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# BLAKE DAWSON WALDRON

L A W Y E R S

AUST. COMPETITION &  
CONSUMER COMMISSION  
MELBOURNE  
11 NOV 2005

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**Partner**  
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**Contact**  
Wolfgang Hellmann  
Telephone (03) 9679 3263

**Our reference**

11 November 2005

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

Dear Mr Gregson

**MMT Limited (NMMT): Exclusive Dealing Notification**

We act for NMMT.

On behalf of our client, we enclose the following:

1. a notification of exclusive dealing (Form G);
2. a submission in support of the notification of exclusive dealing; and
3. a cheque for the amount of \$1,000 being the filing fee for the notice.

Please contact Ayman Guirguis on 9679 3778 or Maddi Palser on 9679 3058 if you have any queries in relation to the attached notification.

Yours sincerely



**Ayman Guirguis**  
Partner  
Tel: (03) 9679 3778  
ayman.guirguis@bdw.com

MELBOURNE  
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N40939

FORM G

Regulation 9

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.

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1. (a) Name of person giving notice

**NMMT Limited (NMMT)**

**ACN 058 835 573**

**(Australian Financial Services Licence No. 234653)**

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

**NMMT is a wholly owned subsidiary of AXA Asia Pacific Holdings Limited (AXA APH). NMMT provides financial services to retail investors through Investor Directed Portfolio Services. AXA APH is listed on the Australian Stock Exchange. It is approximately 51% owned by AXA S.A., a company incorporated in France and listed on the Paris and the New York stock exchange. The global AXA group provides superannuation, investment and insurance services to 50 million customers worldwide.**

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

**Level 39, 101 Collins Street, Melbourne, 3000**

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

**The provision of a self managed superannuation fund service, AXcess Self Managed Super, (AXcess Service) to trustees of self managed super funds (SMSFs). The AXcess Service will provide customers with a comprehensive administration and investment service, to support the flexibility offered by a self managed super fund.**

(b) Description of the conduct or proposed conduct

**The AXcess service will require customers to establish and maintain a cash management trust account with Macquarie Bank Investment Management Limited (CMT). The CMT will be the transaction account that forms the hub of the proposed AXcess Service.**

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

- **Trustees of SMSFs, who control the investment of contributions and the payments of benefits on behalf of beneficiaries**
- **NMMT**
- **Macquarie Investment Management Limited**

(b) Number of those persons

(i) At present time

**Nil**

(ii) Estimated within the next year

**400**

(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 11 November 2005

Signed by/on behalf of



(Signature)

**Ayman Guirguis**

(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 the notification lodged by NMMT Limited (**NNMT**) 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**

NNMT is a wholly owned subsidiary of AXA Asia Pacific Holdings Limited (**AXA APH**). NNMT provides financial services to retail investors through Investor Directed Portfolio Services.

AXA APH is listed on the Australian Stock Exchange. It is approximately 51% owned by AXA S.A., a company incorporated in France and listed on the Paris and the New York stock exchanges. The global AXA group provides superannuation, investment and insurance services to 50 million customers worldwide.

Macquarie Investment Management Limited (ABN 66 002 867 003) (**Macquarie**) is one of Australia's largest fund managers with more than \$42 billion in funds under management and administration (as at 31 January 2005). It is a member of the Macquarie Bank Group of companies. Macquarie operates a cash management trust (**CMT**) which was established in 1980 and has more than \$AUD 9 billion funds under management. The CMT is one of Australia's largest CMTs. The CMT has the highest possible credit rating (AAAm) from Standard and Poors.

**3. DESCRIPTION OF THE RELEVANT CONDUCT**

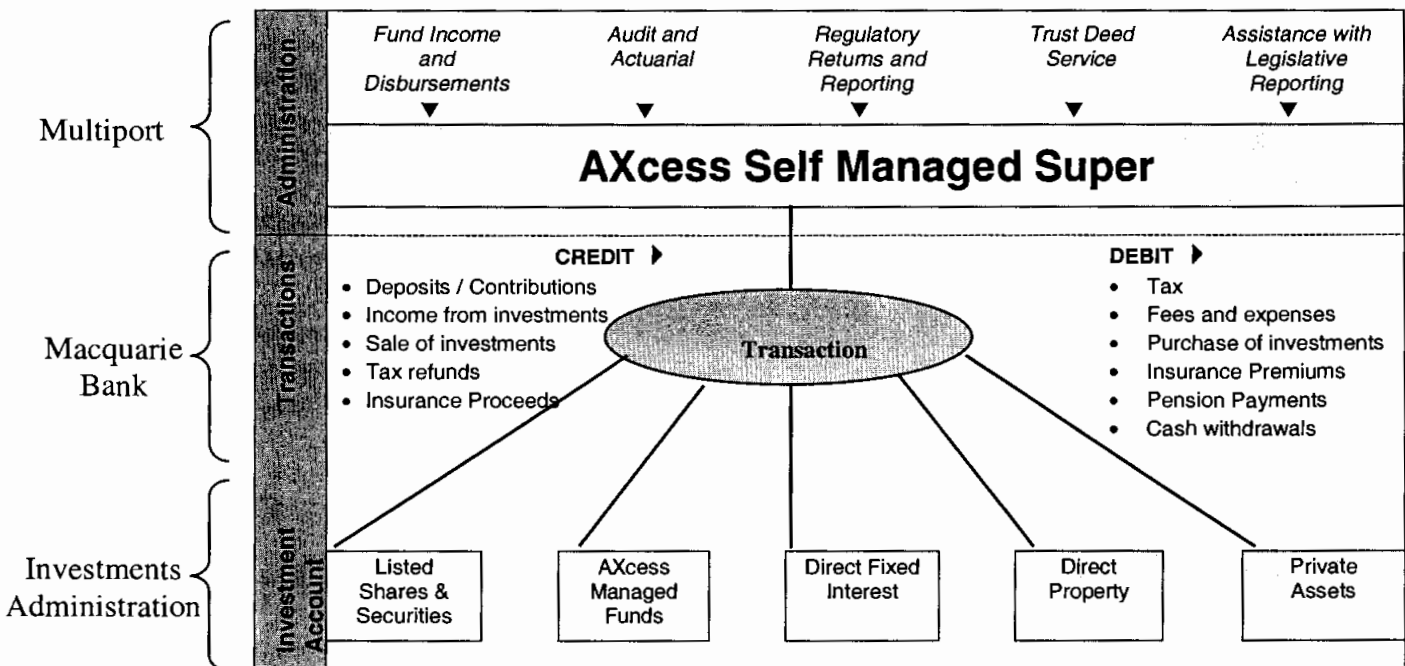
NNMT proposes to offer customers and prospective customers the following:

