



New rules for fundraising offer documents

On 13 March 2000, new rules apply under the Corporate Law Economic Reform Program (CLERP) for raising investment funds from the public. One of the most striking changes is that registration of prospectuses will be replaced by public exposure of fundraising offer documents before companies start processing acceptances.

Public exposure will offer analysts, the media and the public a brief opportunity to study and comment on offer documents before they "go live". Under the law, the minimum exposure period will be seven days, although ASIC may extend the period up to 14 days.

To make it easier for people to find offer documents, our website will contain a full list of all offer documents that have been lodged with us. The list will include all documents at the public exposure stage and also offers that are currently on the market. This service, called OfferList, will let the public search by company name or type of offer. Although OfferList will not give people a copy of the offer document itself, it will show them how to obtain a copy.

OfferList will be another safety check for investors. If they hear of an investment

opportunity, they can use the service to see if an offer document has been lodged with us. If it does not appear, they have clear warning to take extra care in checking that the offer is lawful. If they are unsure whether an offer document is legally required, they can contact our Infoline on 1300 300 630.

Under the new law, we no longer have the power to register prospectuses. Instead all offer documents are merely lodged with us. Companies and directors remain legally responsible for what offer documents contain. At any time, during the exposure period or afterwards, people will be able to come to us if they believe an offer contravenes the law.

The end of prospectus registration reinforces the need to get offer documents right before they go live. Although pre-vetting prospectuses came to an end in 1991, some unsatisfactory prospectuses were forestalled at registration. Last calendar year, we registered 828 prospectuses and refused registration of 93. Under the new law, we retain our power to issue stop orders against misleading or deceptive documents, and since there is no longer a registration process, we may see the number of stop orders increase. ■

Continuous disclosure surveillance

We will be closely scrutinising listed companies in market sectors with high trading volatility in a continuous disclosure surveillance program launched by us and the Australian Stock Exchange (ASX).

ASX's continuous disclosure rule requires a listed company to disclose immediately any information that could reasonably be expected to affect its share price. A breach of this rule may breach the Corporations Law.

ASX queries directors when it detects unexplained movements in the price or volume of shares traded. It asks if the market is fully informed of all relevant and necessary information. In many cases, the response is a short reply to the effect that they are not aware of any reason for the price and volume movement.

We will selectively review these responses. Initially, we will send an audit letter asking directors of the company to explain:

- the basis for their response to ASX, and

- the extent of trading by people connected with the company during the period of the unexplained price and volume movement.

If we are still concerned after receiving their response, we will carry out a surveillance of the company. We will release the results of our audit letters and surveillance to ASX. This will help ASX decide whether the company should be suspended from trading until further information is released.

If our surveillance reveals that a company has breached its continuous disclosure obligations or misled the market, ASX or ASIC, then enforcement action is likely.

The program targets companies in market sectors with high trading volatility. Therefore it will inevitably focus on small mining and high technology companies and will be centred in Perth and Brisbane, with smaller scale programs elsewhere. ■

Gaoled for 7 years

Robert James MacLeod, a director of Trainex Pty Ltd and Starlight Film Studios Ltd, was sentenced to seven years gaol on 13 ASIC charges of offering prescribed interests in tax effective film schemes without a prospectus.

He was also found guilty of five charges relating to fraud under the NSW Crimes Act.

Mr MacLeod used investors' money to buy a luxury Gold Coast unit for himself as well as fund the operations of Starlight and Trainex. We alleged that he misused approximately \$2.1 million of the \$6 million raised.

Mr Macleod will serve a minimum sentence of five years which will be backdated to 30 January 1997 when he was first taken into custody in Los Angeles. In 1993 he had fled Australia using a false identity. After his arrest in the United States we successfully sought his extradition to face these charges.

NSW Director of Enforcement Allen Turton says this is an appropriate sentence for the crime committed and sends the right message to anyone considering doing the same. "We have put many unscrupulous people out of action and we will continue to do so. This type of behaviour is criminal and will be treated as such." ■

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NEW YEAR, NEW WEBSITE

Some people say that one calendar year is worth almost ten years in the internet world. The ASIC website as we know it is over four years old, and although in human years forty is the prime of life, in web years it's time for a facelift! At the beginning of March our new and improved website will come online.

There will be numerous advantages - faster access to information, more ways to navigate around the site and improved searches are but a few. The website will also feature some brand new functions which we've designed with you in mind. Visit the new site and while you're there, check out our new consumer-focused "mini" site. It's called "Watchdog" and will be a fount of information on how to protect your money.

The web address (www.asic.gov.au) will stay the same, and access to our products and services will be maintained during the changeover period. If you have any queries about the new site, please email: feedback@asic.gov.au. ■

WHAT'S NEW ON CLERP

You can find the latest information on CLERP in the Policy & Practitioners section of our website. The CLERP page will tell you about information releases and policy releases, as well as events like the recent *ASIC speaks on fundraising, takeovers and CLERP*. Click on Policy & Practitioners, then click on "CLERP 1-4." ■

ASIC SPEAKS ON ENFORCEABLE UNDERTAKINGS

Our next *ASIC speaks...* forum will be on enforceable undertakings. Dates are Thursday 6 April (Melbourne) and Tuesday 11 April (Sydney). Venues and registration details will be posted on our website. ■

SECOND DRAFT FOR EFT CODE

The Electronic Funds Transfer (EFT) Working Group has released a second draft proposal to expand the EFT Code of Conduct to cover all forms of consumer electronic funds transfers.

