



ASIC News

Australian Securities & Investments Commission Newsletter Issue 73 June 2004

We may review your financial reports

Your company may be selected for review as part of our 2004–05 financial reporting surveillance program.

Our 2004–05 program will:

- review selected financial reports of Australian listed companies for compliance with all accounting standards
- review any company that receives a qualified audit report. Such a report is an indication that the company has not met its Corporations Act obligations.

Our surveillance program is part of our broader strategy to review the financial report of every publicly listed entity at least once every four years.

In 2004–05, the second year of this broader strategy, we will review the financial reports of another 440 entities for compliance with accounting standards.

Of these, more than 300 entities will be chosen randomly, while about 100 will be selected for review based on a range of risk factors.

AASB 1047

As a special program, we will review the financial reports of all publicly listed companies for compliance with Australian

Accounting Standard AASB 1047 'Disclosing the Impact of Adopting Australian Equivalents to International Financial Reporting Standards (IFRS)'.
For the 30 June 2004 reporting period, AASB 1047 requires financial reports to include an explanation of how the transition to IFRS is being managed and a narrative explanation of the key differences in accounting policy that will arise.

We will focus on those companies where the new standards will result in significant accounting policy changes and financial reporting impacts.

With the disclosures under AASB 1047, you must state policy differences clearly and in enough detail to tell report users about the specific impact on accounting policies. For example, a list of the standards or areas of difference by itself, without some indication of the impact of the change (e.g. whether it will increase or decrease profit or net assets), won't be sufficient, even though quantification is not required.

For more, see Media Release 04–158 at www.asic.gov.au/mr. ■

Super fund trustee director jailed

Mr Terrance Robert James, a former director of EPAS Ltd, was sentenced to three years' jail in the Southport District Court.

Mr James was sentenced before Judge Healy after a jury found him guilty of 18 counts of breaching his directors duties. Mr James' sentence is to be suspended after serving 18 months on entering into a \$500 good behaviour bond for five years.

We alleged that Mr James improperly used his position as a public company director of EPAS Ltd, the corporate trustee of the Employees Productivity Award Superannuation Fund, to gain advantages for himself.

We alleged that as an EPAS director, Mr James approved EPAS making loans to companies or enterprises in which he held an interest, or to companies that entered into joint venture agreements with companies he owned.

We further alleged that in some cases Mr James or related entities received a fee from the borrower obtaining a loan from EPAS, resulting in Mr James and related entities receiving around \$248,000. ■

CLERP 9: proposed infringement notices

If you're a director of a listed company, the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) no. 9 Bill [CLERP 9 Bill] proposes a new remedy for companies that breach continuous disclosure obligations.

Under the proposed provisions, if we have reasonable grounds to believe that a company has breached the continuous disclosure provisions, we will investigate and may issue the company with an infringement notice, requiring payment of a fine.

We've released a guide on the infringement notice process in anticipation of the Bill

being enacted in its current form. We'll issue a revised guide if the infringement notice provisions change.

Key features of the proposed infringement notice process are:

- Infringement notices will be issued for less serious breaches of the continuous disclosure obligations.
- An ASIC delegate who has not been involved in the investigation of the alleged breach will decide whether or not to issue a notice. The company will be

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Financial services ads must be accurate

Anyone operating in the financial services industry, including mortgage brokers, must ensure that all their advertising claims are completely accurate and correct.

Claims of being 'unbiased' or providing 'unbiased advice' must be strictly correct or adequately qualified, if companies are to avoid liability for misleading and deceptive conduct.

We recently accepted an enforceable undertaking from Mortgage Choice Ltd. We believed Mortgage Choice's published claims that it was 'totally unbiased', provided 'unbiased home loan advice', and that its consultants were 'paid the same regardless of which lender or loan you choose' were misleading and deceptive, because Mortgage Choice and its franchisees deal only with lenders on their panel.

We also took the view that a statement in Mortgage Choice's Customer Charter that they reviewed their lender panel 'to ensure that we have a cross-section of lenders who can offer what we consider to be the best choice of home loans', was misleading, because panel membership depended on, among other things, the lenders making commission and other payments to Mortgage Choice.

Mortgage Choice has given an undertaking to discontinue these practices, remove the statement from the Customer Charter, place corrective advertisements in national and local newspapers, and compensate any customer who has suffered loss by relying on the claims that it is unbiased, or that its consultants are paid the same regardless of which lender or loan is chosen. Mortgage Choice has separately advised that it will stop using the word 'unbiased' in promotional material.

For more information, see our Media Release 04-161 at www.asic.gov.au/mr. ■

Clearly disclose soft dollar benefits to clients

Our research report on soft dollar benefits in the financial planning industry revealed a wide range of such benefits being offered to individual advisers and firms, as well as examples of both good and poor disclosure practice.

