

Noticeboard

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ASIC NEWS

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION NEWSLETTER ISSUE 12 APRIL 1999

Risky business - correction
In our last issue we referred to high risk investment schemes. We listed a number of schemes and other situations where over the past ten years more than 100,000 investors had lost money. In two cases we referred to losses shareholders experienced in listed public companies. A reader has pointed out that those companies were not schemes, and shareholder losses arose for different reasons than those affecting the schemes. Incidentally, the Adsteam Ltd we referred to was the company formerly known as The Adelaide Steamship Company Ltd, not Adsteam Marine Ltd. We apologise for this mistake.

What 2 do with Y2K survey?

A survey seeking to find out how ready licensees were for Y2K prompted a disappointing response which leads us to believe some licensees may not be ready.

Rather than target those that didn't respond we have gone back to the industry - licensed securities dealers, advisers and insurance brokers - and are asking all 3000 of

them to indicate whether they are Y2K compliant and what systems they have in place to mitigate any loss come the changeover from 1999 to 2000.

If it means we have to pay some of the licensees an extra visit, we are quite prepared to do so.

Of the firms that did respond to our initial survey, 73 per cent said they had developed a formal plan to address Y2K issues including identifying business critical systems, office and communications equipment and communication links with other parties.

They were also checking the compliance of building control systems, fire control panels, security, lifts, vaults, telephones and faxes. For more information about what's happening with Y2K call Jenny Green on 02 9911 2620.

Commission appointments
Commissioner Jillian Segal has been appointed to act as Deputy Chair and National Director Regulation Shane Tregillis to act as Commissioner, both for a period of up to six months while the Government seeks a

permanent appointee to fill the post of Deputy Chair.

These appointments will be in addition to their current roles and responsibilities.

Takeovers for retail investors
A new information sheet contains basic information about how takeovers happen, shareholders' rights and how to make the best use of them.

The information sheet covers only takeovers of companies whose shares are listed on the Australian Stock Exchange, and does not cover takeovers of small unlisted companies.

King hit

There has been a good response to the posting of our policy statements and practice notes on the Internet via the web site of our publisher, Centre for Professional Development (CPD).

ASIC Infoline and CPD have referred many people to the site. At the time of going to press, the award for most popular policy goes to Policy Statement 56 on prospectuses, followed by PS 86 on new financial requirements and PS 130 on managed investments: licensing.

Queensland enforcer
South Australian Minter Ellison partner Michael Burnett starts as our Queensland Enforcement Director this month. In private practice he worked on the prosecution of Geoffrey Dexter who promoted the Wattle Group investment scheme.

Statistics

Here is a summary of our insolvency and incorporation statistics for the month ending 28 February 1999.

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

Insolvencies

NSW	226
VIC	185
QLD	94
SA	50
WA	51
TAS	10
NT	4
ACT	25
Total	645

New incorporations

NSW	3045
VIC	2329
QLD	1250
SA	335
WA	614
TAS	44
NT	40
ACT	146
Total	7803

Cyber Watchdog

Former NSW Enforcement Director Tim Phillipps has been appointed to lead our new national electronic enforcement unit based in Sydney.

This new unit will increase our ability to take swift and effective action against unlawful behaviour on the Internet and focus on building expertise in the electronic world to assist ASIC staff.

Tim has already been involved in working on a project to conduct computerised website surveillance. Our automated surveillance system routinely searches all 50,000 websites in Australia, capturing those where suspicious activity may be occurring. Using this filtering mechanism, staff can focus their attention on suspects sites without spending many fruitless hours in manual searches.

"Electronic enforcement is a new area for regulators, presenting a raft of

technological opportunities and challenges", Tim said, "and while Australia has had limited experience in the litigation side of electronic enforcement by comparison with the United States, we are well advanced in the development of automated surveillance tools."

"This new unit demonstrates our intent to become one of the world's leading electronic regulators."

"The new unit will coordinate all electronic surveillance and enforcement activities across Australia and will cooperate with overseas regulators where necessary."

Already ASIC receives complaints about suspect websites and chat rooms, frequently associated with possible attempts to ramp share prices or otherwise manipulate the market. A number of investigations are



Tim Phillipps

already in progress, and we recently took action in the Federal Court to restrain the operations of one site operator whom we felt had overstepped the mark. ■

Speaking of takeovers

The recent Sydney and Melbourne *ASIC speaks on takeovers* forums were sold out. The aim of the seminars was to share with the industry some of the lessons learnt in recent months of hectic takeover activity.

One key issue raised at the forum was what people say and how they behave in battles for companies with large numbers of retail shareholders. Retail shareholders do not know the unwritten rules of the takeover game. They may miss the difference between "the offer will close on this date" (meaning there will be no extension to the bid) and "the offer is scheduled to close on this date" (meaning there might be an extension).

