



Disclosing tax risks
Tax scheme promoters have been warned by us that they must adequately disclose tax risks in prospectuses, so that investors are fully informed before they make investment decisions. Tax driven schemes are generally considered to be high risk, not only because of their often speculative nature, but also the risk that tax deductions could be denied by the Australian Taxation Office (ATO) through amended assessments.

The ATO is clamping down on illegal tax shelters. More than 13,000 investors in 40 schemes in the past years have had their deductions disallowed. The Tax Commissioner, Mr Michael Carmody, said that too many projects were offered to the market by groups with no track record in an industry, where the level of fees were abnormally high and projected returns were unrealistic.

Cold calling rep restrained
After getting complaints from investors, we obtained Federal Court orders restraining Californian-based representative of Alpine Picture Inc, Garry William

Zinn, from selling shares in Australia.

Alpine is a film company incorporated in the USA. Since July 1998 more than 250 Australian investors have sent approximately \$3 million offshore to bank accounts in the USA and Hong Kong to buy Alpine shares. These shares were sold to Australians through an overseas agent without a registered prospectus. This breaches the Corporations Law.

Takeovers involving stapled securities
We are developing a policy about takeovers involving offers for stapled securities (a security that is stapled to another security).

We consider that it is in the best interest of an efficient and competitive market for the takeover hurdles created by a stapled security structure to be minimised. Accordingly, we have granted relief to facilitate a takeover involving shares in an Australian company which are stapled to shares in a foreign incorporated company. Before a bid is

announced, all modifications relating to stapled securities should be sought from ASIC.

For further information contact Richard Cockburn, National Coordinator, Mergers and Acquisitions, on (03) 9280 3201.

Responsible entities
We have extended the deadline to 1 November 1999 for responsible entities of managed investment schemes to join an external complaints resolution scheme.

Our internet safety checks
Before you invest, or take out insurance, you can do the following free internet searches on our ASIC Search page of our website:

- *Company search* to see if a company exists, has a prospectus and is an Australian entity. You can also check if a director is disqualified from managing a company.
- *Managed investment scheme search* of our professional registers to see if a responsible entity has a securities dealers licence.
- *Investment advisers and dealers search* to see if an adviser or authorised

representative has a licence or if a person is banned from giving investment advice.

- *Insurance brokers search* to check if an insurance broker has a licence.

Statistics
Here is a summary of our insolvency and incorporation statistics for the month ending 31 March 1999.

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

Insolvencies

NSW	273
VIC	169
QLD	118
SA	61
WA	59
TAS	7
NT	3
ACT	24
Total	714

New incorporations

NSW	3625
VIC	2767
QLD	1313
SA	423
WA	693
TAS	55
NT	38
ACT	136
Total	9050

Our \$4 million internet joke

More than 230 people were willing invest \$4 million in an internet investment scheme, not realising it was part of our longest running April Fools joke.

On April 1, we set up a fake internet investment site www.smbi.com.au. The site told people it was a sure thing they would triple their money in 15 months if they invested in Millennium Bug Insurance (MBI).

The site claimed MBI was offering blue chip companies insurance against losses from the Year 2000 Millennium Bug. The web page claimed that because the Millennium Bug was considered to be high risk, the insurance company would be able to charge high premiums, giving investors a good rate of return.

During April, 10,200 people visited the fake site, 233 people committed themselves to \$10,000 and \$50,000 investment packages and 1212 people asked for more information about the investment.

The purpose of the campaign was to encourage investors to find out more about an investment before handing over their money. We do not want to stop people from investing over the internet, but want to make sure they take some simple steps to protect themselves, including using our website www.asic.gov.au

We are a strong supporter of the opportunities the internet provides for the financial services sector – we are actively assisting e-commerce business development opportunities. Our other role, however, is

one of consumer protection in the financial services and investment area.

A simple search on our website would have shown:

- the company didn't exist;
- there was no prospectus; and
- the company did not have a licence to operate an investment scheme.



We have a new page "Our internet safety checks" on the Investors and Consumers page of our website. The page sets out the free ASIC internet searches you can do before you invest.

Our Consumers and Investors web page also has information on how to choose an investment adviser and how to avoid financial scams.

Nine people complained to us about the site. A person in the insurance industry "doubted it was a legitimate business". An investment adviser thought the advertised returns "could not possibly be true" and a lawyer who knew about Y2K felt the offer "cannot be genuine". ■

Serviced strata schemes

We have issued Policy Statement 140 on how the Corporations Law and ASIC Act apply to promoting and operating serviced strata arrangements as managed investment schemes. It deals with arrangements when owners of property (such as strata title units or community title interests) make their real estate available to a manager who uses it as part of a serviced apartment, hotel, motel or resort complex.

The Policy Statement is substantially similar to the revised Interim Policy Statement 140 which was issued in December 1998. However, we have made some fine-tuning and significant presentational changes.

