

AUST. COMPETITION &  
CONSUMER COMMISSION  
SYDNEY  
25 JAN 2005

N31357  
N31358

# BLAKE DAWSON WALDRON

L A W Y E R S

Level 36  
Grosvenor Place  
225 George Street  
Sydney NSW 2000

www.bdw.com

Tel + 61 2 9258 6000  
Fax + 61 2 9258 6999

DX 355 Sydney

Locked Bag N6  
Sydney NSW 1225  
Australia

Partner  
Peter Armitage  
Telephone (02) 9258 6119

Contact  
Caroline Gill  
Telephone (02) 9258 5778

Our reference  
PJA.CAEG.02-1377-4874

25 January 2005

Mr Scott Gregson  
General Manager  
Adjudication Branch  
ACCC  
Level 7  
123 Pitt Street  
SYDNEY NSW 2000

FILE No:
DOC:
MARS/PRISM:

Dear Mr Gregson

## Form G Notification of Exclusive Dealing Conduct

We enclose a form G Notification of Third Line Forcing Conduct on behalf of the following UBS companies.

- (a) UBS Securities Australia Ltd; and - N31357
- (b) UBS AG. - N31358

We also enclose cheques for the amount of \$1,200 comprising filing fees for one Limited company (\$1,000) and one further Limited company at the concessional rate of \$200.

If you have any queries, please do not hesitate to contact Peter Armitage on (02) 9258 6619 or Caroline Gill on (02) 9258 5778.

Yours faithfully

*Blake Dawson Waldron*

SYDNEY  
MELBOURNE  
BRISBANE  
PERTH  
CANBERRA  
LONDON  
PORT MORESBY  
JAKARTA  
SHANGHAI

112620522

**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 subsection 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.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of persons giving notice:

UBS Securities Australia Ltd (ABN 62 008 586 481) (UBS Securities) and UBS AG (ABN 47 088 129 613)  
(UBS)

(See Direction 2 on the back of this Form)

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

UBS is a global investment bank. UBS is a financial services licensee and operates an investment bank in Australia.

UBS Securities is a wholly owned subsidiary of UBS and is a financial services licensee dealing in financial products, including ASX derivative products and related financial products.

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

Level 25, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000

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

See attachment

(b) Description of the conduct or proposed conduct:

See attachment

(See Direction 4 on the back of this Form)

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

The product described at 2(a) is being offered to high net worth individuals including both retail and wholesale clients as defined by s 761G *Corporations Act 2001* (Cth). Therefore, the conduct relates to high net worth individuals who apply for a UBS Derivative Equity and Loan Trading Account.

(b) Number of those persons -

(i) At present time 0

(ii) Estimated within the next year 50

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

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

Mr Peter Armitage, Blake Dawson Waldron

Locked Bag N6, Grosvenor Place, Sydney NSW 1220

Dated 25 January 20 05

Signed on behalf of the person giving this notice

*Peter Armitage*

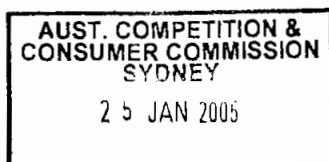
Signature

PETER JAMES ARMITAGE

Full Name

PARTNER, BLAKE DAWSON WALDRON

Description



## 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 that 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.

## ATTACHMENT

### 2(a)

This notification relates to a new financial product to be offered by UBS Securities: the Derivative Equity and Loan Trading Account (**DELTA**). DELTA is an account with a loan facility that enables investors to invest in approved securities and options. This product is designed to allow an investor to implement an investment strategy through UBS Securities using their own funds combined with funds borrowed from UBS Securities.

Investors will purchase an exchange traded put option through UBS Securities. UBS Securities will then purchase the underlying securities to that put option on behalf of the investor and UBS will lend the investor an amount up to the exercise price of the put option covering the securities. Any difference between the loan amount and the purchase cost of the underlying securities is contributed in cash by the investor. Investors may also then sell exchange traded call options over those securities. Subject to certain conditions, the option positions can be closed and replaced by different option positions with different exercise prices and terms, and the loan amount may be adjusted accordingly.

