

# Noticeboard

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# ASIC News

Australian Securities & Investments Commission Newsletter Issue 16 / August 1999

## E-commerce initiatives

In our e-commerce story in the June issue of *ASIC News*, we said that Corporate Express was the first company to write a software package which allowed it to integrate with our ECR software. "Corporate Express" is a business name registered to Winglide Pty Ltd in NSW. It has no connection with Corporate Express Australia Ltd, the distributor of office products, computer hardware and software, and registered owner of business name "Corporate Express" in Qld, ACT, SA, WA and NT.

## Helping Asian regulators

We have received a grant from Edith Cowan University for a groundbreaking new educational project. The project involves developing an educational program for officials working in regulatory bodies and government departments in Indonesia, the Philippines and Vietnam. We will be working on the program with accountants PricewaterhouseCoopers

The aim of the program is to foster sound corporate governance, and improve the

regulatory environment to prevent corporate and governmental fraud in those countries.

"The rationale is to create awareness among governments of the fundamental leadership role they have to play in fostering good corporate governance, and of the exposure which many business within their countries face through failure to adequately protect themselves against such issues as industrial and intellectual property theft," says Stephen Howell, ASIC Director of Enforcement (WA) and project manager.

## Fundraising and CLERP

The Corporate Law Economic Reform Program Bill 1998 proposes changes to the Law on fundraising. We have published three policy proposal papers on fundraising: *Profile statements*, *Disclosure document lodgement* and *Discretionary powers*.

Your comments on these three policy proposal papers are invited. Comment closes on Friday 20 August 1999. Copies of the report are available from our website on the Policy and Practitioners page or from Infoline.

## Alternative dispute resolution

We have released policy guidelines for alternative dispute resolution (ADR) schemes that handle consumer complaints in the finance industry.

The policy statement, *Approval of external complaints resolution schemes*, sets out the guidelines against which we will approve ADR schemes.

The policy statement will apply to any scheme operating in the financial system that seeks or requires our approval. This includes banking, life and general insurance and investment advisory services.

For a copy of the policy statement, contact our Infoline or visit the Policy and Practitioners page of our website.

## Second round of cold calling

For the second time this year, we are urging Australians to "hang up" on overseas investment promoters who phone them and pressure them to invest their money off-shore.

This round of "cold calling" was mainly from US broking firms registered with the National Association of Securities Dealers which, in the eyes of some Australian investors, could give them some legitimacy. We are currently investigating complaints about the calls.

Investors can protect themselves by doing a free internet search of our register of licensed investment advisers and dealers from our website.

## 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	414	4,715
VIC	210	4,171
QLD	147	2,142
SA	82	795
WA	69	1,145
TAS	22	114
NT	10	64
ACT	24	244
<b>Total</b>	<b>978</b>	<b>13,390</b>

## ASIC's 1st year Alan Cameron, ASIC Chairman

I believe ASIC's first year has been a tremendous success. We have delivered enforcement and new company registration and information services, in spades. And have been noticed doing it!

A year ago Parliament extended our role to protect consumers in superannuation, insurance, deposit taking and managed investments.

In these new areas we now have a team of more than 70 staff who have established new procedures, conducted 630 inspections, began 17 investigations and completed five enforcement actions. Two of 22 gaol sentences this year relate to these new areas. We inspected more than 300 people advertising as insurance brokers in the Yellow Pages, apparently without proper registration. This situation presents the risk that people would think they were insured when they were not.

To help superannuation fund members make better decisions for their retirement, we also published a consumer guide to superannuation, *Super decisions*, with the Association of Superannuation Funds of Australia.

On 1 July this year, Parliament extended our jurisdiction to cover State based financial institutions as well.

In our traditional areas of work with markets and companies, we obtained court orders against Nomura International plc, for manipulating Australia's share and futures markets in transactions worth \$600 million, the first action of this type in Australia. This action sent a clear message about where the

line is drawn between acceptable trading strategies and misleading and deceptive conduct.

Through our investigations, 21 people were sent to gaol, the third highest number since 1 January 1991. Too many of these serious offences involve investment advisers cheating their clients, although the financial planning industry as whole has successfully raised general standards over the last few years. This general improvement was reflected in the ASIC-Consumers' Association study released last October.

We used our relationships with overseas authorities to recover \$4.7 million that Australians would have lost in offshore scams. The low interest rate, low inflation environment in Australia has made some Australians susceptible to offshore offers that are too good to be true. I do appreciate the efforts that advisers and business people have made to warn investors and to tell us about these scams.

In that vein, you will recall our most successful investor warning and our first on the internet, Millennium Bug Insurance. In the month following that campaign, people used our database more than twice as often to check if advisers or investment managers were properly licensed.

