

# BLAKE DAWSON WALDRON

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**Our reference**

AUST. COMPETITION &  
CONSUMER COMMISSION  
MELBOURNE

27 OCT 2005

Mr Scott Gregson  
Acting General Manager, Adjudication  
Australian Competition & Consumer Commission  
C/- Level 35, The Tower  
360 Elizabeth Street  
MELBOURNE VIC 3000

FILE No:

27 October 2005

DOC:

MARS/PRISM

Dear Mr Gregson

## **UBS Private Clients Australia Limited / UBS Securities Australia Limited Exclusive Dealing Notification**

We act for UBS Private Clients Australia Limited (**UBSPCA**) and UBS Securities Australia Limited (**UBSSA**).

On behalf of our clients, we enclose the following:

1. a notification of exclusive dealing (Form G) signed by us on behalf of UBSPCA;
2. a notification of exclusive dealing (Form G) signed by us on behalf of UBSSA;
3. a submission in support of the notifications of exclusive dealing; and
4. a cheque for the amount of \$1,200, comprising a filing fee of \$1,000 for one Limited company and a concessional filing fee of \$200 for one further Limited company.

Under the contracts with their customers, our clients are obligated to give customers 20 business days notice of amendments to the terms and conditions of the contracts. Our clients are seeking to introduce the services that are subject to this notification on 12 December 2005 and hence, the notices to the customers must be mailed out by 9 November 2005.

We would therefore be grateful if you could advise us of any issues or queries you may have in relation to this notification prior to 9 November 2005.

MELBOURNE  
SYDNEY  
BRISBANE  
PERTH  
CANBERRA  
LONDON  
PORT MORESBY  
JAKARTA  
SHANGHAI

141804925\_4

Please contact Ayman Guirguis on 9679 3778 or Wolfgang Hellmann on 9679 3263 if you have any queries in relation to the attached notification.

Yours sincerely



**Ayman Guirguis**  
Partner

Tel: (03) 9679 3778  
ayman.guirguis@bdw.com



**Wolfgang Hellmann**  
Senior Associate

Tel: (03) 9679 3263  
wolfgang.hellmann@bdw.com

COMMONWEALTH OF AUSTRALIA  
*Trade Practices Act 1974* – Sub-section 93 (1)  
EXCLUSIVE DEALING:  
ADDITIONAL 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.

- 
1. (a) Name of person giving notice

**UBS Private Clients Australia Limited ("UBSPCA")**

**ABN 50 005 311 937**

**Australian Financial Services Licence No. 231127**

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

**UBSPCA is a financial services licensee dealing with financial products and services for private investors, including financial product advice and other wealth management products and services.**

- (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

**The provision of services in relation to the execution and settlement of trades in ASX quoted financial products to private investors.**

**The supply of financial products which are quoted on ASX to private investors.**

- (b) Description of the conduct or proposed conduct

**UBSPCA proposes to offer ASX quoted financial products to private investors on the condition that the private investors acquire services in relation to the execution and settlement of trades in the ASX quoted financial products from UBSSA.**

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

**Private investors who seek to acquire ASX quoted financial products from UBSPCA, from time to time; UBSPCA; and UBSSA**

- (b) Number of those persons

(i) At present time

**None**

(ii) Estimated within the next year

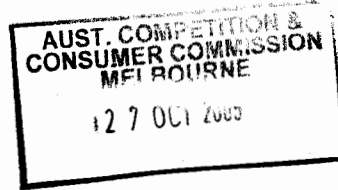
**35,000 Private Investors**

- (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.

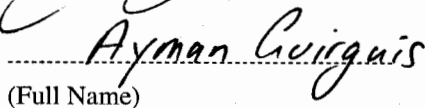
**Ayman Guirguis, Partner  
Blake Dawson Waldron  
Level 39, 101 Collins Street  
Melbourne, Victoria 3000  
telephone: 03/9679 3778  
facsimile: 03/9679 3111**



Dated 27 October 2005

Signed by/on behalf of UBS Private Clients Australia Limited

  
-----  
(Signature)

  
-----  
(Full Name)

## 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.

COMMONWEALTH OF AUSTRALIA  
*Trade Practices Act 1974* – Sub-section 93 (1)  
EXCLUSIVE DEALING:  
ADDITIONAL 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.

