

Form G

Commonwealth of Australia
Competition and Consumer Act 2010 — 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 *Competition and Consumer Act 2010*, 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:

(Refer to direction 2)

N97114

Bond Street Custodians Pty Ltd (“**Bond Street Custodians**”)

N97115

Mercer Outsourcing (Australia) Pty Ltd (“**MOAPL**”)

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

(Refer to direction 3)

Bond Street Custodians, Macquarie Equities Limited (“**MEL**”), Macquarie Investment Management Limited (“**MIML**”) are each members of the Macquarie group of companies and provide a range of services, including the following:

- MIML provides investment and administration across a range of asset classes, including to investors through the Macquarie Wrap platform;
- MEL provides financial advice and securities and other financial product execution services, including under the name Macquarie Private Wealth; and
- Bond Street Custodians provides custodial services, including to MIML as operator of the Macquarie Wrap platforms.

MOAPL is a member of the Mercer group of companies. MOAPL provides a range of administration (or ‘back office’) services to trustees of some of the largest corporate, master trust and industry superannuation funds in Australia – including superannuation and pension administration services, a clearing house facility for employer contributions, unit pricing and group insurance and claims administration.

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

Mr Wayne Leach
Partner, King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

2 Notified arrangement

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

MOAPL wishes to provide its clients who are trustees of large regulated superannuation funds, with a fully integrated direct investment administration service. This will enable the trustees to provide a greater range of investment options to their superannuation fund members.

Members of the superannuation fund will have an option to invest in a selection of ASX-listed shares, exchange-traded funds and term deposits (**direct investment service**). The direct investment service will be provided by MOAPL at a wholesale level to superannuation fund trustees who will in turn provide it alongside the choice of investment options on offer to members of their fund.

MIML operates an investment platform that can provide MOAPL and its superannuation fund trustee clients with access to ASX-listed shares, exchange traded funds and term deposits. MIML's investment platform has the sophistication to accommodate superannuation fund trustees and their tax treatment.

Macquarie group entities will provide the custodial, transactional and reporting services related to the investment platform.

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

MOAPL and MIML propose to enter into a Platform Services Agreement under which MIML will provide the platform services to MOAPL to enable MOAPL to offer the direct investment service to superannuation fund trustees. This offer by MOAPL is made on the condition that the superannuation fund trustee must obtain custodial services from Bond Street Custodians.

Bond Street Custodians will hold the securities and term deposits on trust for the relevant superannuation fund trustee who, in turn, will hold its interest in these assets on trust for the fund's members. MEL will, at least initially, be the market participant for the platform services and will provide securities trading services to MOAPL.

Bond Street Custodians and each superannuation fund trustee will enter into a Custody Deed under which Bond Street Custodians will provide custodial services to the superannuation fund trustee. Bond Street Custodians will not charge a fee for its standard services under the Custody Deed for so long as the superannuation fund trustee uses MOAPL's direct investment service under the Platform Services Agreement. Bond Street Custodians may refuse to supply the custodian services to a superannuation trustee if the superannuation fund trustee is

no longer acquiring direct investment services from MOAPL via the platform service which is the subject of the Platform Services Agreement.

(Refer to direction 4)

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)

Persons likely to be affected by the notified conduct are clients of MOAPL, being trustees of large superannuation funds that acquire, or wish to acquire, direct investment services from MOAPL.

- (b) Number of those persons:

- (i) At present time:

3

- (ii) Estimated within the next year:

Approximately 6 superannuation fund trustees. *(Refer to direction 6)*

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

- (i) NGS Super Pty Ltd ABN 46 003 491 487 AFSL 233 154
as Trustee of NGS Super ABN 73 549 180 515
Att: Mr Anthony Rodwell-Ball
Chief Executive Officer
GPO Box 4303
Melbourne VIC 3001

- (ii) Retirement Benefits Fund Board ABN 97 724 593 931
as Trustee of the Retirement Benefits Fund (RBF)
Att: Mr Philip Mussared
Chief Executive Officer
GPO Box 446
Hobart TAS 7001

- (iii) Mercer Superannuation (Australia) Limited ABN 79 004 717 533 AFSL
235906
as Trustee of the Mercer Super Trust
Att: Mr David Anderson
Managing Director
GPO Box 4303
Melbourne VIC 3001

4 Public benefit claims

(a) Arguments in support of notification:

(Refer to direction 7)

The notified conduct will give rise to significant public benefits. In particular, it will:

- provide large superannuation funds with the ability to offer members access to a direct investment option through which they can invest in ASX-listed shares, exchange-traded funds and term deposits;
- facilitate increased competition between large superannuation funds and a better product offering in the market;
- better enable large superannuation funds to compete with self-managed superannuation funds, which already enable their members to directly invest in shares, exchange-traded funds and term deposits; and
- enable MOAPL to expand its service offering, and range of services offered, to superannuation funds, providing greater choice for superannuation funds, and encouraging increased competition in the provision of administration services to superannuation funds.

These are significant public benefits, given the reliance by all Australians on the level of investment in superannuation funds.

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

See the response to question 4(a), 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)

The parties consider that the relevant markets involve the supply of:

- superannuation fund administration and custodial services for large superannuation funds.
- investments and investment platform services.

Each of these markets is highly competitive.

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)

The notified conduct will not give rise to any discernible public detriments.

Both the services supplied by MOAPL and the services supplied by MEL, MIML and Bond Street Custodians relate to, and facilitate, use of the Macquarie Wrap platform to enable superannuation fund trustees to provide direct investment services to their members.

In addition:

- there is no requirement for superannuation funds or end-user members to use the Macquarie Wrap platform (i.e. superannuation funds can and will continue to offer the full range of their existing investment options to members);
- the arrangements do not involve any restriction on MOAPL's ability to acquire investment platform or other services from other suppliers; and
- the arrangements do not involve any restriction on MIML's, MEL's or Bond Street Custodians' ability to supply services to superannuation funds or investors.

The notified conduct merely enables the provision of a greater range of services to superannuation trustees who are clients of MOAPL.

The discounted rates offered by the Macquarie parties also provide an incentive to invest through the Macquarie Wrap platform. However, there are a wide range of competing service offerings available to superannuation fund trustees and investors.

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

See the response to question 6(a), above.

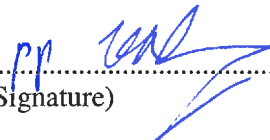
7 Further information

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

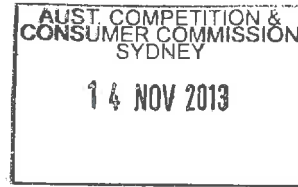
Wayne Leach
Partner, King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Phone +61 2 9296 2327

Dated..... 14 November 2013

Signed by/on behalf of the applicant


.....
(Signature)

Wayne Leach
Partner
King & Wood Mallesons



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 *Competition and Consumer Act 2010* 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.