

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
25 OCT 2005



Our reference
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19 October 2005

Australian Competition and Consumer Commission
GPO Box 3648
SYDNEY NSW 2001

Dear Sir / Madam

Rismark International - notification of third line forcing

We act for Rismark International.

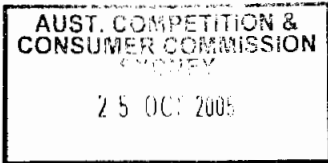
We enclose for lodgement an exclusive dealing notification together with a cheque for the lodgement fee of \$1,000.

Please do not hesitate to contact Vicki Grey should you have any further queries or comments.

Yours faithfully

Vicki Grey
for **GADENS LAWYERS**

Enc

**Form G**

N. 31481

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.

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of person giving notice

ARES Capital Management Pty Limited (CAN 112 951 292) trading as "Rismark International"
("Rismark")

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

Rismark is a global funds management enterprise which undertakes sophisticated real estate investment and securitisation.

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

c/- Vicki Grey
Gadens Lawyers
Level 15, 77 Castlereagh Street
Sydney NSW 2000
Telephone 02 9931 4753

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

Loans secured by mortgages over residential real estate.

(b) Description of the conduct or proposed conduct

Refer Annexure A.

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

Consumers wishing to take advantage of equity financing for the purchase of owner-occupied housing.

(b) Number of those persons--

(i) **At present time** Significantly more than 50

(ii) **Estimated within the next year** Significantly more than 50

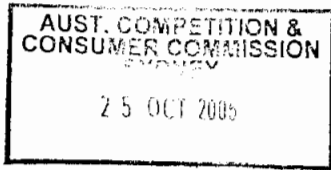
(c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses

N/A

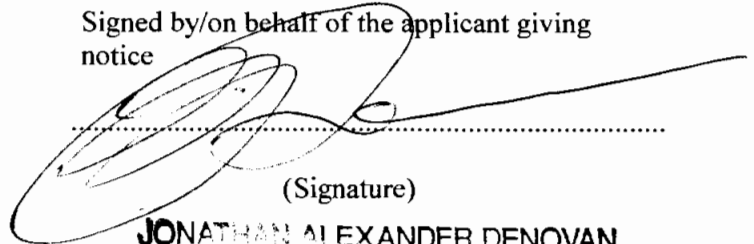
4. Names and address of person authorised by the person giving this notice to provide additional information in relation to this notice

c/- Vicki Grey
Gadens Lawyers
Level 15, 77 Castlereagh Street
Sydney NSW 2000
Telephone 02 9931 4753

Dated 19 October, 2005



Signed by/on behalf of the applicant giving notice


.....
(Signature)

JONATHAN ALEXANDER DENOVAN
.....

(Full Name)

Partner
.....

(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 sub-section 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 sub-section 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 sub-section 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 sub-section 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.

Annexure A

Rismark International

Rismark is currently launching an innovative wholesale fund (The Advanced Real Estate Solutions (“ARES”) Fund) to raise up to \$1 billion that will invest in residential real estate assets across Australia. Macquarie Bank is coordinating the capital raising.

The ARES Fund will invest in thousands of hybrid housing finance instruments developed by Rismark, called Equity Finance Mortgages (“EFMs”). The EFMs themselves will be distributed and serviced by leading Australian mortgage providers under their own brands. Rismark will specify the business processes that govern the origination, securitisation and ongoing portfolio management of the EFMs.

Equity Finance Mortgages (EFMs)

The EFM has been developed to provide affordable financing to borrowers wishing to purchase real estate. Borrowers who are otherwise unable to afford repayments on a traditional mortgage may finance a percentage of the purchase price under an EFM.

Under the EFM, borrowers do not pay interest. Instead, borrowers agree to pay the lender a share of any growth in the value of the mortgaged property.

For example, assume the borrower borrows 20% of a property valued at \$500,000 (ie loan amount is \$100,000) under an EFM.

No interest is paid on the principal sum of the EFM for the life of the loan.

The loan will be repayable at the earliest of the following.

- (a) the property is conveyed or transferred;
- (b) the property is compulsorily acquired by an authority;
- (c) on the 25th anniversary of the loan being entered into;
- (d) if the borrower dies:
 - (i) upon conveyance or transfer of the property after the borrower’s after death; or
 - (ii) 12 months after the death of the borrower.

The amount repayable under the loan is calculated as follows.

- (a) If the fair market value of the property as at the date for repayment of the loan is the same as the fair market value of the property at the date of entering into the loan:
 - (iii) the borrower repays the principal amount borrowed (ie \$100,000).
 - (iv) the borrower has not had to make the principal and interest repayments otherwise payable on the \$100,000 throughout the life of the loan under a traditional loan.
- (b) If the fair market value of the property as at the date for repayment of the loan is greater than the fair market value of the property at the date of entering into the loan, the borrower repays \$100,000 plus 40% of the amount of the increase.

For example, if the fair market value of the property as at the date for repayment is \$550,000 (ie an increase of \$50,000), the borrower repays \$120,000 (ie \$100,000 + 40% of \$50,000).

The borrower has still made a profit of \$30,000 and has not had to make the principal and interest repayments otherwise payable on the \$100,000 throughout the life of the loan under a traditional loan.

- (c) If the fair market value of the property as at the date for repayment of the loan is less than the fair market value of the property at the date of entering into the loan, the borrower repays \$100,000 less 20% of the loss realised on the property.

For example, if the fair market value of the property as at the date for repayment is \$450,000 (ie an decrease of \$50,000), the borrower repays \$90,000 (ie \$100,000 - 20% of \$50,000).

The borrower has reduced the loss realised on the property by 20% and has not had to make the principal and interest repayments otherwise payable on the \$100,000 throughout the life of the loan under a traditional loan.

Funding the balance of the purchase price

Borrowers will usually borrow 20 – 30% of the purchase price of the property under the EFM. In practice, EFMs will be marketed by mortgage brokers as part of a package consisting of the EFM and a primary mortgage offered by a given Lender. That is, the primary Lender will not allow a borrower to take out an EFM without also taking out a primary mortgage with them.

Note that although the EFM and the primary mortgage will be promoted as a package, the borrower will enter into separate agreements with Rismark for the purposes of the EFM and with the primary Lender for the primary mortgage.

However, Rismark itself does not force the borrower to take out the primary mortgage. The Rismark product may stand alone and in theory, borrowers may fund the remainder of the purchase price by:

- (a) paying cash;
- (b) borrowing money on the security of a different property;
- (c) borrowing money on an unsecured basis; or
- (d) borrowing money under a traditional first mortgage secured by the same property.

How the proposed conduct will benefit the public

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

- (a) will make home ownership accessible to consumers who would otherwise be unable to afford to meet the cost of mortgage repayments;
- (b) allows consumers to take advantage of equity financing – an method of financing which has been available to businesses for centuries;
- (c) enables consumers to diversify wealth away from an individual housing asset.

Why there is no substantial lessening of competition from the proposed conduct

The proposed conduct will not lessen competition because:

- (a) the retail mortgage market is a well-developed, competitive market with many other loans which consumers may access;
- (b) the number of consumers potentially affected by the proposed conduct is immaterial compared to the total number of customers who acquire retail mortgages to purchase owner-occupied properties.

The benefits from the proposed conduct will outweigh any possible detriment to consumers.