- 
1. (a) Name of person giving notice

**UBS Securities Australia Limited ("UBSSA")**

**ABN 62 008 586 481**

**Australian Financial Services Licence No. 231127**

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

**UBSSA is a financial services licensee dealing in financial products and services, including ASX derivative products and related financial products and services.**

- (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

**The supply of ASX quoted financial products to private investors.**

**The provision of services in relation to the execution and settlement of trades in ASX quoted financial products to private investors.**

- (b) Description of the conduct or proposed conduct

**UBSSA proposes to offer to execute and settle trades in ASX quoted financial products for private investors on the condition that the private investors have acquired ASX-quoted financial products from UBSPCA or from another broker or financial planner with whom UBSSA has entered into an execution and clearing arrangement, from time to time.**

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

**Private investors who seek to acquire services from UBSSA in relation to the execution and settlement of trades in ASX quoted financial products, from time to time; UBSPCA; UBSSA and other private client brokers and financial planners who are AFSL holders, from time to time.**

(b) Number of those persons

(i) At present time

**None**

(ii) Estimated within the next year

**35,000 Private Investors**

(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.

**Ayman Guirguis, Partner  
Blake Dawson Waldron  
Level 39, 101 Collins Street  
Melbourne, Victoria 3000  
telephone: 03/9679 3778  
facsimile: 03/9679 3111**



Dated 27 October 2005

Signed by/on behalf of UBS Securities Australia Limited

-----  
(Signature)

-----  
(Full Name)

## 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.



**SUBMISSION TO AUSTRALIAN COMPETITION AND CONSUMER COMMISSION  
IN SUPPORT OF NOTIFICATION UNDER SECTION 93(1) OF THE *TRADE  
PRACTICES ACT 1974 (CTH)***

**1. INTRODUCTION**

This submission is in support of two notifications lodged by UBS Private Clients Australia Limited (**UBSPCA**) and UBS Securities Australia Limited (**UBSSA**), respectively, under section 93(1) of the *Trade Practices Act 1974* (the **Act**) in relation to conduct potentially falling within section 47(6) or section 47(7) of the Act.

Accordingly, the relevant test to be applied by the Commission is set out in section 93(3A) of the Act, whereby the Commission assesses whether the public benefits associated with the relevant conduct outweigh any likely public detriment.

**2. PARTIES**

UBSPCA is a wholly owned subsidiary of UBS AG, a corporation registered in Switzerland, and is a related company of UBS AG, Australian Branch (ABN 47 088 129 613), UBS Global Asset Management (Australia) Limited (ABN 31 003 146 290) and UBSSA.

UBSPCA advises and deals in the following classes of financial products:

- securities (domestic and international);
- Government and semi-Government and corporate bonds and debentures;
- derivatives;
- cash management trusts;
- managed funds;
- warrants;
- life insurance products; and
- superannuation products.

The financial services provided by UBSPCA include:

- discretionary wealth management services;
- financial planning and wealth management services, including investment planning, retirement planning, asset protection strategies, risk insurance, estate planning and succession planning;
- access to "wholesale" managed funds for "retail" clients; and
- wealth and asset advisory services.

UBSSA provides the following financial services:

- advising and dealing in the following classes of financial products:
  - securities;

- debentures, stocks or bonds issued, or proposed to be issued, by a Government;
  - derivatives;
  - warrants, including managed investment products;
  - managed investment schemes (excluding investor directed portfolio services); and
  - deposit and payment products;
- underwriting interests in managed investment schemes and issuing of securities; and
  - making markets for all financial products excluding foreign exchange contracts.

Currently, UBSSA does not provide services in relation to the execution and settlement of trades in ASX quoted financial products to private investors.

### 3. DESCRIPTION OF THE RELEVANT CONDUCT

UBSPCA and UBSSA propose to enter into arrangements under which all on-market trades for UBSPCA's private clients will be executed and cleared by UBSSA.

The proposed arrangements involve:

- UBSPCA offering ASX quoted financial products to private investors on the condition that the private investors acquire services in relation to the execution and settlement of trades in ASX quoted financial products from UBSSA; and
- UBSSA offering to execute and settle trades in ASX quoted financial products for private investors on the condition that the private investors have acquired ASX quoted financial products from UBSPCA or from another private client broker or financial planner with whom UBSSA has entered into an execution and clearing arrangement, from time to time.

Initially, UBSSA may only have an execution and clearing arrangement in place with UBSPCA and hence, UBSSA may offer execution and settlement services for ASX quoted financial products only to private investors who have acquired ASX quoted financial products from UBSPCA.

