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31 March 2008

Mr David Hatfield  
Acting General Manager, Adjudication  
Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601

Dear Mr Hatfield

**Hillross Financial Services Ltd - Notification of third line forcing conduct under section 93(1) of the Trade Practices Act 1974 (Cth)**

We act for Hillross Financial Services Ltd ("Hillross").

**1 Notification of conduct which may amount to third line forcing under section 93(1) of the Trade Practices Act 1974 (Cth)**

Pursuant to section 93(1) of the *Trade Practices Act 1974 (Cth)* ("TPA") Hillross notifies the Commission of conduct which may amount to third line forcing under sections 47(6) and (7) of the TPA.

Hillross is a member of the AMP group of companies and provides financial advice and dealing services in Australia. It provides retirement advice, investment, superannuation, life cover, income protection insurance, self-managed superannuation, permanent disability cover and other financial planning services.

The enclosed Form G notification of exclusive dealing relates to the provision by Hillross of investment services known as Personalised Portfolio to customers, on the condition that the customers acquire custodian services from Australia and New Zealand Banking Group Limited.

As set out in the notification, Hillross considers that the proposed conduct would not result in any meaningful lessening of competition, and will result in a net public benefit. In particular, as Hillross is required to nominate a custodian to provide the custodial services to comply with its financial services and regulatory obligations as it is not permitted to provide custodial services under the conditions of its Australian Financial Services Licence, the third line force is very much a technical one and is unlikely to have any impact on competition

## 2 Supporting documentation

We enclose the following:

- (a) Form G exclusive dealing notification; and
- (b) a cheque for \$100 for lodgement of the notification.

Should you have any questions relating to this application, please contact me or Stefanie Benson on (02) 9296 2435.

Yours sincerely



Dave Poddar  
Partner  
Direct line +61 2 9296 2281  
Direct fax +61 2 9296 3961  
Email [dave.poddar@malleasons.com](mailto:dave.poddar@malleasons.com)

Encl

**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 in 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 THE BACK OF THIS FORM

**1 Applicant**

- (a) Name of person giving notice:  
*(Refer to direction 2)*

Hillross Financial Services Limited ABN 77 003 323 055, AFSL No. 232705 N93352  
("Hillross")

- (b) Short description of business carried on by that person:  
*(Refer to direction 3)*

Hillross is a member of the AMP group of companies. AMP Limited ("AMP") is a leading wealth management company listed on the Australian Securities Exchange and the New Zealand Exchange. AMP's principal activities concern retirement savings and income, funds management and funds advice, life, risk and general insurance and banking and financial planning.

AMP conducts its principal activities through two key business units - AMP Financial Services and AMP Capital Investors.

Hillross sits within the AMP Financial Services business unit. Hillross holds an Australian Financial Services Licence (No. 232705) and is a Principal Member of the Financial Planning Association of Australia.

Hillross provides financial advice and dealing services in Australia. It provides retirement advice, investment, superannuation, life cover, income protection insurance, self-managed superannuation, permanent disability cover and other financial planning services.

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

Dave Poddar  
Partner  
Mallesons Stephen Jaques  
Level 61 Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000

## 2 Notified arrangement

*(Refer to direction 4)*

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

This notice relates to investment services known as the Personalised Portfolio . The Personalised Portfolio are investment services under which Hillross manages a portfolio of cash, managed funds and/or listed securities on behalf of the customer while the customer retains beneficial ownership in the underlying securities held in the portfolio. Rather than pool the ownership of the customers' cash and assets in the form of a unit trust, as is more commonly the case with funds management products, the relevant cash and assets are held for each customer by a custodian selected by Hillross, in this case Australia and New Zealand Banking Group Limited ("ANZ"). ANZ acts as custodian of the securities and cash balances in Hillross's customers' Personalised Portfolio accounts and is responsible for the settlement of all transactions, receipt of income from securities and holding securities on behalf of the customers.

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

### ***Summary***

This notice relates to the requirement of Hillross that customers who acquire the Personalised Portfolio from Hillross also acquire custodial services from ANZ.

### ***Background***

When a customer selects Hillross's Personalised Portfolio, the customer appoints Hillross as its agent to manage cash and investments in an investment account known as a "Managed Discretionary Account" ("MDA"). Under this structure the customer's investment transactions are undertaken on their behalf without obtaining the customer's prior instructions for each transaction. Instead, the MDA is managed in accordance with a suitable investment program which will be recommended to the customer when the customer first selects the services and which may be updated from time to time.