The current EFT Code provides consumers with protection for their ATM and EFTPOS dealings but doesn't cover newer forms of banking technology, such as telephone and internet banking, smart cards and digital cash. The Working Group's intention is to make the expanded Code "technology-neutral" and ensure that consumers enjoy the same level of protection no matter what type of banking technology they use.

The revised proposal follows a discussion paper released last July. The Working Group received 25 written submissions on the discussion paper and held numerous face to face consultations with institutions, consumer groups and electronic funds transfer experts.

As a result, the original draft expanded Code has been substantially amended, although many of the amendments are technical in nature and the expanded cover planned for the EFT Code has not been significantly changed.

A requirement to disclose fees on a transaction at the time of the transaction proved unworkable in practice. Rather than delaying the rest of the Code, the Working Party referred this issue to ASIC for further consultation with industry and consumer groups. We will be providing an opportunity for interested parties to debate whether there is a need for improved disclosure of fees and, if so, how this may be implemented over time.

Comments on the second draft proposal are invited by 3 March 2000. A copy is available on our website or by phoning Infoline on 1300 300 630. The Working Group hopes to finalise the expanded Code by the middle of this year. ■

COMPLIANCE WITH THE CODES

Results of our first round of monitoring show that compliance with the Banking, Building Society, Credit Union and EFT Codes of Practice continues to be high.

According to ASIC Director of the Office for Consumer Protection, Delia Rickard, "In every instance, except one, cases of non-compliance reported to ASIC have been remedied or are being corrected. The exception relates to a technical problem of compliance with the Codes which will be raised in reviews of the industry codes this year."

The Codes address general principles of disclosure, conduct and dispute resolution. We inherited responsibility for monitoring the Codes from the Australian Payment System Council (APSC) in July 1998. Because this was mid-way through the reporting period of April 1998 to March 1999, we adopted the APSC's monitoring process. We are reviewing the process and have invited comments on it.

During this period, banks reported 8551 disputes as against 2.9 billion transactions through 40 million personal banking accounts. In the previous period, they had reported 4759 disputes as against

2.6 billion transactions. While the incidence of disputes as against transactions was higher for this reporting period, the total number of disputes remains low.

Disputes under the Banking, Building Society and Credit Union Codes generally related to:

- disclosure of fees and charges,
- service delivery, and
- PIN-based EFT transactions.

Complaints about unauthorised ATM and EFTPOS transactions under the EFT Code were slightly down on the previous reporting period from 17 to 16 per one million transactions. Trends varied, however, between banks, building societies and credit unions.

We see each of these Codes as important consumer protection tools for the customers of deposit taking institutions, and encourage any credit unions and building societies who have not yet signed up for their industry Code to do so.

Copies of the full report are available on our website or by phoning Infoline on 1300 300 630. ■

In a statement today...

Gold Coast option trader John O'Hare has been banned for 18 months from acting as a representative of a dealer or an investment adviser.

The banning order came after our investigation into Mr O'Hare's actions while working as a senior client adviser at Potter Warburg Securities and then Shaw Stockbroking.

We found that between September 1995 and January 1997, Mr O'Hare had developed an option strategy in an attempt to increase the value of and protect his clients' portfolios in a volatile market.

Our investigation found that Mr O'Hare did not adequately take into account the investment objectives, financial situations and needs of his clients which resulted in them losing a substantial amount of money.



Following our application, the Companies Auditors and Liquidators Disciplinary Board (CALDB) has made orders disciplining Michael Philip Gilovitz of NSW company Gainsfords, chartered accountants, in respect to his 1994 and 1995 audits of Aboriginal Housing Co Limited.

The CALDB ordered: Mr Gilovitz be reprimanded; he undertake not to sign any audit opinions in relation to listed companies, companies limited by guarantee or disclosing entities for two years and he undertake 20 hours of continuing professional development in auditing for each of the next two years.



Former company director Warren George Boucaut was found guilty in the Perth District Court on a charge of fraud.

After a two week trial, a jury found that Mr Boucaut deceitfully induced the National Australia Bank to deliver \$361,815 to the then Challenge Bank to re-finance the operations of a company of which he was a director.

Mr Boucaut made misrepresentations to NAB that St Croix was a viable business making trading profits, thereby inducing NAB to deliver \$361,815 to Challenge. St Croix was subsequently placed into liquidation.

We banned former Newcastle investment adviser Wayne McIver, now of Corinda Queensland, from acting as a representative of a securities dealer or an investment adviser for life.

Mr McIver was a representative of a licensed securities dealer from 8 December 1995 to 9 December 1997. He was charged and convicted of two charges under the NSW Crimes Act for fraudulent misappropriation of money refunded by the Australian Taxation Office to clients and one charge under the Commonwealth Crimes Act for using a forged ATO assessment form.

