

FORM G
Regulation 9

FILE No:
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MARS/PRISM:

COMMONWEALTH OF AUSTRALIA

Trade Practices Act 1974 - Sub-section 93(1)

EXCLUSIVE DEALING: NOTIFICATION

To the Australian Competition & 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 giving notice:** 143060
Westpac Banking Corporation (ABN 33 007 457 141).
- (b) **Short description of business carried on by that person:**
Banking services – provision of financial accommodation.
- (c) **Address in Australia for service of documents on that person:**
Catherine Parr
Allens Arthur Robinson,
Level 29, Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney, NSW 2000
Ph: (02) 9230 4994
Fax: (02) 9230 5333
2. (a) **Description of the goods or services in relation to the supply or acquisition of which this notice relates:**
Westpac Protected Equity Loan. See Attachment A.
- (b) **Description of the conduct or proposed conduct:**
See Attachment A.
3. (a) **Class or classes of persons to which the conduct relates:**
Persons or other entities borrowing for the purpose of investment or business.
- (b) **Number of those persons:**
 - (i) At the present time – Nil.
 - (ii) Estimate within the next year – Substantially in excess of 50.

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

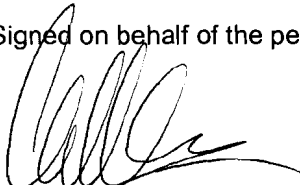
Not applicable.

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

Catherine Parr
Allens Arthur Robinson
Level 29, Deutsche Bank Place
Corner Hunter and Phillip Streets
SYDNEY NSW 2000

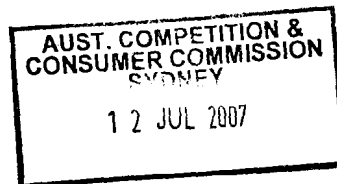
Dated: 12 July 2007

Signed on behalf of the person giving this notice:



Catherine Parr

PARTNER, ALLENS ARTHUR ROBINSON,
solicitors for the person giving
this notice



ATTACHMENT A**The Proposed Conduct**

Westpac Banking Corporation (**the Bank**) provides a range of financial products and services to personal, business and corporate customers.

The Bank proposes to offer a Westpac Protected Equity Loan (**PEL**) on or about [X] July 2007. The Westpac PEL is a similar product to:

- the Westpac Protected Equity Loan which was first offered in February 2004, and benefits from the immunity conferred by Notification 31275; and
- the Westpac Protected Equity Loan Plus which obtained immunity through Notification 31306.

A Westpac PEL allows an investor to invest in a basket of shares and units (**Securities**) or, in some cases, a parcel of Securities from a single issuer determined by the investor. The Bank loans the investor 100% of the cost of those Securities. The investor (mortgagor) mortgages the Securities to the Bank as security for the loan. The mortgage gives the Bank (mortgagee) an equitable interest in the Securities. The loan is limited recourse – provided no default has occurred Westpac is limited, in seeking repayment of the loan principal at maturity, to recourse to the Securities under its mortgage. One respect in which the new PEL differs from the products the subject of Notifications 31275 and 31306 is that the borrower and the owner of Securities do not have to be the same person.

Securities in listed companies and listed trusts are generally 'uncertificated Securities' and are issued under the Clearing House Electronic Sub-register System (**CHESS**) sub-register. The ASX Settlement and Transfer Corporation Operating Rules (**ASTC Operation Rules**) do not give a financier, such as the Bank, a method of registering or noting its interest in the mortgaged Securities on CHESS and so the financier must establish a method to allow them to control their security interests in the Securities.

As the National Australia Bank (**NAB**) outlined in its application to the Australian Competition and Consumer Commission (**the Commission**) for notification of exclusive dealing on 29 May 1996, there are a number of alternative methods of securing the Bank's interest in the mortgaged Securities on CHESS. These alternatives include certification by the borrower and subsequent deposit of scrip, legal mortgage over the uncertificated Securities, equitable mortgage vesting title in a nominee and using a CHESS participant as a sponsoring broker. As NAB notes in its application, none of the available options fully address all the requirements of a bank when taking security over uncertificated Securities.

The Bank therefore proposes to use JDV Margin Lending Pty Ltd (**JDV**) as the sole sponsor for the uncertificated Securities, although the Bank retains the right to nominate a different CHESS participant to perform the role of sponsor under the arrangements. JDV has the technology and personnel to perform the CHESS-related functions. JDV will act as the Controlling Non-Broker Participant in relation to the mortgaged securities, which means that it, as CHESS participant, will register the investor's ownership of the mortgaged securities and effect transactions in relation to the Securities as agreed between the Bank, the investor and JDV.

Also, in order to ensure proper control over the loan proceeds (and ultimately the sale proceeds when the Securities are sold) the Bank also requires the customer to use its related company Westpac Securities Limited (trading as Westpac Broking) as its Broker to buy and sell the Securities.

Trade Practices Issue

It is possible that the proposed conduct described above might involve conduct of the kind described in section 47(6) of the Trade Practices Act 1974 Cth (*the Act*) on the basis that the Bank will only provide financial accommodation to the borrower *on the condition that* the borrower (or the owner of the Securities, if that owner is not the borrower) uses JDV as its sponsor. Similarly, the conduct might involve conduct of the kind in section 47(7) of the Act if the Bank refuses to provide the loan because the borrower (or owner) will not use JDV as its sponsor. As Westpac Securities Limited (trading as Westpac Broking) is a related body corporate no issue arises in respect of the specification of broking services.

Whilst the proposed conduct may fall within the realm of section 47(6) and / or section 47(7), the conduct is inherently pro-competitive. It is submitted that the public benefits which result from the proposed conduct outweigh any possible public detriment.

Public Benefit

The Bank believes that the proposed conduct is not anti-competitive. The proposed arrangements will offer an additional method by which investors can invest in an equity portfolio, without limiting the options currently available.

The type of product in question (a Securities financing arrangement where Securities are used as security for the loan) is a popular form of Securities financing and similar products are offered by a number of companies with whom the Bank competes.

The Bank believes that offering the product in a way which enables borrowers to choose their own broker and sponsor is not practical or cost effective. By using a *nominated broker* and a *nominated sponsor* in this arrangement, the Bank is better able to protect its security over the Securities in the event that the customer defaults on the loan. This, in turn, allows the Bank to offer a wider range of product choice to the customer.

The Bank considers that the proposed arrangements are an efficient and cost effective method of obtaining the required security over uncertificated Securities. Offering the product in this way is pro-competitive because it introduces new competition for the provision of services to facilitate investments in equity portfolios. It is therefore submitted that the public benefits resulting from the greater competition will outweigh any detriment to the public likely to result from the notified conduct.