

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

Undertaking to the Australian Securities and Investments Commission given for the purposes of section 93 AA

by

Westpac Banking Corporation
ARBN 007 457 141

1. BACKGROUND

Commentary

- 1.1 Westpac Banking Corporation ("Westpac") is the holder of Security Dealers Licence number 15373, under the Corporations Law ("the Law").
- 1.2 As part of its financial services business, Westpac operates a financial products distribution business and provides retail investment advisory services.
- 1.3 The Australian Securities and Investments Commission ("ASIC") conducted a surveillance commencing in May 1999 ("the surveillance") of the retail investment advisory business. This surveillance is part of ASIC's increased emphasis on its consumer protection responsibilities and the importance of examining industry compliance following expansion of ASIC's powers and changes to the Australian Securities and Investments Commission Act 1989 ("the ASIC Act") and the Corporations Regulations from 1 July 1998.
- 1.4 Issues arising out of the surveillance in relation to disclosure and compliance are not unique to Westpac and have broader industry implications.
- 1.5 ASIC sought information and documents from Westpac using its powers under the Law and the ASIC Act. ASIC also interviewed proper authority holders of Westpac in Victoria and New South Wales, and retained an expert consultant to review a number of client files. Westpac co-operated with ASIC during this surveillance and bore some of the expenses incurred in the review.
- 1.6 Westpac has a system of remuneration that is based on financial incentives that are related to the products and services recommended. It disclosed in its Advisory Services Guides (ASG) and Financial Needs Analysis (FNA) that up to two thirds of commissions paid to Westpac as a result of recommendations was allocated towards salaries and benefits of advisers and planners but did not include particulars of the nature and extent of those financial incentives.
- 1.7 While Westpac does not agree with all aspects of ASIC's concerns as set out below, it acknowledges them and has agreed to put in place a number of compliance measures (including the specific requirements set out below) for the purposes of ensuring best practice in ongoing compliance with the Law, the Corporations Regulations, the ASIC Act and Licence Conditions attached to

licence number 15373. Westpac has systems of training and supervision in place that included a system of 'sampling' where it would, on a regular basis, review a sample of files of each adviser and planner. These systems are to be enhanced in accordance with the measures set out below.

- 1.8 Westpac has informed ASIC that it had reviewed and initiated action to address the issues referred to in clause 1.10, prior to receiving ASIC's written notification of concerns.

Disclosure

- 1.9 Arising out of the surveillance, ASIC considers that Westpac did not make the level of disclosure required to meet the requirements of section 849(2)(c) and (d) of the Corporations Law. ASIC is also of the view that, although Westpac has legal advice to the contrary, the disclosure of the remuneration of planners and advisers in the ASG did not adequately describe the extent to which remuneration was based on products and services recommended and thus, Westpac did not provide customers with sufficient information to enable them to understand the full basis of remuneration.

As a consequence, ASIC is concerned that customers of Westpac's retail investment advisory services who received the ASG may not have been fully aware of incentives which could influence advisers' and planners' recommendations to them. In addition, the nature and varying levels of advice offered by Westpac were not adequately described in the ASG.

Compliance

- 1.10 Arising out of a review of a number of client files ASIC had concerns about Westpac's compliance systems in the areas of training and supervision. In particular, ASIC had concerns that insufficient information was collected from some customers so as to have a reasonable basis for making recommendations as required by section 851 of the Corporations Law. Arising out of what ASIC believes to be deficiencies in Westpac's training and supervision of advisers and planners, some instances were identified in the review where products recommended by advisers appeared to be inappropriate.

- 1.11 In addition :

- (a) ASIC is of the view that Westpac's compliance structure in retail advisory services required improvements to correct deficiencies in identifying, monitoring and reporting non-compliance with provisions of the Law, the ASIC Act, the Corporations Regulations and Licence Conditions attached to licence number 15373; and
- (b) ASIC is of the view that Westpac's procedures required improvement to ensure that each representative was adequately trained and supervised in relation to their duties as required by provisions of Corporations Regulation 7.3 and the conditions of its licence.

- 1.12 Westpac has offered and ASIC has accepted the commitments in this enforceable undertaking as an alternative to the actions referred to in clause 3.3.

2. UNDERTAKINGS

Westpac undertakes the following for the purposes of section 93AA of the ASIC Act.