However, UBSSA proposes to enter into execution and clearing arrangements with other private client brokers or financial planners who are holders of an Australian Financial Services Licence (AFSL) during Q2 2006. Therefore, UBSSA proposes to offer to provide services to private investors in relation to the execution and settlement of trades in ASX quoted financial products on the condition that the private investors have acquired ASX quoted financial products from UBSPCA or any of the private client brokers or financial planners with whom UBSSA has entered into an execution and clearing arrangement, from time to time.

#### 4. PUBLIC BENEFITS

There are a number of benefits that will be available, as a result of the proposed arrangements, to any investors that choose to execute and settle trades through a broker who is a participant of the execution, clearing and settlement offering of UBSSA. The benefits will flow to existing and new clients of UBSPCA. They include the following:

- **Improved execution services** - Clients will have access to a wider pool of orders, thereby contributing to better priced and quicker filled orders.
- **Improved Clearing and Settlement Services** - Under the proposed arrangements, UBS will use its resources more efficiently so as to reduce duplication in back office resources and procedures by combining two separate functions and databases into one. This will allow UBS more time to ensure settlements occur on time.
- **Access to a wider financial products range** - third party private client brokers and financial planners will have access to a wider financial product range than they may currently have, including the UBS cash management trust for settlements and cash deposits, exchange traded options dealing and possibly UBS margin lending.
- **Improved technical and operational infrastructure** - third party private client brokers and financial planners will have access to an improved technical and operational infrastructure. Under the proposed arrangements, there will be only one database as opposed to two, and this will make it easier and more efficient for IT to make enhancements to systems and conduct back-up procedures. The chance of inconsistencies between two databases will be eliminated and there will be less risk of error in the technical and operational infrastructure.
- **Business Continuity Expertise** - third party private client brokers and financial planners will benefit from business continuity. UBS can not allow its infrastructure to be "off the air" for any significant length of time. Therefore, it has spent a considerable amount of money to ensure that all its various systems and interfaces all have "fall back" capabilities. For example, the settlement system SHARES which will be used in the proposed arrangements has "two phase" commit to a backup machine ensuring UBS will never lose a CHESSE message.

Importantly, the benefits set out above that the third party private client brokers and financial planners will have as a result of the proposed arrangements, will "flow on" to their clients (private investors).

#### 5. NO PUBLIC DETRIMENT

The proposed conduct will not result in any public detriment.

If the ASX quoted financial products and the services in relation to the execution and settlement of the ASX quoted financial products were all provided by a single legal entity, the possibility of a breach of section 47(6) or section 47(7) of the Act would not arise. The possibility of a breach of these provisions only arises because the ASX quoted financial products and the execution and settlement services in relation to those products are provided by two separate, but related companies. The proposed conduct will therefore

have no appreciable effect on competition in the supply of ASX quoted financial products and/or the provision of execution and settlement services for ASX quoted financial products.

The financial services markets in general, and the supply of ASX quoted financial products and the provision of execution and settlement services for ASX quoted financial products are highly competitive. UBSPCA is only one of a number of suppliers of ASX-quoted financial products, and UBSSA is only one of a number of providers of execution and settlement services in relation to ASX-quoted financial products. Private investors are free to choose whether to take the "bundled" product offered by UBSPCA and UBSSA, or to acquire the financial products and services from a competitor or competitors of UBSPCA and UBSSA. Further, competitors of UBSPCA and UBSSA offer similar "bundled" services, for example Etrade and IWL Sanford.

Currently, UBSSA does not provide execution and settlement services in relation to ASX-quoted financial products to private investors. Therefore, the proposed arrangements will result in an additional provider of these services to private investors entering the market. This will increase the choice of private investors who seek to acquire ASX quoted financial products and also the choice of private client brokers and financial planners who seek to enter into an execution and clearing arrangement with a provider of execution and settlement services for ASX quoted financial products. Hence, the proposed arrangements will have significant pro-competitive effects.

Furthermore, the proposed arrangements will have no detrimental effect on existing customers of UBSPCA. Rather, they will have a beneficial effect, as set out above in section 4.

## 6. CONCLUSION

As set out above, the proposed offer by UBSPCA and UBSSA will:

- result in substantial public benefits and have substantial pro-competitive effects both for existing clients of UBSPCA and for the wider financial services markets in Australia;
- have no off-setting detrimental effect for private clients of UBSPCA or any of the other private client brokers or financial planners or the general public.

**UBS Private Clients Australia Limited**  
**UBS Securities Australia Limited**  
**27 October 2005**