

# Noticeboard

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# ASIC News

Australian Securities & Investments Commission Newsletter Issue 15 / July 1999

## In a statement today

In our last issue we referred to obtaining interim restraining orders against the proprietors of Sponduli Consultancy, David Whiting and Brian Kevin Fitzgibbon. David Whiting, licensed investment adviser with Taylor Collison Stockbrokers in Sydney and South Australia, is not the same person as David Ross Whiting of Sponduli Consultancy in Brisbane.

## New Tasmanian Regional Commissioner

Ian Johnston has been appointed the new ASIC Regional Commissioner for Tasmania.

Mr Johnston most recently worked as project manager for National Mutual's parent company AXA in Paris. He has served as Chair to the Trustee Corporations Association (Vic Council), as well as holding a position of Executive Council Member of the Trustee Corporations Association of Australia.

He is a qualified barrister and solicitor with extensive experience in Corporations Law matters.

## Gull of the Month

Our first winner of the Gull of the Month works in the financial industry and came across the Gull in the course of his work.

He told the tale of the Gosford housewife who, for some reason, believed she had access to an unlimited supply of "super" bonds.

She offered to sell him US Government Treasury Bonds, supposedly issued in secrecy by the US Government to fund gaps in the annual United States budget! These "secret" bonds were meant to be "yielding" 13% for 3 to 6 months. At that time, the true rate was about 5.5%.

Our anonymous winner was overwhelmed by his win and has big plans for his \$50 prize.

"I would like to thank my boss, my producer...sorry wrong speech. I will be putting the money to good use by helping an exiled Nigerian Prince to get some money from his homeland," he said.



## ACT Investor Forum

ACT investors and consumers of financial products will have a chance to discuss what to look out for when they are investing at our investor forum. ASIC Chairman Alan Cameron and financial commentator David Koch will answer investors' questions at the forum. Alan Cameron will also outline ASIC's role in protecting investors.

The ACT Investor Forum is on 26 July 1999 and is free of charge. For more information contact our Infoline on 1300 300 630.

## Talk about money

The inaugural Money Show Exhibition will be held at the new Sydney Showground on 16-18 July. Associated with Channel 9's Money program and Paul Clitheroe, the Money Show will be a chance for investors to meet representatives of the financial industry.

Michael Dunn, Director ASIC Communications will talk about investment disasters and how to avoid them and Tim Phillipps, Director ASIC Electronic Enforcement will address the hot topic of internet investment fraud.

## Prescribed interests to managed investments

We have issued Information Release 99/20 which gives guidance and relief to help prescribed interest undertakings convert to registered managed investment schemes.

We issued the Information Release after consulting with industry and consumer representatives. Copies of the information release are available on the Publications section of our website and from our Infoline.

## Statistics

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

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

	Insolvencies	New Incorporations
NSW	296	3,593
VIC	170	2,814
QLD	82	1,356
SA	41	458
WA	72	740
TAS	11	69
NT	5	38
ACT	30	176
<b>Total</b>	<b>707</b>	<b>9,244</b>

## LANDMARK HIGH COURT DECISIONS

### Cross-vesting and the Corporations Law

ASIC Chairman Alan Cameron said that the High Court decisions on cross vesting do not pose any risk to the national scheme under which Australian corporations laws operate. They also do not affect ASIC's powers in relation to consumer protection, insurance and superannuation.

The High Court held that transferring jurisdiction from the state courts to the Federal Courts was unconstitutional. Alan Cameron said the full effect of the decisions would take time to analyse, but that all new Corporations Law matters arising in the states will now be started in state courts.

State and Commonwealth Attorneys-General have prepared draft state legislation to ensure that any affected decisions of the Federal Court will continue to have effect and can be enforced as decisions of the state Supreme Courts.

The legislation will also enable matters currently before the Federal Court to be transferred to state Supreme Courts.

### Superannuation Complaints Tribunal's powers

The High Court recently overturned a Federal Court decision and restored the review powers of the Superannuation Complaints Tribunal.

The Chairperson of the Superannuation Complaints Tribunal, Mr Neil Wilkinson, said "it was great news for ordinary super fund members who now again have an accessible source of justice in the resolution of their superannuation disputes".

Peter Kell ASIC Office of Consumer Protection said "The decision means that the SCT can now properly deal with superannuation disputes and set about reducing the backlog of complaints. The difficulties that might have been encountered in setting up alternative arrangements have also been avoided. It represents the end to a long period of uncertainty for industry members about dispute resolution procedures."

### ASIC's modification powers

The High Court is expected to clarify the extent of ASIC's modification and exemption powers under the Corporations Law, after granting ASIC leave to appeal a Full Federal Court decision.

We sought leave to appeal because the Full Federal Court found the modification we granted to Southcorp Ltd was beyond powers. The modification enabled Southcorp to compulsorily acquire shares issued under a convertible instrument after the conclusion of the successful takeover bid for Coldstream Wines.