ASIC Chairman, Alan Cameron, said the final policy confirms that our primary focus is on the information needs of investors in serviced strata arrangements regulated under the Corporations Law. They must receive appropriate disclosure about the benefits, risks and costs of their investment. He said that we will review compliance among promoters and operators and we are prepared to take enforcement action in appropriate cases when we find the law is being breached.

Copies of Policy Statement 140 and the information sheet (which includes a summary and typical questions and answers) are available through the Policy and Practice page of our website www.asic.gov.au ■

ASIC Infoline 1300 300 630 ♦ ASIC homepage www.asic.gov.au

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Gull Awards

To tie in with our Millennium Bug internet campaign, we've launched the Gull Awards on our website www.asic.gov.au. These awards will be presented each month to the person who finds the most outrageous, unbelievable or far-fetched financial scam.

We've set up the Awards to warn consumers about investment scams and

highlight steps you can take to protect yourself.

You can participate in the Gull Awards. Everyone who contributes a story is in the running for the Gull of the Month. We will give a \$50 cash prize for the best entry.

Email gordana.nekich@asic.gov.au ■

Inside this issue

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Court order on Coms21 shares

The Federal Court has found that Terra Industries Inc and Peter Gray, principal of stockbroking firm PG Intercapital, breached the substantial shareholding requirements of the Corporations Law relating to Coms21 shares.

The court ordered that the remaining nine million Coms21 shares held by them should be vested in ASIC and that we should dispose of the shares over three months.

ASIC National Manager Mergers and Acquisitions, Richard Cockburn, said it was a basic requirement of the Corporations Law that a stockbroker who buys shares on credit for a client, who then defaults, should consider whether a substantial shareholder notice must be

lodged.

Under the Corporations Law, people who acquire a 5% or greater interest in a listed company must notify the company and the ASX of the acquisition.

"ASIC's investigation into the matter revealed that Terra Industries had failed to pay for its purchases of the shares and the market was not informed of this failure or the fact that other people had acquired an interest in these shares," Richard Cockburn said.

"We intervened in this matter to prevent PG Intercapital and Terra Industries from selling down their Coms21 shares into an market which was not informed about the overhang caused by the failure of the client to settle." ■

CLERP 6 & "opting-up" by retail investors

The Government recently released an important Consultation Paper dealing with stage 6 of its Corporate Law Economic Reform Program (CLERP 6). The paper, entitled "Financial products, service providers and markets - An Integrated Framework - Implementing CLERP 6", should be regarded as essential reading if you are interested in the future regulation of financial services and markets. Copies of that paper are available on Treasury's website www.treasury.gov.au

As the principal regulator of financial markets, intermediaries and products, we have an obligation to contribute to the public debate about these matters. Our submission to Treasury on the CLERP 6 Consultation Paper can be found on our website www.asic.gov.au Our submission is in two parts: Major Policy Comments, and Technical and Other Comments.

We support the policy goals of the Consultation Paper and broadly support the way in which they are proposed to be implemented. We believe also that there are some proposals in the paper which may need to be considered further or which could be improved.

For example, one of the matters which we have raised in our submission is the proposal in the paper which would

allow a capacity for retail consumers to "opt-up". That is, it is proposed that retail consumers are to be allowed to waive their various consumer rights so they can have access to wholesale markets and products. The motivation for the proposal is to empower consumers who are sufficiently sophisticated investors to participate in wholesale markets.

Under the proposals the party opting-up will forego various rights including their right to receive:

- financial service product disclosure;
- a Financial Services Guide;
- the benefit of a suitability analysis by their adviser;
- the benefit of mechanisms designed to deter pressure selling; and
- the benefit of compensation arrangements for fraud or negligence by participants in a financial product market or a clearing and settlement facility.

We support the idea of empowering consumers, but we are also keenly aware of the need to ensure that provisions designed to lead to their empowerment do not expose them to unacceptable risks of fraud or deceptive conduct. Opting-up will necessarily involve someone making a subjective judgment that a person who would otherwise be regarded as a retail

MEG accounting action settled

We have settled Federal Court action against Media Entertainment Group Ltd (MEG). We took action against MEG to force it to comply with the accounting standards.

In 1998 MEG released half year financial statements for the accounting period ending 31 December 1997 which recognised revenue as soon as contracts for services were signed rather than when services were provided.

We believed that MEG's recognition of revenue upon signing contracts did not give a true and fair view of the financial position and performance of the company.

MEG's accounting treatment at that time was to record approximately \$3.5 million as sales revenue. However, if the company had adopted a revenue recognition policy which accorded with the accounting standards, the sales revenue would have been approximately \$1.6 million.

We agreed to settle this matter on the following terms:

- MEG lodges with ASIC and distributes to its shareholders, on or before 30 June 1999 revised financial statements for the year ending 30 June 1998 prepared according to ASIC's interpretation of applicable accounting standards;
- MEG prepares and lodges future financial statements in accordance with ASIC's interpretation of the applicable accounting standards; and
- MEG agrees to pay ASIC's disbursements of the proceedings. ■

consumer is so sophisticated that they need not be provided with their usual rights. Subjective judgments of that kind may be susceptible to errors. They may even open up some scope for bad practice and maybe even for fraud.