At the time of events leading up to the charges, Mr McIver, a qualified accountant, was conducting an accountancy, tax agency and insurance agency business called Asset Creation & Management Pty Ltd in Thornton NSW.



CLERP update: Listed managed investment schemes will be subject to the takeover provisions of the Corporations Law when amendments made by the Corporations Law Economic Reform Act commence on 13 March 2000.

These changes mean new responsibilities and rights for unit holders and responsible entities who manage these funds. Responsible entities and holders of large parcels of units in such schemes are urged to familiarise themselves with the new legislation.



We have amended our policy on management rights schemes to change a condition of the relief we give operators of these schemes. A majority of investors in a scheme may still replace an existing operator. However, our amended condition now gives the outgoing operator nine months to sell any property used for the conduct of the scheme at a value that reflects this use.

The change establishes ways of arriving at an independent valuation if, after the nine months, the property is still not sold and the investors want the operator to sell it to someone they nominate. ■

TRAINING AUTHORISED REPS

We have established a Training Advisory Committee to provide input from the financial services and training industries on our policies for education and training of licensees and principals and their authorised representatives.

The Committee members were chosen from 18 nominations from professional and industry bodies and training providers for their expertise and experience in financial services or training. The membership reflects the wide range of financial services and products offered by the industry. Each member is appointed for one year, but will be eligible for re-appointment.

The Committee members are: Rosalind Russell, AMP (Chair); Professor Don Adams, Macquarie University Applied Finance Centre; Linda Evans, National Insurance Brokers Association; Joan Fitzpatrick, Australian Insurance Institute; Sarah Goodman, Commonwealth Bank Group; Professor Hugh Moore, Deakin University; and Brad Pragnall, Australian Society of Certified Practising Accountants. Jan Horwood from ASIC's Regulatory Policy Branch will provide administrative support.

ASIC National Director Regulation, Shane Tregillis, says the Committee will provide a forum for participants in the financial services and training industries. "This will help to promote consistency in education and training across the financial services sectors which will promote confidence in the training received by authorised representatives and licensees generally."

Industry participants can contact Committee members directly to put forward their views. In addition to input from the Committee, we will continue to consult widely with industry in implementing our training policies. A register of ASIC compliant training courses is now on our website. ■

Noticeboard

Margin call

The value of margin loans on the books of major banks and stockbrokers has doubled in the last two years to an estimated \$4.2 billion. This increase, and the volatility of the share market, prompted our recent consumer alert on the risks of margin lending.

Until recently, margin lending products were mainly sold through licensed financial planners. Now service providers are selling the loans direct to consumers. Also the recent growth in internet trading has seen online brokers linking execution-only internet services with margin lending products.

We're concerned that consumers may be obtaining these loans direct or from the internet without fully understanding the risks, especially of margin calls. We have urged consumers to seek professional advice before taking out a margin loan.

Superannuation Complaints Tribunal

Graham McDonald has been appointed as Chairperson of the Superannuation

Complaints Tribunal. He has extensive experience in dispute resolution as Deputy President of the Administrative Appeals Tribunal and as inaugural Banking Industry Ombudsman. Nicole Arendsen, Manager of the Financial Services Complaints Scheme (FSCRS), has been appointed as Deputy Chairperson.

Investor directed portfolio services

We have made it easier for industry and investors to use investor directed portfolio services (IDPS) with the release of our final policy statement on these services. IDPS are custody, transactional and consolidated reporting services, often referred to as member discretionary master funds and wrap accounts. The IDPS policy replaces our existing policies for these services and will give market participants the flexibility to structure their services in a way that best meets their customers' needs.

We have also taken the opportunity to provide regula-

tory certainty for the operation of nominee and custody services. We will be discussing with industry how best to extend our policy approach to products other than securities, such as superannuation.

Policy Statement 148 *Investor directed portfolio services* and Policy Statement 149 *Nominee and custody services* are available through our website or by phoning Infoline on 1300 300 630.

ASIC appointments

Keith Inman is our new Director Electronic Enforcement. He joins us after three years as the National Crime Authority's Director Intelligence, a role which included strategic intelligence and technical surveillance.

Samuel Weiss is our new Executive General Manager of Infrastructure. He will be responsible for our corporate services programs, human resources, information technology and public information program. He was previously with the senior management team of NIKE Europe where he was

responsible for finance, distribution, information technology, human resources, legal and strategic planning.

Regional Commissioner honoured

Our Queensland Regional Commissioner, Barrie Adams, was awarded the Public Service Medal in the Australia Day awards. He receives his award in recognition of his commitment to business and investors in Queensland.

Statistics

Here is a summary of our insolvency and incorporation statistics for the month ending 30 November 1999.

If you would like more information please contact Infoline on 1300 300 630. ■

	Insolvencies	New Incorporations
NSW	216	2,557
VIC	165	2,031
QLD	73	1,021
SA	45	307
WA	41	518
TAS	8	52
NT	3	32
ACT	13	113
Total	564	6,631

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