Practical examples were drawn from the takeover battles for GIO, ANI and Coms21. For example, some players may not realise that when we execute a takeover modification or exemption, the document becomes public. In fact ASIC sells an information service called "ASIC Alert" that tells any subscriber if any documents of

interest about a particular company have been registered on ASCOT.

Chairman Alan Cameron and National Takeovers Coordinator Richard Cockburn spoke at both sessions, and NSW and Victorian takeover team leaders Jennifer O'Donnell and Debra Russell spoke in their home town. Brisbane is next on 20 April, where Niall Coburn will provide local input.

Richard Cockburn presented "tips", or a

few of the traps and pitfalls of the mergers and acquisitions area including those on page 2.

A phone poll revealed that the Seminar was well received. The Commissioners hope to run other *ASIC speaks...* this year. Possible topics include managed investments in late June or early July and electronic commerce later in the year. ■



ASIC's Richard Cockburn, Debra Russell & Alan Cameron with Alastair Lucas (second right) of Macquarie Bank and the SIA

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Enforceable undertakings

Last year Parliament passed legislation giving ASIC the power to accept enforceable undertakings.

Recently we released guidelines setting out when they can be used, their limitations and the consequences of failing to comply with an undertaking. (See Practice Note no.69 available at <http://www.asic.gov.au>)

Enforceable undertakings are promises made to ASIC by companies, responsible entities of managed investment schemes, and/or individuals in relation to ASIC's functions and responsibilities.

They may also be made where a breach of the Corporations Law or other legislation which ASIC administers has occurred or is suspected.

Typically, enforceable undertakings will set out what someone has promised to do to address ASIC's concerns. These promises are enforceable in court.

ASIC has already accepted 19 undertakings in a variety of circumstances, including:

- a person promising not to give investment advice without holding a proper licence;

- a company promising to cease promoting a prescribed scheme on an internet site without a registered deed and prospectus;
- a company promising to set up an internal compliance plan and to report quarterly to the market as part of its compliance with the continuous disclosure obligations; and
- a company promising that, on an ongoing basis, it will retain tapes of certain telephone conversations in connection with securities traded on the ASX and/or futures traded on the SFE for a period of 3 months, (this followed a Federal Court declaration that the company had engaged in a contravening conduct).

ASIC's National Director of Enforcement Joe Longo said, "Enforceable undertakings provide an open and effective way of getting companies and individuals to comply with the law. Their use has enabled ASIC to achieve outcomes which could not have otherwise been sought from a court."

"Enforceable undertakings allow us to achieve more timely and innovative results. We will monitor compliance with all undertakings and will initiate court action to enforce compliance with an undertaking when there has been a failure to comply." ■

THE GLOBAL GAME

The globalisation of financial markets and growing interest in international financial regulation has put the spotlight on ASIC's international activities.

ASIC's bilateral relationships with securities regulators around the world allow the exchange of information for all of our operational activities. We have power to obtain evidence on behalf of foreign regulators, and rely on foreign regulators who have similar powers to do the same for us. Our recent court proceedings against Nomura International plc were a good example of this international co-operation in action.

We are a member of the International Organisation of Securities Commissions (IOSCO) and sit on both its Technical and Executive Committees. IOSCO's members include securities commissions from more than 90 countries together with affiliate members including stock exchanges and industry groups. In May 2000 we will host the annual conference of IOSCO in Sydney.

ASIC Chairman Alan Cameron is Chairman of the Joint Forum on Financial Conglomerates established by IOSCO, the Basle Committee on Banking Supervision and the International

Association of Insurance Supervisors. In January, the Joint Forum released a number of papers on issues arising for regulators dealing with international financial conglomerates.

In March our Chief Accountant Jan McCahey and Alan Cameron met with accounting professionals and industry representatives to discuss IOSCO's current work on international accounting standards. IOSCO is assessing the comprehensive set of core standards developed by the International Accounting Standards Committee (IASC) to determine whether IOSCO should recommend endorsement of the IASC standards for cross-border capital raising and listing to its members.

Our international work includes a range of technical assistance activities with securities regulators in the Asia Pacific region. Delegates from a large range of emerging markets attended the ASIC 1999 Summer School. In recent months we hosted delegations from the Securities and Exchange Board of India, the National Securities Commission of Kazakhstan and the Malaysian Securities Commission.

Additionally we are contributing to the APEC Finance Ministers initiative on securities regulator training. ■

Tips and lessons on takeovers

Here are some tips presented by National Takeovers Co-ordinator Richard Cockburn.

We regard buying shares in the closing phase of the ASX as trading in the ordinary course of trading for the purposes of section 698.

This is important as it relates to section 698 which prohibits the offering of collateral benefits during a takeover. The issue of collateral benefits is being covered in two recently released policy proposal papers.

Using ASIC Alert will tell you when a Part A is registered and if it is docimaged you may receive it before the target.

