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20 December 2007

Our Ref: 653269/LAK
Your Ref:

By facsimile: 02 6243 1199 and courier

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Mr Scott Gregson
General Manager
Adjudication
Australian Competition and Consumer Commission
PO Box 3131
Canberra ACT 2601

Dear Mr Gregson,

Exclusive Dealing Notifications – Macquarie Bank Limited

We act for Macquarie Bank Limited.

We enclose two exclusive dealing notifications by Macquarie Bank Limited, each pursuant to section 93(1) of the *Trade Practices Act 1974*. These notifications are lodged in respect of conduct which may constitute exclusive dealing under sections 47(6) and 47(7) of the Act. Each notification is given in the prescribed form and should not be taken as an admission that the relevant conduct would contravene the statutory prohibition.

We also enclose a cheque made payable to the Commission in the sum of \$200, being the prescribed lodgment fee for two notifications.

Please do not hesitate to contact me should you require any further information or if you have any queries about the notifications.

Yours sincerely,



Lindsay Kyle
Partner
(02) 8922 5282
lindsay.kyle@bakernet.com

Encl 3

AUST. COMPETITION & CONSUMER COMMISSION
CANBERRA
21 DEC 2007

Form G

Commonwealth of Australia
Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice:

N932.52

Macquarie Bank Limited (ABN 46 008 583 542) of No 1 Martin Place
Place, Sydney, New South Wales, 2000 (**MBL**).

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

MBL is a diversified international provider of banking, financial, advisory
and investment services, including the provision of credit services.

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

Baker & McKenzie

AMP Centre

Level 27

50 Bridge Street,

SYDNEY NSW 2000

Telephone: (02) 9225-0200

Facsimile: (02) 9225-1595

Attention: Lindsay Kyle

Direct: (02) 8922 5282

Email: lindsay.kyle@bakernet.com

2. Notified arrangement

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

The services that MBL proposes to offer, to which this notice relates, are loan services relating to a property backed investment product known as Macquarie Property Lever (**MPL**). Further details of MPL are included in section 1 of Attachment A.

- (b) Description of the conduct or proposed conduct:

See Attachment A – sections 1 and 2.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

The MPL product is open to all investors but is considered by MBL to be specifically appropriate for those investors with self managed superannuation funds.

- (b) Number of those persons:

- (i) At present time:

None. The product has not yet been brought to market.

- (ii) Estimated within the next year:

Approximately 500.

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

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

See Attachment A – section 3.

- (b) Facts and evidence relied upon in support of these claims:

See Attachment A – section 3.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the

relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The market in which the MPL product will be supplied is the market for the supply of financial services. There are a vast number of suppliers active in this market.

In respect of property backed investment products similar to MPL, we understand that there are at least three products currently available. The suppliers of these products are Quantum Group Australia, Babcock & Brown (the SPI plan product) and Calliva.

These types of investment products, being offered in the context of the financial services market, will be subject to any relevant regulation in that market. However, the suppliers of these products are typically major banks and financial institutions who are already very familiar with financial services regulations and are sufficiently well resourced to ensure compliance.

Other markets affected by the supply of MPL include the market for the supply of general insurance services. This is because, as part of the MPL package, investors will be required to acquire the benefit of being noted on an MBL-designated insurance policy. There are a vast number of suppliers active in this market, and a vast number of potential customers for general insurance services.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

See Attachment A – section 4.

- (b) Facts and evidence relevant to these detriments:

See Attachment A – section 4.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Lindsay Kyle, Partner, Baker & McKenzie, AMP Centre, Level 27,
50 Bridge Street, Sydney, New South Wales 2000.