Our suggested alternative approach to the opting-up proposals is to use more objective criteria to justify a retail investor participating in a wholesale market.

For more details about our views on opting-up and the many other important proposals in the Consultation Paper, see our response to it. ■

In a statement today...

We applied to the Supreme Court of Victoria to have property development company Pacific Matrix Limited wound up because we thought it breached the law in its accounting and reporting obligations for the 1997/98 financial year. Despite being advised about our concerns in November 1998, the company didn't fix the breaches and then further contravened the law for the 1998/99 financial year.



ASIC and ASX wrote to brokers who were involved in the 13 April trading in the company One.Tel requesting that the brokers agree to commercial arbitration. ASIC and ASX agreed that the market in One.Tel shares was confused and trading early on 13 April was mispriced. A number of investors were disadvantaged while others made a windfall gain.

We accepted an enforceable undertaking from Consolidated Gaming Corporation that CGC will not allot or issue any further securities under its March 2 prospectus. CGC is also required to refund subscription money to people who applied for shares under the prospectus. We did this because the prospectus did not outline the risks associated with the development, production and sale of products which were to contribute to the projected profit of CGC after tax.

Former stockbroker's consultant, Gerard Andrew John Farley, was charged with creating a false or misleading appearance in respect to the share price of Bendigo Mining NL Securities.

We obtained an interim injunction restraining Solution 6 Holdings Ltd from putting two resolutions to a meeting of its shareholders. The resolutions concerned approving the issue of shares and converting preference shares to Thorney Holdings Pty Ltd. We opposed them because we thought they were deceptive or likely to deceive.

Hobart based investment advisor, Sandra Joyce Stephens, has been permanently banned by us from acting as an investment adviser or a representative of a licensed dealer. The banning order was issued after we found that Ms Stephens had not performed her duties as an investment adviser efficiently, honestly and fairly.

We gave Bristle Ltd subsidiary, Blend Investments Pty Ltd, relief from the Corporations Law allowing it to serve amended takeover documentation on Wesfi Limited and its shareholders. This followed a Supreme Court of Western Australia decision not to prevent the distribution of the "Part A" takeover documentation after Bristile proposed some amendments. The relief meant Bristile could send out its takeover documentation giving Wesfi's directors additional time to consider the amendments.

Green light for Bristile

Mark Braumand
Takeover offer Bristile Ltd has been cleared to mail out its Part A offer to Wesfi Ltd shareholders tomorrow following a ruling by the Australian Securities and Investments Commission.
The ASIC said yesterday it had approved Bristile's amendments to its Part A offer a challenge by Wesfi to the clear takeover Supreme Court, in which Wesfi had sought to injure the release of the offer documents.
The amendments relate mainly to dividend propositions in Bristile's Part A and how they would relate to a merged entity if the takeover offer was successful. Bristile's amended dividend statement said that once Wesfi had given its shareholders and Wesfi's Part B members in due Part A, Bristile would review Wesfi's financial information and forecasts and let Wesfi shareholders know as soon as possible whether it expected to pay the 7.5c final dividend for the 1998-99 financial year in the event that the takeover was successful.
Having made a 13 per cent stake in Wesfi, Bristile is offering one share and the cash for the remaining Wesfi shares. The offer is conditional on a minimum 90.1 per cent acceptance.
The ASIC said it would no action against Bristile over its cash purchase of Wesfi shares on January 11 and March 16.

Electronic Funds Transfer Working Group

We have formed an Electronic Funds Transfer (EFT) working group. The aim of the working group is to make sure that consumers using electronic banking have adequate consumer protection.

Your use of EFTPOS and ATM machines is covered by the EFT Code of Conduct, and the code's liability provisions for unauthorised transactions are written into your contract with your bank. However, if you use telephone or internet banking, your liability if something goes wrong is not covered by this code, and in some cases it could fall entirely on you. Should the EFT code be extended to cover these other technologies?

This is the question that the Federal Government directed us to deal with through the EFT working group, in response to a recommendation of the 1998 review by Treasury and the ACCC of the EFT Code of Conduct.

The working group will formulate a framework for the new technologies which ASIC, as a regulatory organisation, will increasingly have to deal with.

The outcome may mean that banks will include a wider range of electronic services in the voluntary code. This is consistent with what ASIC Office of Consumer Protection Director, Delia Rickard, calls a "technology neutral" code, one that will cover new technologies as they emerge.

"Why should your liability be any different if you use telephone banking or electronic cash rather than an ATM?" Ms Rickard said.

The 13 member working group of industry, consumer and government representatives first met on April 22. It hopes to report on a new Code of Conduct within a year. ■