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Our ref SHS:260767

AUST. COMPETITION &
CONSUMER COMMISSION
SYDNEY
28 AUG 2006

GILBERT
TOBIN

N31722 LAWYERS

28 August 2006

By hand

Scott Gregson, General Manager, Adjudication
Australian Competition & Consumer Commission
C/- Level 7
Angel Place
123 Pitt Street
SYDNEY NSW 2000

FILE No:
DOC:
MARS/PRISM:

Gilbert + Tobin

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Australia

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Dear Mr Gregson

Notification under section 93(1) of the Trade Practices Act

Please find enclosed a notification on behalf of ETrade Australia Securities Limited (**E*TRADE Australia**) under s 93(1) of the *Trade Practices Act* 1974, together with a cheque for \$1,000, being the required filing fee.

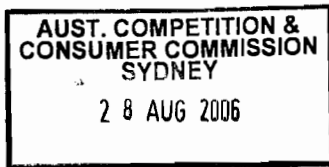
E*TRADE Australia claims confidentiality over the information set out in Confidential Schedule 1 to the notification, on the grounds that the information disclosed therein is commercially sensitive. E*TRADE Australia therefore requests that that information not appear on the public register.

Please do not hesitate to contact me if you would like to discuss E*TRADE Australia's claim for confidentiality or any other aspect of this notification.

Yours sincerely,



Simon Snow
Partner
T +61 2 9263 4246
ssnow@gtlaw.com.au



FORM G
Regulation 9

N 31722

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(6) or (7) of that Act in which the person giving notice engages or proposes to engage.

1. (a) Name of person(s) giving notice:

ETrade Australia Securities Limited ABN 93 078 174 973 (**E*TRADE Australia**).

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

Supply of online financial product trading and related services.

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

Simon Snow
Partner, Gilbert + Tobin
Level 37, 2 Park Street
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 online financial product trading and related services.

(b) Description of the conduct or proposed conduct:

See Attachment A.

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

Customers of St. George Bank Limited or its subsidiaries (**St George**) who acquire, will acquire or will be offered online financial product trading and related services provided by E*TRADE Australia.

(b) Number of those persons:

(i) At present time: unknown, but substantially greater than 50.

(ii) Estimated within the next year: unknown, but substantially greater than 50.

(c) **Where number or classes 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**

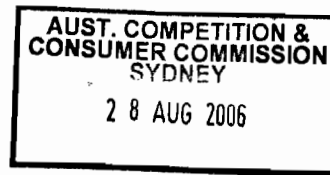
Simon Snow
Partner, Gilbert + Tobin
Level 37, 2 Park Street
Sydney NSW 2000

Date: 28 August 2006

Signed on behalf of the applicant giving notice:



.....
Simon Snow
Partner
Gilbert + Tobin



ATTACHMENT A

1 Proposed conduct

Customers of St George will be offered an online financial product trading service called "Direct Shares". The Direct Shares online financial product trading service will be supplied by E*TRADE Australia. In order to acquire the Direct Shares service from E*TRADE Australia, customers will be required to establish and maintain a bank account with St George. E*TRADE Australia may refuse to provide the Direct Shares online financial product trading service to consumers who do not agree to establish and maintain a bank account with St George.

E*TRADE Australia may from time to time give or allow a discount, allowance, rebate or credit (**Benefit**) to Direct Shares customers that is not offered to other online financial product trading customers of E*TRADE Australia. E*TRADE Australia may refuse to provide a similar Benefit to other customers of E*TRADE Australia who are not Direct Shares customers, and who therefore may not maintain a bank account with St George. The maximum value of any Benefit would be equivalent to a reduction of [see Confidential Schedule 1] off the best price available to customers of E*TRADE Australia who do not acquire the Direct Shares product.

There is an argument (not necessarily accepted by E*TRADE Australia) that the proposed conduct (**Proposed Conduct**) may amount to a contravention of s 47(6) and s 47(7) of the *Trade Practices Act 1974 (Cth) (Act)*.

2 Public benefit and competition issues

For the reasons noted below, the impact of the Proposed Conduct is not such that, under the test laid down in s 93(3A)(b) of the Act, the likely benefit to the public will be outweighed by the likely detriment to the public.

2.1 Public benefits for customers, potential customers and the industry

The Proposed Conduct will allow customers of St George Bank the benefit of acquiring online financial product trading services from E*TRADE Australia at competitive prices while being able to use their St George bank accounts for settlement purposes.

In order to offer St George customers the ability to use their St George bank accounts, E*TRADE Australia has arrangements in place with St George to ensure that sufficient funds are available in the relevant accounts for settlement and to transfer those funds to E*TRADE Australia when required for settlement. This means that there is no settlement risk to E*TRADE Australia from transactions by customers using Direct Shares.

If E*TRADE Australia was to allow Direct Shares customers to have bank accounts with any financial institution of their choosing, then E*TRADE Australia would be required to establish arrangements with every financial institution to manage the credit risk, ensure that sufficient funds would be available in the customer's account with that financial institution for settlement and to access those funds for settlement. E*TRADE Australia considers that it would be costly to establish such arrangements (even if all financial institutions agreed to enter into such arrangements with E*TRADE Australia), and that E*TRADE Australia would be forced to pass such costs on to its customers.

To the extent that E*TRADE Australia gives a Benefit to Direct Share customers, this will result in savings for such customers and is also likely to result in a competitive response from other providers of broking services.

2.2 Public detriment

There will no public detriment resulting from the Proposed Conduct.

There will be no lessening of competition as a result of the Proposed Conduct. The market in which online financial product trading services are supplied is highly competitive and the Direct Shares product is but one of a range of competing products offered by a number of suppliers.

Consumers will remain free to obtain financial product trading services from a range of sources other than through the Direct Shares product, including from:

- E*TRADE Australia under its own brand;
- other suppliers of online financial product trading services; and
- other suppliers of stockbroking services.

Please also see Confidential Schedule 1.

2.3 Conclusion

Due to the public benefits that will flow from the Proposed Conduct and the absence of any public detriment, E*TRADE Australia requests that the Commission allow the notification to stand.

CONFIDENTIAL SCHEDULE 1

**EXCLUDED FROM
PUBLIC REGISTER**