Certain restrictions apply to the product – for example: only securities approved by UBS Securities can be traded through this account; the put options must have an exercise price equal to or less than the market price at the time of purchase; the loan term is subject to the expiry of the put option.

The following draft description of the DELTA is taken from the draft Product Disclosure Statement in relation to the DELTA:

#### Product Overview

The UBS DELTA is a facility that enables successful applicants to combine their own funds with those borrowed from UBS to trade Approved Securities and Exchanged Traded Option (**ETO**) positions over those Approved Securities, subject to certain restrictions. In summary, the DELTA facility involves the following:

- Successful applicants will acquire a Loan from UBS;
- The Loan will be used to purchase Approved Securities through UBS Securities. The Loan will be secured by the Approved Securities purchased by you.
- You will be required to establish through UBS Securities a Put Option position to provide protection against the value of the Approved Securities falling below the Loan amount;
- You may sell or write Call Options against your Approved Securities to reduce the overall transaction costs.
- There may be opportunities during the term of the Loan to adjust the ETO positions to address market movements.
- At maturity of the Loan, a number of alternative courses of action exist, depending on the value of the Approved Securities at that time.

UBS will make the Loan to you. UBS Securities will act as your ASX Market Participant and ACH Clearing Participant for all ETO trades.

#### Key Benefits

The key benefits that you may be able to derive from using the DELTA are as follows:

- The ability to implement a tailored investment strategy using a short term, interest only loan and ETOs;
- Your ETO positions can be adjusted at any time to take advantage of movements in the price of the underlying Approved Securities (subject to the impact of such adjustments on the loan – see below);
- There is currently a wide range of Approved Securities that UBS will lend against through the DELTA facility – you should contact UBS for the latest list.
- You have the choice of a range of exercise prices and expiries and the benefit of the transparent pricing and liquidity that the ETO market provides;

- You have a known downside risk, amounting to the sum of the capital contributed, loan interest and option premium paid, plus costs and brokerage;
- Your potential upside is leveraged and only limited if you sell a Call Option over all of your Approved Securities;
- It is expected that you will be entitled to dividends and potential franking credits during the term; and
- By establishing a DELTA CMT, you will be able to trade and settle efficiently with UBS.

## 2(b)

UBS Securities and UBS, together, propose to offer the DELTA product on condition that an investor establishes a DELTA Cash Management Trust (**DELTA CMT**) provided by UBS Global Asset Management (Australia) Ltd (ABN 31 003 146 290), a separate wholly owned subsidiary of UBS. To open a DELTA, the client will be required to enter into an agreement with both UBS (who will provide the loan) and UBS Securities (who will deal in securities on behalf of the client). UBS Securities is promoting the DELTA.

In order to comply with various financial services regulations and requirements, UBS carries on business through a number of different entities. For example, UBS Securities is a participating organisation of the Australian Securities Exchange (ASX) and is responsible for the securities transaction associated with the DELTA.

The DELTA CMT is a competitive interest bearing account. It will be provided by UBS Global Asset Management (Australia) Ltd because neither UBS Securities nor UBS is in the business of providing products such as the DELTA CMT.

Because UBS Global Asset Management Ltd is a separate corporation from UBS Securities and UBS, the conduct described in this notice may constitute third line forcing under the *Trade Practices Act*.

### **Role of the DELTA CMT**

DELTA CMTs will be used for all transactions related to investment in securities and options through DELTA. UBS Securities will direct debit the DELTA CMT to settle all payments on the day a trade is executed or when interest on loan advances and brokerage fees become due. Dividends on securities purchased through the DELTA and loan advances are credited to the investor's DELTA CMT. Investors will be able to electronically transfer funds into their DELTA CMTs for the purpose of trading using their own contributions. An investor will also be able to withdraw funds from the DELTA CMT, except certain funds which will be frozen by UBS Securities as they are required to fund an option premium or collateralise an option position (see below for more details).

