and GWM Adviser Services Limited (ABN 96 002 071 746) ("**A National Subsidiary**");

- (ii) refuse to supply or refuse to offer to supply National Services to the Employee if he does not agree to acquire Services (as defined below) from a National Subsidiary.

The National Subsidiaries provide financial services and financial product advice related services including sales, marketing, training, compliance, research, paraplanning and other advisory services and professional support services (“Services”).

The proposed conduct will be of benefit to the public as it will:

- allow greater competition in the markets for wealth management and financial planning services by enabling the Employees to operate in a broader capacity as financial planners;
- assist the Employees to achieve compliance with relevant financial services legislation;
- assist those clients of the National who choose to be serviced by the Employees to continue to receive high quality financial advice from the financial planner of their choice;
- assist National and National Subsidiaries (as related bodies corporate) to achieve greater efficiencies and improve services to retail consumers through the financial planners.

The proposed conduct will not lessen competition in the markets for the relevant products and services as:

- competition in the relevant markets is vigorous and there are many competitors;
- the number of financial planners potentially affected by the proposed conduct is insignificant compared to the total number of financial planners in the market; and
- National Subsidiaries and the National are related bodies corporate. The proposed conduct is a very technical type of third line forcing conduct which will be engaged in by two related companies. If National and the National Subsidiaries were not related companies but different business units within the same company, and they engaged in the conduct described in this notification, they would not be engaging in third line forcing conduct. By accepting the Dawson Committee’s recommendation to amend the third line forcing provisions to exempt related companies, the Commonwealth Government has recognised the lack of detriment associated with the type of third line forcing conduct described in this notification.

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

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

Certain financial planners previously employed by National.

(b) **Number of those persons:** N/A

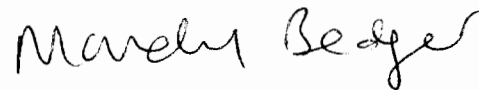
(c) **Where number of persons stated in item 3(b) is less than 50, their names and addresses:** N/A

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

Amanda Bodger
Mallesons Stephen Jaques
Level 28, Rialto
525 Collins Street
Melbourne VIC 3000
Tel: 9643 4069

Dated 29th October 2004

Signed by the person giving this notice



Amanda Bodger

Partner, Mallesons Stephen Jaques