If you're a financial adviser, and you accept benefits with the potential to influence your advice, you must clearly disclose these to clients.

Soft dollar benefits are benefits which are not standard commission payments.

Our report found that benefits offered to individual advisers include overseas trips, share options and cash bonuses for selling particular financial products. Benefits to financial planning firms include 'fee rebates' potentially worth thousands or even millions of dollars each year to the individual firm. We also found examples of both good and poor disclosure practice.

A number of firms are to be commended for clearly explaining soft

dollar benefits in consumer-friendly language. But other firms are leaving their clients in the dark about these incentives, with disclosure that is vague or, in extreme cases, non-existent.

Our research looked at industry practice in December 2003 to March 2004 and only involved firms that had transitioned under the Financial Services Reform Act (FSRA).

We will be asking those firms whose disclosure was inadequate to review their documents and make the necessary changes. We will also be considering a formal surveillance next financial year to ensure firms are fully disclosing soft dollar benefits.

Parallel to this, we support proposals by industry associations to reduce conflicts of interest and ban some forms of soft dollar benefits.

For a copy of *Disclosure of soft dollar benefits: An ASIC research report*, visit our website at www.asic.gov.au. ■

FSR update

Notified us of your auditor?

If you're an AFS licensee (and not a public company), you must appoint an auditor within a month of your licence starting and notify us of the appointment within 14 days. Use ASIC form FS06, which you can complete and lodge online via our Licensees portal at www.asic.gov.au/licensees. You can also download the form via that webpage and lodge it by mail or in person.

Are your annual accounts overdue?

AFS licensees also need to lodge annual accounts (i.e. a profit and loss statement, balance sheet and auditor's report) for each financial year that ends on or after the start of their AFS licence.

If you are a licensee who is not a body corporate, your deadline for lodgment is 31 August (i.e. two months after the end of the financial year).

If you are a body corporate licensee, you have up to three months after the end of your financial year.

If you have overdue annual accounts,

you need to lodge them as soon as possible. Use ASIC forms FS70 and FS71, which are available electronically and in hard copy via www.asic.gov.au/licensees.

June deadline for non-transitioning managed investment schemes

In 2000, we granted passively managed and closed managed investment schemes a longer transition period before they had to become managed investment schemes complying with Chapter 5C of the Corporations Act. This relief expires on 30 June 2004 for non-mining primary production schemes, film schemes, other passively managed schemes, pre-1991 exempt trusts and other prescribed interest undertakings that have relief extending that regime.

For schemes that currently have relief, we will consider a further extension of the transition period until 1 July 2010 if applicants apply before 30 June 2004 and are able to meet certain conditions.

Find out more by reading our Media Release 04-162. ■

Enforcement update

Following our joint investigation with the Tasmanian Police, former financial adviser, Mr Mervyn William Mitchell, was sentenced to seven years' jail after pleading guilty to 110 counts of fraud.

We alleged that between July 1995 and May 2003, Mr Mitchell dishonestly obtained \$4,571,813 from the super-annuation and investment funds of 59 clients. He gambled in excess of \$1 million and also spent money running his financial advice business and buying real estate and cars.

Mr Mitchell was an authorised representative of the Hobart-based securities dealer Godfrey Pembroke Ltd. All the clients who lost money have now been compensated by Godfrey Pembroke.

Mr Mitchell is banned for life from providing any financial services.



We banned Melbourne financial adviser, Mr Lance Charles Pitt, from providing financial services for two years.

On 28 February 2000, Mr Pitt was convicted of seven offences committed between September 1997 and November 1998 for theft and obtaining property by deception. He was fined \$5000 and ordered to pay \$23,963 by way of restitution.

Although the offences were not committed in connection with the provision of financial services, we banned Mr Pitt after finding he had been convicted of offences involving serious fraud and that he was unlikely to comply with financial services laws.

We obtained orders in the Federal Court to wind up International Unity Insurance (General) Ltd (IUI General), an unauthorised foreign insurer, and its Australian agent, International Unity Insurance Pty Ltd (IUI Australia).

Justice Lander ordered that Mr Paul Pattison of Pattison Consulting be appointed as the official liquidator of IUI General and IUI Australia.

Our action followed complaints from Australian holders of IUI General's policies that more than \$1 million of insurance claims and policy refunds had not been paid.

If you hold insurance policies accepted by IUI General and you have unpaid claims or wish to seek a refund of your premium, contact Mr Pattison on (03) 9600 4611.



The Federal Court in Adelaide ordered that Pubasia International Pty Ltd and The Monkey Ale House Pty Ltd be wound up on our application.

The two South Australian companies were wound up with the consent of their sole director, secretary and shareholder, Mr Paul Raymond Williams.

We made the application after becoming concerned that the companies were insolvent.