In fact, for the whole year ending on 30 June, people browsed our company database on the internet 1.6 million times, making our website one of the top 100 sites Australians use. The database we maintain now has more than 1.1 million companies, the highest ever and up 6% on last year. ■

## Banned for 4 years

To make sure buyers and sellers can deal in an informed market, we banned Melbourne-based ABN AMRO securities dealers, Leigh Anthony Gardner and Andrew William Donald, for four years. Both banning orders stem from our investigation into unusual trading by ABN AMRO staff on May 29 1998.

Our investigations revealed that they had created false impressions of trading in the marketplace.

We alleged that Mr Gardner partly executed a buy order for National Foods Ltd after the market closed. Before the close of market, National Foods shares traded up to \$2.92. During post trading single price auction, 39,119 shares were bought. After the post trading single price auction, the shares closed at \$3.06. This meant the client had to pay a higher price than if the shares had been traded earlier.

Similarly, we alleged Mr Donald partly executed a buy order for Burswood Ltd after the market closed. Burswood shares had traded up to 89c before the close of market. But in an after trading activity, Burswood shares were traded at 95c.

Recordings of a phone conversation between Mr Donald and a SEATS operator, indicate he instructed the operator to give the Burswood shares "a bit of a nudge upwards".

We also accepted an enforceable undertaking from Michael Casey, a former ABN AMRO operator, that he would not act as a representative for 2 months and would complete a securities industry law and ethics course. ■

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## GAOLED FOR GIVING FALSE INFORMATION

Computer interrogation by the Australian Federal Police of files created on behalf of former NSW marketing consultant, John Graham Kelly, sealed our case against him. Mr Kelly was the first person to receive a gaol sentence for giving false information during one of our examinations. He was goaled for six months.

In our investigation into Fairbrother Construction, of which Mr Kelly was a consultant, we alleged that just before it went into liquidation in November 1995, he instructed office staff to type and backdate

invoices from him for consultancies totalling \$110,000. He then had the office write cheques to him which he cashed.

In the examinations, Mr Kelly had said the invoices had been created on the dates stated on them and not in November, as we alleged.

However, office staff confirmed they had created and backdated the invoices. Further, a computer interrogation of the files showed the invoices were created in the week before the company was placed into liquidation. ■

## Inside this issue

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## MORTGAGE INVESTMENT SCHEMES

Our new interim policy, on regulating mortgage investment schemes, means we will take a closer and more direct role in the regulation of this industry which is estimated to have \$20 billion under management.

The starting point for regulating schemes will be the managed investment provisions of the Corporations Law. Schemes which are required to comply with these provisions will have to do so from 1 November 1999.

Those provisions give investors two important safeguards: the operator of a scheme has to be licensed and the scheme has to be registered.

There are also important financial requirements that have to be satisfied before we will issue a licence.

Disclosure of information to investors is an important part of our policy. We will require operators to issue a prospectus.

We expect investors to receive information such as the main features of the mortgage lending, the relationship between the operator and investors, the rights of the lender, the fees and charges that will apply and the valuation practices that the operator will use.

We are also prepared to offer more substantial relief from the obligations of the law, such as licensing and registration, for small scale, low risk schemes, if we are satisfied that they are supervised by an industry body and that the industry body provides adequate alternative protection.

The interim policy statement is available on the Policy and Practitioners page of our website [www.asic.gov.au](http://www.asic.gov.au) or from our Infoline 1300 300 630. ■

## Real estate agents and financial advice

Your comments are welcome on our report on the effectiveness of the regulations that apply to real estate agents when they give financial advice to consumers. The Commonwealth Government asked us to review these regulations as part of its response to the Financial System Inquiry (the Wallis Inquiry).

Some real estate agents recommend particular real estate investments as personally suitable for a consumer's circumstances and needs. It appears that in these cases consumers do not have the full range of safeguards they have when getting personal securities recommendations from a securities adviser.



Our preliminary view is that real estate agents giving personally tailored advice should meet the same requirements applying to people offering securities advice. For example, they should meet authorisation standards (competency, integrity and financial standards) and conduct standards, as well as disclose conflicts of interest to consumers and offer them redress mechanisms.

Real estate agents are primarily regulated under state and territory law. Ultimately, any changes in this area will be a matter for Governments to determine. The purpose of our report is to seek public comment on our preliminary conclusions, so that Governments can make informed decisions on this issue. In particular, we want your comments on our:

- analysis of the differences between the regulatory regimes for real estate agents and for investment advisers; and
- proposed method for addressing these differences.