### **Avoiding delays provides convenience and risk management for both UBS Securities and the Investor**

DELTA is designed to be a short term trading product. Consequently there could be several transactions between UBS Securities and the investor per day. Before acquiring options on behalf of the investor, UBS Securities will check that the investor has sufficient funds in the DELTA CMT to fund the option premium. By accessing information on the DELTA CMT in this way, UBS Securities is able to effect these transactions more quickly. As set out below, this can reduce the risk borne by the investor and allows the investor to receive payments from UBS Securities sooner – thereby freeing up the investor's funds.

An important feature of the DELTA product is that the put option provides the primary protection for the amount that UBS has loaned to the client. In order to protect the position of UBS, UBS Securities must be assured that the client has funds cleared and available for settlement of any put option trade before UBS Securities effects the trade. Through the investor's DELTA CMT, UBS Securities will be able to very quickly check the balance of the investor's DELTA CMT, freeze the funds required and hence allow the trade to proceed immediately.

Without the DELTA CMT, UBS Securities would require investors to provide funds to settle the put option trade in advance. This could cause significant delays – depending on the mechanism of transfer the delays could be up to 5 days. As option prices can move rapidly over the course of a day, this could disadvantage the client. By holding funds ready in a DELTA CMT, UBS Securities and the investor avoid these delays, and trades on behalf of the investor can be executed immediately as the investor directs.

Avoiding these delays is also very important in relation to trading in call options. For example, if the investor wishes to sell a call option over their securities then they will be required by the Australian Clearing House (ACH) rules to provide collateral to the ACH. UBS Securities will be able to supply the investor's underlying securities to ACH as collateral. However, if the investor wishes to sell a call option over the underlying securities before the underlying securities have settled (3 business days after the purchase of the underlying securities, in accordance with market practice), the investor may have to provide cash collateral. If sufficient funds for this collateral are held in the DELTA CMT at the time of transaction, the investor will be able to sell the call option immediately. Without the DELTA CMT, the investor would have to wait for the funds to be received by UBS Securities from the investor's external bank account before the call option trade could be executed, thereby missing a potential market opportunity.

The DELTA CMT will also allow for the more efficient trading of securities and options through the DELTA by freeing up the investor's capital. For example, when an investor is credited with dividends attributable to shares purchased on the investor's behalf, those funds can be immediately utilised for the purchase of new options or securities. Because the DELTA CMT is also a competitive interest bearing account, the investor can earn interest on the balance of their account. Without the DELTA CMT, the investor would not be able to earn interest on any amount transferred to UBS Securities for the purposes of effecting a trade on the investor's behalf for the period of the delay associated with transferring cash from an external bank account to UBS Securities.

Further, by settling all funds through the DELTA CMT, UBS Securities will be able to provide a consolidated statement of all cash flows to the client over the time they have invested in DELTA.

### **Competitive Effect**

The DELTA is simply another way for high net worth individuals to use borrowed capital to invest in securities and options. Given the competitive nature of the financial services sector, and in particular the range of ways in which investors can invest in options, or raise funds for making those or similar investments (including through margin lending facilities offered by various financial institutions), and the vigorous competition in options trading and leveraged products, the requirement that investors establish a DELTA CMT will have no anti-competitive effect. Indeed, the development and offer of the DELTA product on the basis set out above will increase competition among these types of financial products.

### **Conclusion**

As set out above, the DELTA product benefits investors by facilitating the expeditious execution of trading in securities and options and the prompt crediting of funds. The condition notified is integral to the efficiency of the DELTA as a mechanism for trading in securities and options.

In short, the DELTA product, which includes the condition which is the subject of this notification, will have:

- no anti-competitive detriment; and
- clear benefits to the public in the offer of a further financial product of this type.