Dated 20 December 2007

Signed by/on behalf of the applicant

.....
(Signature)

Lindsay Anne Kyle
(Full Name)

Partner, Baker & McKenzie

Attachment A

Description of the Proposed Conduct and Public Benefits

1. Background

- 1.1 Macquarie Bank Limited (**MBL**) is seeking to provide a new investment product called Macquarie Property Lever (**MPL**) to investors.
- 1.2 MPL involves MBL providing a loan to the investor to purchase a residential property.
- 1.3 The residential property is identified by the investor and purchased by an MBL-controlled trustee company (**Trustee**) who effectively holds the asset on trust for the investor until the final loan repayment is made. At the date of final payment legal title passes to the investor.
- 1.4 The loan has a 9.5 year term and is non-recourse to the borrower. Interest is charged monthly in arrears in respect of the loan over the term. During the course of the investment the investor receives the full benefit of capital growth of the property and the rental income stream associated with the product. MBL receives interest payments on the outstanding loan and a monthly management fee.
- 1.5 As part of the MPL product, an insurance policy will be issued by an MBL-designated insurer, namely QBE.
- 1.6 The insurance policy will be issued to MBL and MBL is responsible for payment of all insurance premiums. The investor (as well as the Trustee) will be noted on the policy as an interested party.
- 1.7 The investor will liaise with QBE direct with regard to potential insurance claims. Any insurance proceeds will be paid to the Trustee who legally owns the residential property until the loan is paid off in full.

2. Proposed Conduct

MBL proposes to supply loan services relating to MPL to investors on condition that investors acquire rights under an insurance policy to be supplied by an MBL-designated insurer, QBE.

3. Public Benefits

The proposed conduct will be of benefit to the public as it will provide the public with access to an innovative, streamlined, cost-efficient product enabling the investor to purchase a residential property of his or her choosing.

The bringing to market of this new product will also serve to stimulate competition in this sector of the banking and finance services market and foster the development of other new investment products.

In particular, the conduct gives rise to the following public benefits:

3.1 Access to innovative product

MPL is a sophisticated innovative product which is tax efficient, superannuation fund compliant and provides the investor with the flexibility to choose their own residential property.

For MBL to be able, commercially, to offer MPL to the public it needs to properly manage its financial risk exposure. Given that MBL's only recourse is against the property (not the investor), MBL's internal risk management policies require that there be an appropriate level of governance of the property. This includes ensuring that an appropriate insurance policy is taken out in respect of the property.

If MBL were not able to pre-arrange a suitable insurance policy in respect of MBL, it would not consider it commercially viable to bring the MPL product to market.

3.2 Streamlined product

By pre-arranging the insurance coverage required in respect of MPL, MPL is able to be offered to investors as a 'package' or 'one-stop-shop' product to investors. This brings with it the benefit of convenience and ease of access for consumers. The investor does not need to undertake the additional step of selecting an insurer and making a separate purchase of insurance services which would, in turn, require the investor to be sufficiently informed as to the appropriate level of insurance cover.

Requiring investors to make their own arrangements would make the MPL product less convenient and generally less attractive to the majority of those investors.

3.3 Unique insurance product

MBL has negotiated a group insurance policy with QBE to cover all investment properties. In doing so, MBL has been able to negotiate a unique product with QBE which includes rental relief terms which are more favourable than those typically available to the general public.

3.4 Stimulates competition

The bringing to market of the new MPL product will be of benefit to the public in stimulating competition for the supply of these types of loan services in the market. Other lenders will be prompted to offer innovative and sophisticated product features in their loan offerings. In turn, this is likely to place downward pressure on the pricing of these products.

A similar increase in competition has been seen on the introduction of other MBL products. For instance, in 1992 when MBL introduced its GEI product, a protected loan facility enabling the investor to borrow 100% of the cost of a share portfolio, this stimulated similar product offerings from suppliers such as Westpac, Smith Barney Citigroup, Commsec and Leveraged Equities. Pricing has reduced over time with these offerings by the addition of various product options, such as capping gains.

4. Public detriment

4.1 The impact of MBL's conduct will not, in our submission, result in any detriment to competition. Rather, the introduction of MPL is likely to

promote competition among other lenders, putting downward pressure on pricing for these types of investment products.