### ***Conduct or proposed conduct***

As a condition of supplying the Personalised Portfolio Hillross requires its customers to acquire custodian services from ANZ. Before the customer can use the Personalised portfolio service it must enter into a Custody Agreement with ANZ.

The custodian services which ANZ must provide under the Custody Agreement include the following:

- holding the securities and cash securities on trust for the customer;
- accepting, releasing and delivering securities in accordance with instructions from Hillross;
- ensuring that all securities are registered; and

- collecting distributions.

The Personalised Portfolio therefore allow Hillross to manage collectively a number of customer's cash and assets, but in such a way that each customer retains beneficial ownership of its assets.

### **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:  
(Refer to direction 5)

Customers acquiring the Personalised Portfolio Service from Hillross and potential customers who may consider acquiring the Personalised Portfolio.

- (b) Number of those persons:

- (i) At present time:

Hillross is not in a position to know the exact number of customers or potential customers but believes it is likely to be substantially more than 50

- (ii) Estimated within the next year:  
(Refer to direction 6)

Substantially more than 50

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

N/A

### **4 Public benefit claims**

- (a) Arguments in support of notification:  
(Refer to direction 7)

Hillross submits that its requirement that customers acquire custodian services from ANZ does not give rise to any public detriment and, moreover, will result in clear public benefits because:

- it will increase consumer choice, allowing customers access to a new and innovative financial service;
- it will stimulate competition in financial services markets as other competitors strive to match or better Hillross's product;
- unlike many other financial products it will allow collective management of customers' assets while allowing individual customers greater control over ownership of their assets;
- it will assist Hillross to achieve greater business and cost efficiencies and thereby reduce costs to its customers; and

- it will provide customers with greater convenience and security in dealing with Hillross.

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

None in addition to those described above

## 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):

*(Refer to direction 8)*

Hillross considers the relevant market to be the Australian market for the supply of retail investment 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:

*(Refer to direction 9)*

Hillross is of the view that the conduct in question does not result in any public detriment and does not result in a substantial lessening of competition in relation to any of the relevant markets for the services in question for the following reasons:

- Hillross is required to nominate a custodian to provide the custodial services to comply with its financial services and regulatory obligations as it is not permitted to provide custodial services under the conditions of its Australian Financial Services Licence. The third line force is very much a technical one and is unlikely to have any impact on competition;
- retail managed investment markets are highly competitive. They are characterised by a large number of competitors, and a high rate of new product development and innovation; and
- the conduct in question does not lessen competition with respect to other investment service providers, as any such competitors remain free to offer similar products to their clients;
- the conduct will not foreclose the ability of other custodians to provide custodial services to other providers of portfolio or similar services, or the ability of other providers of portfolio services to provide such services to other customers;

- there is no element of compulsion, in that no existing Hillross client is compelled to acquire the Personalised Portfolio Services, or to change their existing arrangements;
- customers remain free to obtain investment products and services from a range of other providers; and
- Hillross will continue to offer alternative investment products to customers who do not wish to acquire the Personalised Portfolio.

(b) Facts and evidence relevant to these detriments:

None in addition to those described above.

***Previous notification***

Hillross is aware that the Commission has previously accepted the following notification relating to similar conduct:

Notification N31729 dated 20 September 2006: BT Funds Management No. 2 Limited (“BT2”) proposed to offer a funds management product, BT Elect Portfolio, to retail customers on condition that the cash and assets were held separately for each retail client by a custodian approved by BT2. BT2 had pre-approved Westpac Securities Administration Limited for this role.

**7 Further information**

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

Dave Poddar  
 Partner  
 Mallesons Stephen Jaques  
 Level 61 Governor Phillip Tower  
 1 Farrer Place  
 Sydney NSW 2000

Phone: (02) 9296 2281  
 Fax: (02) 9296 3961

Dated

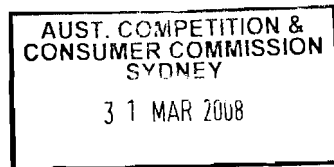
Signed by/on behalf of the applicant

  
 (Signature)

Dave Poddar

Mallesons Stephen Jaques

Partner



## DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.  
  
Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
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. 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 section 47 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. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.