We were also concerned that the companies had no registered office or principal place of business. The companies did not have the consent of the occupier of the premises listed as their registered office on our public database of Australian companies. ■

Moola Talk schools competition winners

ASIC Commissioner Professor Berna Collier visited Darwin on 28 May to present prizes to the winners of our Moola Talk poster competition for Northern Territory high school students.

Open to Year 9 and 10 students in the Territory, the competition invited students to design a poster with a slogan about looking after money or ways to avoid being ripped off by a financial scam.

The aim of the competition was to encourage students to think about money matters, at an age when many will soon be receiving their first income from part-time work and starting to make their own financial decisions.

Students were encouraged to come up with ideas for their poster by reading our *Moola Talk!* comic, visiting our consumer website www.fido.asic.gov.au or using their own experiences with money.

The winners, from Darwin High School, Kormilda College (Darwin), Tennant Creek High School and St Philips College in Alice Springs, received \$200 for themselves and \$1000 for their school.

'The creativity of all the entries we received was very impressive. I hope the winners will put some of the money skills they have learnt to good use in deciding how they spend their prize money', said Professor Collier.

The Moola Talk competition is just one way that we seek to promote the importance of financial literacy in schools, and across the community.

For our consumer resources, visit www.fido.asic.gov.au or ring our Infoline on **1300 300 630**. ■

more news

at www.asic.gov.au

- **ASIC acts against Vanuatu investment clubs and Australian directors** (9 June, MR 04-178)
- **Stockland reverses write-off of premium** (7 June, MR 04-177)
- **ASIC obtains injunction stopping illegal offer of Swiss bank accounts** (4 June, MR 04-175)

Noticeboard

Beware investment seminars

Have you or your clients been invited to investment seminars? We received 'complimentary VIP tickets' with a purported 'value' of \$149 printed on them, to attend what the promoters describe as 'the country's #1 financial conference'. Before you do anything, check who they are and whether their claims are credible.

Who's presenting?

The flyer talked about 'four of Australia's Greatest Financial Super Stars' presenting at the conference.

We checked ASIC's databases to see if any of the presenters of the seminar held an Australian financial services licence. They did not. Nor did the conference organising company.

How credible are the claims?

One claim was 'Earn 15–60% interest per year with a unique government approved investment'.

A warning sign is 'government approved'. No Australian government 'approves' investments of any kind. Whatever investment you may consider, Australian law makes it clear that you

must decide for yourself whether it's suitable for you.

For more, visit 'FIDO's invited to an investment seminar' at our consumer website www.fido.asic.gov.au.

New policy on relief for FCISs

We've released Policy Statement 178 *Foreign collective investment schemes* [PS 178], which replaces [PS 65], our 1993 policy on FCIS.

Our new policy provides relief for both:

- operators of collective investment schemes that are authorised in other jurisdictions and want to operate in Australia, and
- responsible entities of Australian-registered schemes that want to invest scheme property in unregistered FCIS overseas.

We also released two class orders with [PS 178]: [CO 04/526] and [CO 04/527], which amends [CO 98/55].

For a copy of the policy statement and Information Release 04–20, visit www.asic.gov.au/publications or ring our Infoline on **1300 300 630**.

Managed discretionary accounts

If you're an existing operator of a managed discretionary account (MDA) service, you must comply with the transitional arrangements under Policy Statement 179 *Managed discretionary account services* [PS 179]. This includes obtaining an Australian financial services (AFS) licence authorisation to provide MDA services by 10 December 2004.

Our approach to the regulation of MDA services, including these transitional arrangements, is set out in [PS 179] and summarised in our Information Release *ASIC policy approach to the regulation of managed discretionary account services* [IR 04–01].

We anticipate that MDA operators will be able to apply for their AFS licence authorisation when version 6 of eLicensing is released in September. We'll confirm when this will be available.

For a copy of the policy statement and Information Release 04–19, visit www.asic.gov.au/publications or ring our Infoline on **1300 300 630**.

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To find out more

Visit the *ASIC News* page of www.asic.gov.au.

CLERP 9: proposed infringement notices

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able to present information before the delegate makes a decision.

- The company can decide whether or not it will comply with the notice.
- Compliance by the company is not an admission of liability. Although ASIC will publish details of the notice, it cannot start further proceedings against the entity for the breach specified in the notice.

We believe that infringement notices will provide a timely and efficient way to address the less serious breaches of the continuous disclosure laws, potentially resolving issues more quickly and removing the need for long and expensive court cases.

For more, visit www.asic.gov.au/clerp9 to get a copy of our guide *Continuous disclosure obligations: Infringement notices*. ■

Summary of new company registrations for May 2004

NSW	3813
VIC	3169
QLD	2098
SA	464
WA	870
TAS	93
NT	35
ACT	177
Total	10,719