- 4.2 The impact of MBL's conduct on the associated market for the supply of general insurance services, if any, will be negligible, given the large number of suppliers and customers in that market.

5. Conclusion

- 5.1 Overall, the conduct is beneficial to the public as it enables investors to access an innovative, streamlined, cost-efficient product which will serve to stimulate other lenders to introduce similar products.
- 5.2 MBL's conduct is therefore not such that the likely benefit to the public would be outweighed by the likely anti-competitive detriment.

Form G

Commonwealth of Australia

Trade Practices Act 1974 — subsection 93 (1)

NOTIFICATION OF EXCLUSIVE DEALING

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of person giving notice: N93253

Macquarie Bank Limited (ABN 46 008 583 542) of No 1 Martin Place
Place, Sydney, New South Wales, 2000 (MBL).

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

MBL is a diversified international provider of banking, financial, advisory
and investment services, including the provision of credit services.

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

Baker & McKenzie

AMP Centre

Level 27

50 Bridge Street,

SYDNEY NSW 2000

Telephone: (02) 9225-0200

Facsimile: (02) 9225-1595

Attention: Lindsay Kyle

Direct: (02) 8922 5282

Email: lindsay.kyle@bakernet.com

2. Notified arrangement

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

The services that MBL proposes to offer, to which this notice relates, are loan services relating to a property backed investment product known as Macquarie Property Lever (**MPL**). Further details of MPL are included in section 1 of Attachment A.

- (b) Description of the conduct or proposed conduct:

See Attachment A – sections 1 and 2.

3. Persons, or classes of persons, affected or likely to be affected by the notified conduct

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

The MPL product is open to all investors but is considered by MBL to be specifically appropriate for those investors with self managed superannuation funds.

- (b) Number of those persons:

- (i) At present time:

None. The product has not yet been brought to market.

- (ii) Estimated within the next year:

Approximately 500.

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

Not applicable.

4. Public benefit claims

- (a) Arguments in support of notification:

See Attachment A – section 3.

- (b) Facts and evidence relied upon in support of these claims:

See Attachment A – section 3.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2(a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the

relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

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In respect of property backed investment products similar to MPL, we understand that there are at least three products currently available. The suppliers of these products are Quantum Group Australia, Babcock & Brown (the SPI plan product) and Calliva.

These types of investment products, being offered in the context of the financial services market, will be subject to any relevant regulation in that market. However, the suppliers of these products are typically major banks and financial institutions who are already very familiar with financial services regulations and are sufficiently well resourced to ensure compliance.

Other markets affected by the supply of MPL include the market for the supply of property management services. This is because, as part of the MPL package, investors will be required to acquire the services of an MBL-designated property manager. There are a vast number of suppliers active in this market, and a vast number of potential customers for property management services.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:

See Attachment A – section 4.

- (b) Facts and evidence relevant to these detriments:

See Attachment A – section 4.

7. Further information

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

Lindsay Kyle, Partner, Baker & McKenzie, AMP Centre, Level 27,
50 Bridge Street, Sydney, New South Wales 2000.

Dated 20 December 2007

Signed by/on behalf of the applicant

.....
(Signature)

Lindsay Anne Kyle
(Full Name)

Partner, Baker & McKenzie

Attachment A

Description of the Proposed Conduct and Public Benefits

1. Background

- 1.1 Macquarie Bank Limited (**MBL**) is seeking to provide a new investment product called Macquarie Property Lever (**MPL**) to investors.
- 1.2 MPL involves MBL providing a loan to the investor to purchase a residential property.
- 1.3 The residential property is identified by the investor and purchased by an MBL-controlled trustee company (**Trustee**) who effectively holds the asset on trust for the investor until the final loan repayment is made. At the date of final payment legal title passes to the investor.
- 1.4 The loan has a 9.5 year term and is non-recourse to the borrower. Interest is charged monthly in arrears in respect of the loan over the term. During the course of the investment the investor receives the full benefit of capital growth of the property and the rental income stream associated with the product. MBL receives interest payments on the outstanding loan and a monthly management fee.
- 1.5 As part of the MPL product, the investor is required to appoint an MBL-designated property manager to manage the property, including any necessary maintenance and repair.
- 1.6 The property manager's fees and expenses will be deducted at cost from the rental income which is paid to the investor.