Disclosure

- 2.1 Westpac, in completing its current review of the Adviser and Planner ASGs, will amend those guides in accordance with clauses 2.5 and 2.6, so that they give an accurate and fair impression of any service offered and will place those guides on its website as soon as practicable.
- 2.2 Westpac will complete its current review of the existing Adviser and Planner ASGs and FNAs in accordance with the procedure set out in clauses 2.5 and 2.6 to clearly disclose remuneration paid to advisers and planners in connection with recommendations made by them to retail advisory customers.
- 2.3 Westpac will revise current procedures to ensure that at the time of making a recommendation, representatives disclose further particulars of any commission or fee, or any other benefit or advantage whether pecuniary or not, and whether direct or indirect, that advisers or planners have received, or will or may receive, in connection with or which might influence the recommendations.
- 2.4 Westpac will by 31 January 2000 engage an external independent consultant (the "Consumer Consultant"), whose appointment and terms of reference are to be approved by ASIC, to review, assess, make recommendations and report in writing to both Westpac and ASIC on whether the proposed amendments to the ASG (or any form of disclosure in any other document created and distributed to customers by Westpac pursuant to clauses 2.1 to 2.3) satisfy the obligations contained in 2.1 to 2.3. This assessment will include, but not be limited to, consumer testing the ASG and any associated documentation.
- 2.5 Westpac will use its best efforts to ensure that the ASG Report is completed and provided to ASIC by 3 March 2000.
- 2.6 Westpac will implement any recommendations made in the ASG Report necessary to satisfy the obligations in clauses 2.1 to 2.3 and will cause the amended ASG, and any other associated documentation, to be provided to all new customers of its advisory services by 4 April 2000.
- 2.7 Westpac will by 4 April 2000, through a customer newsletter advise customers in a form to be agreed by ASIC, of the existence of the new ASG, how to obtain a copy of the new ASG and how to bring a complaint in respect of any recommendation given pursuant to the previous ASG.
- 2.8 Westpac will by 31 January 2000, advise ASIC of procedures adopted to review and the action taken to resolve any issues arising under clause 1.10.

- 2.9 Westpac's Chief Compliance Officer will keep ASIC fully informed of the implementation of obligations set out in clauses 2.1 to 2.8 in accordance with an agreed timetable.

Compliance

- 2.10 Westpac will, by 31 January 2000, engage an external independent compliance consultant (the "Compliance Consultant"), whose appointment and terms of reference are to be approved by ASIC, to review, assess, make recommendations and report ("the Initial Report") in writing by 31 March 2000 to Westpac and ASIC on the change to Westpac's compliance and training programs which Westpac is implementing relating to retail advisory services.
- 2.11 The compliance assessment will include, but not be limited to, the identification and recommendations for further changes with respect to compliance to ensure a level of full compliance with the requirements of the Law, the Corporations Regulations, the ASIC Act, and the Licence Conditions attached to licence number 15373, including such issues as:
- a) supervision and training of representatives;
 - (b) disclosure to clients;
 - (c) procedures to ensure that representatives' have a reasonable basis for recommendations made.
- 2.12 Westpac will implement, or will agree with ASIC a timetable to implement, any recommendations made by the Compliance Consultant in the Initial Report as soon as practicable but in any event by 31 May 2000 in order to achieve full compliance with the Law, the Corporations Regulations, the ASIC Act and Licence Conditions attached to licence number 15373.
- 2.13 Westpac will instruct the Compliance Consultant to review, assess, make recommendations and report in writing to both Westpac and ASIC on Westpac's compliance and training programs as at 30 September 2000 and 31 March 2001, such Reports to include an assessment of the matters referred to in clause 2.11 and in the terms of reference, and of the action taken by Westpac to remedy any deficiencies identified in the Initial Report or in any of the Reports referred to in this clause.
- 2.14 The Managing Director, after reporting to the Westpac Board will provide assurances to ASIC at 6 monthly intervals, 31 March 2000, 30 September 2000 and 31 March 2001 as to the actions taken by Westpac to comply with the provisions of this Undertaking, those assurances to be provided within 45 days from the end of each of those periods.

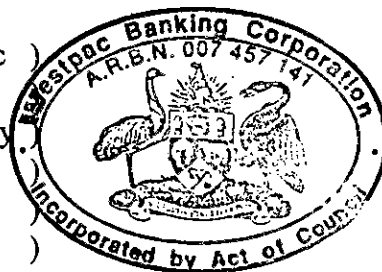
3. Acknowledgments

- 3.1 Westpac acknowledges that ASIC:-
- (a) may from time to time publicly refer to this undertaking;

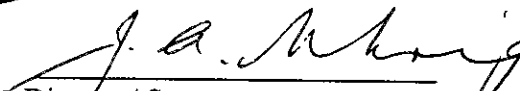
- (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - (c) will place a copy of the executed undertaking on a Public Register.
- 3.2 Westpac acknowledges that ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.
 - 3.3 Pursuant to section 786 of the Law, ASIC may, at any time, subject to a hearing, impose conditions and restrictions on a security dealer's licence in addition to those prescribed by the Law and may take action under Division 2, Part 2 of the ASIC Act.
 - 3.4 Westpac acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
 - 3.5 Westpac acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED on the 16th day of December 1999.


The Common Seal of Westpac Banking Corporation (ARBN 007 457 141) was duly affixed to this undertaking on December 1999 in the presence of:




Director


Director/ Secretary

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION PURSUANT TO ASIC ACT, SECTION 93AA BY ITS DULY AUTHORISED DELEGATE:


[Delegate's name and title]

Jan Redfern.
Regional General
Council.