The two forms of ASIC Alert to do with M&As are the "short group" and the "all groups". Short groups are advised by fax of the lodgment or registration of any of the takeover documents. The all groups category is advised whenever a document is lodged or registered in various cases. We also allow for a copy of the document to be faxed from the ASIC data base, although there is frequently a couple of days delay between registration and docimaging.

If you lodge a document (which requires registration) at a Business Centre do not expect it to be acted upon quickly.

The correct place would be a Regional Office, where you will know it will be acted on promptly.

Do not say things you don't mean. Bidders and target companies need to be mindful of what they say and how it may be interpreted, particularly by any of the many first time share owners.

Informal discussions do not bind us. We have a regulatory policy group which decides as a group on matters put to us. Rarely can one officer in the M&A area bind us on a major issue. ■

In a statement today...

ASIC has accepted an enforceable undertaking from Paulsens Gold Pty Ltd, Resolute Limited, Killyhevlin Pty Ltd and Kemia Pty Ltd. The undertakings provide the conditions under which ASIC has agreed that Paulsens Gold Pty Ltd's proposed takeover bid for Taipan Resources NL can proceed.

Our crackdown on unlicensed advisers continues. We successfully obtained final orders in the Federal Court prohibiting Sydney company Investors International Pty Ltd from carrying on an investment advice business. The sole director of Investors International, Stuart Drummond Arthur, who is not licensed, was also prohibited from giving investment advice following an investigation by Carolyn Conway and Rod Peters.

Peter Kell of the Office of Consumer Protection has extended the deadline to 1 November 1999 for responsible entities of managed investment schemes to join an external complaints resolution scheme.

We took Newcastle financial adviser Stuart John Forsythe to court where he pleaded guilty to 30 NSWRO charges of misappropriation and forgery involving approximately \$1.3 million. Forsythe was also committed to stand trial on three additional charges of fraud and misappropriation involving approximately \$200,000.

Former superannuation agent John Robert Houghton was sentenced on 26 charges in the District Court. He was given two years gaol with a minimum term of 18 months to be served. Mr Houghton pleaded guilty to all charges that he fraudulently applied funds totalling \$1.3M from wholesale superannuation investment pools for his own benefit.

Former Platinum Investment Services Pty Limited director and financial adviser, Frank Papa, was sentenced to 208 hours of community service. He was placed on an eighteen month good behaviour bond and fined \$2,600.

Northern Australia was the focus of investigations when our officers from NTRO and QRO visited several companies in the Darwin and Cairns regions. The surveillance exemplified how we are working with small business to identify areas and practices that impact on small business.

According to our research more than 300 people may be masquerading as registered insurance brokers, putting consumers at risk. An unregistered person carrying on the business of an insurance broker is breaking the law. ASIC has written to these "brokers" giving them to 19 April 1999 to register. Consumers should check with ASIC to see if their broker is registered and also check that their policy is valid. ASIC has dealt with cases where consumers thought they were insured, but when an expensive accident occurred they found that no policy was in place.

And on rural schemes, Ailsa Wilson, Alphonsus DeRoza and Ian Speed saw that no blue gums would ever be planted by Austimber Pty Ltd. Promoter Austimber Pty Ltd was appointed a liquidator following our application in the Federal Court in Melbourne.

And more! Former director of Afcan Group International Pty Ltd, Andrew John Smith will stand trial in the Brisbane District Court on three misappropriation charges associated with the alleged export of ostriches to New Zealand.

THREE IN FOUR RURAL SCHEMES DESTINED TO FAIL

According to information received, investors could lose their money in three out of every four rural investment schemes offered.

Frequently it is not the rural product that is the problem but the fees that go into the pocket of the promoter and manager and the unrealistic claims of high profits.

Every year between December and June new rural investment schemes are offered to investors, with the promise of high returns and tax concessions.

Last year more than 700 people rushed the ASIC Infoline trying to invest in our April Fool's Day promotion of fake blue bottle farms and goat-sheep cross breeding programs.

Without a positive product ruling from the Tax Office, an investor could face a heavy bill for back taxes and penalties. Last year over 11,000 people in 30 projects had their tax deductions disallowed.

ASIC Regional Commissioner Greg Tanzer said rural schemes were a specialist area but that investors could start by making sure they got independent expert advice.

"Examine if the product's site is suitable, how the scheme will be established and maintained, the manager's skills and resources and have they managed any similar schemes previously," said Mr Tanzer.

"There are good rural investment schemes out there. They are backed by experienced managers, independent directors and solid companies, and have sound marketing plans for their products. They often don't need to advertise heavily or use heavy sales hype because reputable, licensed financial advisers recommend them to their clients."

"Schemes offering high returns are usually accompanied by high risks. If the return sounds too good to be true, there's a fair chance that it is."

"Avoid schemes you have not researched thoroughly yourself or that have not been researched thoroughly by an independent expert, and carefully assess the growth projections in the prospectus," said Mr Tanzer. ■