2. Proposed Conduct

MBL proposes to supply loan services relating to MPL to investors on condition that investors acquire property management services from an MBL-designated property manager.

3. Public Benefits

The proposed conduct will be of benefit to the public as it will provide the public with access to an innovative, streamlined, cost-efficient product enabling the investor to purchase a residential property of his or her choosing.

The bringing to market of this new product will also serve to stimulate competition in this sector of the banking and finance services market and foster the development of other new investment products.

In particular, the conduct gives rise to the following public benefits:

3.1 Access to innovative product

MPL is a sophisticated innovative product which is tax efficient, superannuation fund compliant and provides the investor with the flexibility to choose their own residential property.

For MBL to be able, commercially, to offer MPL to the public it needs to properly manage its financial risk exposure. Given that MBL's only recourse is against the property (not the investor), MBL's internal risk management policies require that there be an appropriate level of governance of the property. This includes ensuring that a suitably competent and experienced property manager be appointed to manage the property.

If MBL were not able to pre-arrange a suitable property manager in respect of MBL, it would not consider it commercially viable to bring the MPL product to market.

3.2 Streamlined product

By pre-arranging the property management services required in respect of MPL, MPL is able to be offered to investors as a 'package' or 'one-stop-shop' product to investors. This brings with it the benefit of convenience and ease of access for consumers. The investor does not need to undertake the additional step of selecting a property manager and making a separate purchase of property management services which would, in turn, require the investor to be sufficiently informed as to the suitability of property managers.

Requiring investors to make their own arrangements in respect of property management services would make the MPL product less convenient and generally less attractive to the majority of those investors.

3.3 Cost efficiency

MBL proposes to use the services of a panel of property managers who have existing relationships with MBL. In this way, MBL will be able to ensure the reliability and experience of the property managers to be associated with MPL. MBL will also be able to use its relationship with these property managers, and the volume of services purchased, to keep certain cost elements down, such as the cost of additional reporting requirements which would normally drive the cost up. The property manager's fees and expenses will be deducted at cost from the rental income which is paid to the investor.

3.4 Stimulates competition

The bringing to market of the new MPL product will be of benefit to the public in stimulating competition for the supply of these types of loan services in the market. Other lenders will be prompted to offer innovative and sophisticated product features in their loan offerings. In turn, this is likely to place downward pressure on the pricing of these products.

A similar increase in competition has been seen on the introduction of other MBL products. For instance, in 1992 when MBL introduced its GEI product, a protected loan facility enabling the investor to borrow 100% of the cost of a share portfolio, this stimulated similar product offerings from suppliers such as Westpac, Smith Barney

Citigroup, Commsec and Leveraged Equities. Pricing has reduced over time with these offerings by the addition of various product options, such as capping gains.

4. Public detriment

- 4.1 The impact of MBL's conduct will not, in our submission, result in any detriment to competition. Rather, the introduction of MPL is likely to promote competition among other lenders, putting downward pressure on pricing for these types of investment products.
- 4.2 The impact of MBL's conduct on the associated market for the supply of property management services, if any, will be negligible, given the large number of suppliers and customers in that market.

5. Conclusion

- 5.1 Overall, the conduct is beneficial to the public as it enables investors to access an innovative, streamlined, cost-efficient product which will serve to stimulate other lenders to introduce similar products.
- 5.2 MBL's conduct is therefore not such that the likely benefit to the public would be outweighed by the likely anti-competitive detriment.