The Full Federal Court decision cast doubt on the validity of many common modifications granted by ASIC relating to takeovers.

The issue to be argued before the High Court does not relate to the validity of the Corporations Law or our role as its administering authority.

### Way cleared for extradition proceedings

The High Court has upheld an appeal by the Federal Government against a Federal Court decision that 16 Corporations Law charges against former Bond Corporation executive, Mr Tony Oates, were invalidly brought. The charges relate to Mr Oates' alleged role in stripping more than \$1.2 billion from Bell Resources.

Mr Oates' lawyers had argued before the Federal Court that Mr Oates had been denied procedural fairness when the Minister for Justice allowed the Bell Resources charges to be laid outside the five year statute of limitation.

If the High Court had upheld the decision, the Minister for Justice might have been required to hear from people charged over corporate offences more than five years old before deciding whether to give consent to a prosecution being commenced.

Mr Oates is in Poland awaiting an extradition hearing. According to a spokesman for the Minister for Justice, the decision should enable the Minister to resume extradition proceedings. ■

## Cheats gaoled

Three former advisers, who cheated elderly people of their retirement savings, have been gaoled on ASIC charges.

Former Melbourne financial adviser, Allan McDonald Healy, was gaoled for five years on charges that he dishonestly obtained about \$3 million from clients of the failed Sentinel financial services group.

In his judgment, Judge Nixon described the devastating effect of Healy's crimes on the lives of his clients as "chilling reading".

The money was the life savings of many of Healy's clients. They had expected the money would be invested through their personal superannuation accounts so they would have security in their retirement.

Eight elderly clients lost around \$1 million, when former Newcastle financial adviser Stuart John Forsythe, forged their redemption requests for withdrawals from financial institutions.

Mr Forsythe was gaoled for six years and we banned him for life from being a representative of a licensed securities dealer or financial adviser.

Sandra Joyce Stephens, a former Tasmanian investment adviser, was sentenced to four years gaol. Earlier this year we banned her for life from acting as an investment adviser.

In actions that Justice Evans described as "a most callous breach of trust", Ms Stephens misappropriated more than \$404,000 of clients money. ■

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## Inside this issue

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## International regulation

The world's securities and futures regulators, including ASIC, and other members of the financial community discussed international accounting standards at the recent Annual Conference for the International Organisation of Securities Commissions (IOSCO).

IOSCO's Technical Committee considered progress on assessing a core set of standards by the International Accounting Standards Committee for cross-border offerings and listings. A comprehensive report on all unresolved issues involving the core standards will be completed for the Technical Committee's first meeting in 2000.

IOSCO is also working on implementing its Objectives and Principles of Securities Regulation and is considering issues raised for regulators by hedge funds and other highly leveraged institutions.

Other topics discussed at the conference were: global capital markets and corporate governance of public companies, and managing collective investment schemes.

The next Annual Conference of IOSCO will take place in Sydney from 14-19 May 2000. For more information about the conference, contact Stephanie Haese on 02 9911 2619. ■



## New Deputy Chairman

We are pleased to announce that David Knott has been appointed as our new Deputy Chairman. He took up his position on 5 July and is based in Melbourne.

Mr Knott was most recently the Chief Operating Officer of the Australian Prudential Regulation Authority (APRA) and a member of its Executive Committee.

In his position at APRA, Mr Knott played a key part in the Authority's formation, strategic planning and structuring.

Mr Knott will bring a strong mix of skills to the Commission. He worked in private legal practice, specialising in company and commercial law, before assuming senior roles in investment banking and public administration. He has served as Chief Executive of Commonwealth Funds Management Limited.

He was the inaugural Executive Director of the Australian Financial Institutions Commission, established in the states and territories to regulate credit unions, building societies and friendly societies. ■

## Preparing for the CLERP Bill

Our preparations for implementing the Corporate Law Economic Reform Program (CLERP) Bill 1998 are now well under way.

The CLERP Bill proposes reforms to areas of the Corporations Law dealing with accounting standards, fundraising, directors' duties and corporate governance, and takeovers.

It was introduced in December 1998 and passed the House of Representatives in June 1999. However, some further amendments to the Bill have been foreshadowed and it has not yet been debated by the Senate; so its commencement date is not yet clear. It may commence late this year, perhaps in October; and we are gearing up to cope with the changes when they happen.

In particular, the law relating to fundraising and takeovers will be substantially rewritten. For example:

- fundraising rules will be amended to facilitate shorter prospectuses and 'profile statements' for some securities;
- issuers of non-quoted securities will be precluded from raising funds on the basis of offer documentation lodged with ASIC for an exposure period of 7 to 14 days, during which time it is

intended that the documentation can be scrutinised by the market; and

- bidders will have available to them a new takeover mechanism, called a 'mandatory bid'.