- NNMT will offer a self managed superannuation fund (**SMSF**) service under the name "*AXcess Self Managed Super*" (**AXcess Service**).
- The AXcess Service will be offered to present and future trustees of SMSFs (**Clients**), who have responsibility for controlling investment contributions and benefit payments on behalf of beneficiaries, on several conditions (described below).
- The AXcess Service comprises three elements: Administration, Transaction and Investment. Those elements will be managed as follows:
  - Administration and accounting services will be provided by NNMT; in fact, on its behalf by Multiport Pty Ltd (**Multiport**), a specialist in SMSF

administration, under an outsourcing arrangement between NMMT and Multiport.

- The transaction account will be the CMT provided by Macquarie and will form the hub of the AXcess Service. The CMT will operate similarly to a bank account. It will be the account from which all investments are drawn and into which the proceeds of sales of investments and dividends and distributions will be deposited. Multiport will monitor activities in the CMT account for compliance and reporting purposes. A variety of reports (eg investment portfolio reports, financial statements and tax returns, pension details reports and others) will be generated by Multiport (on NMMT's behalf) and sent via email to the trustee's financial adviser or accountant.
- Investment placement will be coordinated by a financial adviser or accountant appointed on behalf of the Client. NMMT will provide the client with a broad range of investments from different investment providers.

- The following diagram depicts the proposed arrangements.



- The provision of the AXcess Service is conditional on the following:
  - Clients establishing and maintaining the CMT as described above. The CMT offers real time access to account and cashflow information and charges no transaction, entry or exit fees.
  - Clients investing a minimum of \$20,000 in AXcess Managed Funds, an investor directed portfolio service run by NMMT. AXcess Managed Funds offers a range of managed fund investment options (currently around 204 managed funds, annuities and direct bonds from a range of investment providers) which can be invested in via the AXcess Service. The

investment menu is reviewed quarterly and investment options are added and deleted from time to time.

- The SMSF complying with regulatory obligations under the Superannuation Industry Supervision Act and as prescribed by the Australian Taxation Office.

#### 4. PUBLIC BENEFITS

The proposed conduct will result in the following public benefits:

- Due to taxation and other legal and regulatory requirements, the establishment and maintenance of self-managed superannuation funds is administratively complex. The AXcess Service will reduce the burden of these administrative requirements upon trustees and beneficiaries;
- it will ensure Clients receive an integrated service in relation to superannuation investment and management, and will facilitate easier access and control of their superannuation investments;
- Clients will have the benefit of specialist accounting and administration services, and high quality, prompt reporting;
- Clients will have access to a wide choice of investments;
- the requirement that Clients use the CMT as their transaction account will provide a number of efficiencies:
  - Competitive fee arrangements such as cost savings through no online transaction fees.
  - Resource savings (time & cost) as a result of dealing with one service provider.
  - Consolidated reporting on investments across asset classes (as described above, a key feature of the AXcess Service is the provision of comprehensive reports via email to the financial adviser of the Client).
- NMMT is only one of a number of suppliers of SMSF products, many of which offer similar "bundled" services. By providing an alternative bundled service, NMMT is increasing the range of bundled products and services available to customers.

#### 5. NO PUBLIC DETRIMENT

The proposed conduct will not result in any public detriment. It will have no appreciable negative effect on competition in the supply of financial services, superannuation services or any other relevant market.

NMMT has no exclusive arrangement with Macquarie. Macquarie is able to, and does, "bundle" its CMT with services offered by other suppliers of superannuation products and services.

The financial services markets in general, and the supply of SMSF services, are highly competitive. As noted above, NMMT is only one of a number of suppliers of SMSF products. The public is free to choose whether to take the "bundled" product/service offered by NMMT and Macquarie, or to acquire the products and services from a competitor or competitors of the parties. Competitors who offer a range of, or bundles of, services similar to the AXcess Service, using the Macquarie CMT, include:

- Mariner Self Managed Superannuation Fund Service
- SuperConcepts
- Total Super
- SuperPlus Australia
- Quantum Group

Some other competitor suppliers of services similar to the AXcess Service using cash management trust offerings other than the Macquarie CMT include the following:

- MLC Masterkey
- Asgard
- Perpetual
- Paratech
- SmartSuper
- The Super Group
- Dixons
- Cavendish

## 6. CONCLUSION

As set out above, the proposed offer by NMMT will:

- result in substantial public benefits and have substantial pro-competitive effects in the financial services markets in Australia;
- have no off-setting detrimental effect for clients of NMMT or any other suppliers of SMSFs or the general public.

**NMMT Limited**  
**11 November 2005**