Comments close on Friday 27 August 1999. Copies of the report are available from our website [www.asic.gov.au](http://www.asic.gov.au) on the Policy and Practitioners page or from Infoline on 1300 300 630. ■

## Electronic Funds Transfer EFT

Our EFT Working Group has released its Discussion Paper on an Expanded EFT Code of Practice.

The present Code only covers ATM and EFTPOS transactions. Under the proposed amendments, it will cover all consumer electronic funds transfers whether conducted using telephone or internet banking; stored value products such as smart cards and digital cash; ATMs or EFTPOS; or mechanisms not yet invented. The aim is to make the code as technology neutral as possible.

The proposals cover such issues as allocating liability for unauthorised transactions and requiring disclosure of transaction fees to be disclosed at the time of the transaction. They allow electronic communication of information required by the Code with a right for the consumer to receive a backup paper copy of most communications upon request within 6 months of the electronic communication.

The proposals also include improved privacy protection principles.

Options canvassed for stored value products which don't involve access to, or the transfer of funds to or from an account institution, include:

- providing consumers with a right to redeem stored electronic value;
- allowing issuers of stored value products to impose security requirements on storage of access codes; and
- requiring the refund of lost or stolen electronic value when systems make this possible.

Your comments on the proposals are invited and are due by 6 September 1999. Copies of the discussion paper are available from the Electronic Commerce part of our Policy and Practitioners page [www.asic.gov.au](http://www.asic.gov.au) or from Infoline on 1300 300 630. ■

## In a statement today...

We successfully applied for NSW Supreme Court orders against Craig Wilton Dunning and the company Morgan Grace Investments Pty Ltd, stopping them from promoting investment schemes. One scheme was a movie about fugitive businessman Christopher Skase.

We applied for the orders after alleging the investment was being offered without a prospectus or a compliance plan and did not have a responsible entity, which is required under the Managed Investments Act.



### Christopher Skase Rug pulled on movie

**A PLANNED \$5 million film on the life of fugitive businessman Christopher Skase has been stopped in its tracks.**

We obtained an interlocutory injunction in the Supreme Court of Western Australia restraining Graeme Grubb from carrying on business as a finance broker or mortgage manager.

We started the action to enforce an undertaking that Mr Grubb gave us in May that he would not carry on business as a finance broker. Mr Grubb breached the undertaking by re-commencing a mortgage management business. He wrote to former clients and requested that those clients sign a letter of authority authorising him and a new finance broker to manage their mortgage investments.

Martin Leigh Davies-Roundhill gave us an enforceable undertaking that he would stop promoting an investment offer sent through internet newsgroups to approximately 25,000 email sites. Mr Davies-Roundhill, from Adelaide, recently sent out messages through various newsgroups, including [aus.aviation](mailto:aus.aviation), in an effort to raise \$10 million to fund a new internet company. The messages included an invitation to buy units for \$100 each and requested that the money be forwarded to a Commonwealth Bank account in his name.

The Supreme Court of NSW appointed Horwath and Horwath Sydney to wind up Kellyville worm farmer, Advanced Waste Management Pty Ltd (AWM). We applied to the court for the winding up order on the grounds that AWM was insolvent. AWM sold worm growing contracts for up to \$3000 per contract. The growers were provided with a start up kit and instructions on how to operate a worm farm.

We obtained several undertakings from Delmoo Pty Ltd, the management company of a solicitors first mortgage scheme on the Gold Coast. Documents indicate that the private mortgages or loans in default represented about 40 per cent of the total mortgages or loans administered.

We issued an information release on granting innovative relief to internet hosts who want to display third party prospectuses on their websites. In the first relief of its kind in Australia, the relief allows internet hosts to act as service providers and distribute electronic prospectuses through the internet. We have also adopted a no-action position in relation to the application of the licensing provisions of the Corporations Law to the internet hosts. ■



eRegisters is our new online, interactive service designed to make lodging documents with us easier. We developed eRegisters especially for use by company directors, secretaries and small lodging agents.

eRegisters allows you to view and update your company details held by ASIC. You can also notify us of changes to officeholders and addresses and lodge your annual return using eRegisters.

ASIC Business Development Director Dreda Charters-Wood said "eRegisters is designed to be a quick and simple transaction tool for those people who simply don't have time for all the paper work."

All you need to do is visit our website [www.asic.gov.au](http://www.asic.gov.au). Once there, click on the eRegisters logo and enter your personal identification number (PIN) and start your transaction.

Once you complete your transaction, any fees you owe will be displayed on the screen. You can pay by cheque, over the internet or the telephone using BPAY.

The project is one of our many e-commerce initiatives and it complements existing products such as EDGE and Electronic Company Registrations (ECR).

For more information about eRegisters, or to subscribe to this service, simply 'click' on the eRegisters page of our website or contact us on (03) 5177 3988. ■