This will mean some changes to our policy and procedures in these areas.

We are currently reviewing our policy framework in relation to both fundraising and takeovers. Over the next few months we will be providing details to the market about which of our policies will continue to apply, which will no longer apply, and which will be reviewed or amended. We will also be releasing new policy in some areas (for example, relating to profile statements and lodgement of offer documentation); and will clarify how we will exercise our discretionary powers to grant relief under the new regime.

There are also various operational and systems changes that we will have to make when the CLERP Bill is enacted. For example, many of the forms that accompany documents lodged with us will need to be changed.

Further updates will be published in *ASIC News* over the next few months. ■

## Welcome

- credit unions
- building societies
- friendly societies

Welcome to our latest group of *ASIC News* readers — credit unions, building societies and friendly societies. You have received this newsletter because from 1 July you joined a new regulatory system common to all financial service providers.

The changes are the second stage in implementing reforms recommended by the 1997 Financial System Inquiry which sees building societies, credit unions and friendly societies becoming incorporated under the Corporations Law.

The new legislation means you will automatically become a public company, under the Corporations Law, subject to its corporate governance and financial reporting requirements.

We have a booklet that provides practical advice on what is new and who you should contact. The booklet is available on the Publications section of our website [www.asic.gov.au](http://www.asic.gov.au) or from our Infoline 1300 300 630. ■

## In a statement today...

Adelaide securities representative Murray Charles Fielder received a two year ban from acting as a representative of an investment adviser or securities dealer. Mr Fielder inappropriately advised his clients to invest in failed investment company EC Consolidated Capital and its parent AG Consolidated.

An interim stop order made in relation to the Quiktrak Networks Limited prospectus, dated 27 May 1999, was lifted after Quiktrak lodged a supplementary prospectus explaining how the funds they intended to raise for working capital would be spent.

The stop order was placed on the original short form prospectus for failing to adequately deal with the effect of the offer on the company.

The De Luxe Cab Company has given an enforceable undertaking that it will stop offering its members interest bearing passbook accounts. It converted from a co-operative to a corporation and continued to raise funds on loan from its members. As a corporation the company has more disclosure requirements, including issuing a prospectus.

Former NSW police detective, Roger Rogerson, was banned from managing a company until 15 December 2000. Rogerson, who spent some time in prison on a charge of conspiracy to pervert the course of justice, was found to be managing Scafco Scaffolding Pty Ltd and Re-Con Holdings Pty Ltd.

ACT director, Peter Daniels Clarke was committed for trial on all 95 charges relating to nearly \$4 million in frauds, after almost 120 days of committal. Clarke was extradited from the USA last year and the committal commenced in September.

We have launched a two month pilot project in Victoria and South Australia monitoring disclosure by directors of listed companies of interests in the listed company's shares. The Corporations Law requires directors of listed companies to disclose a change in their share interests within 14 days of the changes occurring. The disclosure must be made to the ASX. This obligation does not apply to directors of proprietary and public companies which are not listed on the ASX



We successfully obtained an urgent interim injunction prohibiting Hong Kong company California International (Far East) Ltd from operating any managed investment scheme, including the Cash Bonus Unit Project which was offering returns of up to 40 per cent a month.

Former Melbourne liquidator, auditor and bankruptcy trustee, David Anthony Bradshaw, will serve four months of an 18 month gaol sentence on ASIC charges of theft totalling \$153,500. Bradshaw used funds from an administration job to renovate his Toorak home.

In NSW, bankrupt George Balos was charged with 39 counts of fraud. The charges relate to almost \$2 million raised by Balos from 20 investors who entered into loan agreements with him. The matter was adjourned until 28 July.

## Amortising intangible assets

Our review of the 1998 financial reports of 111 listed companies identified a number of cases where intangible assets including tradenames, customer databases and licences were not amortised.

ASIC Chief Accountant Jan McCahey said that in many cases the values recorded for the assets were very large and the financial effect of not amortising was to overstate materially company profits.

There are two accounting standards that companies must comply with. AASB 1021, requires them to amortise their non-current assets over their useful lives. The second, AASB 1010, requires companies to ensure the carrying amounts of non-current assets are not overstated.

We expect companies to follow the accounting standards and have already requested that some companies review and revise their accounting for intangibles.

Companies cannot rely on revaluations of the assets or reassessments of underlying value as a substitute for amortisation.

Ms McCahey said the accounting standard does not set an arbitrary upper limit on the time over which the assets must be amortised, and we do not seek to impose one.

"But, companies must be able to substantiate the periods chosen as being reasonable estimates of the useful lives of the assets, taking into account factors such as likely technical and commercial obsolescence.

"It is extremely unlikely that ASIC will accept a claim that the life of an intangible asset is unlimited, nor would it accept a claim that the life should be regarded as unlimited because a precise estimate of useful life cannot be made." ■