

Noticeboard

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ASIC News

Australian Securities & Investments Commission Newsletter Issue 14 / June 1999

Enforceable undertakings register

We have now published a register of enforceable undertakings on the Policy and Practice page of our website. These undertakings have been offered by companies and individuals and have been accepted by us.

The register lists enforceable undertakings accepted by ASIC under either s93AA or 93A of the Australian Securities & Investments Commission Act 1989. We have a policy on enforceable undertakings, Practice Note 69, which is also available on the Policy and Practice page of our website.

Extension of employee share relief

Employers can now offer their long-term casual employees an opportunity to participate in the company's employee share schemes without having to produce a prospectus. This is the effect of the extension of relief we have granted from the prospectus provisions of the Corporations Law for employee share issue.

The extension of relief makes sure that longer term employees are not

disadvantaged by regulatory requirements that restrict their access to share schemes.

Under the new policy employers will be able to seek relief from the prospectus provisions of the Corporations Law when they have casual employees who have been employed for more than a year and whom the company regard as equivalent to their part-time employees.

Relief will not be extended to contractors and other staff who do not have a long-term relationship with the company.

Credit unions, building societies and friendly societies

On 1 July 1999, credit unions, building societies and friendly societies are expected to join a new regulatory system common to all financial service providers.

To help prepare these organisations for the changeover, we have prepared a new booklet, *Changing to a company structure: A guide for credit unions, building societies and friendly societies from your corporate watchdog*.

The booklet provides a practical guide on what's new and what those organisations have to do. It contains key

information on becoming a company, responsibilities to consumers, corporate governance and financial reporting requirements. There is also information on how we cooperate with other regulators and who to contact for help. The booklet is available on our website.

Memoranda of understanding

In further attempts to enhance consumer protection, we have signed memoranda of understanding (MoUs) with regulatory authorities in Spain and South Africa. The MoUs will provide the framework for the exchange of information and investigative assistance between us and Spain's Comision Nacional Del Mercado De Valores and South Africa's Financial Services Board.

Managed investment changes

We have amended seven managed investment policy statements following feedback from industry groups.

The changes to the managed investments policy statements fall into four areas:

- changes to the financial requirements which the responsible entity of a

managed investments scheme must meet;

- changes in the financial requirements which a custodian of assets of a registered scheme must meet;

- a new licence condition for primary production schemes to protect the land on which scheme activity is conducted; and

- miscellaneous changes.

The amended versions of the policy statements, and information release 99/18 which outlines the changes, can be viewed on our website and will be published in the *ASIC Digest*.

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	206	3,593
VIC	124	2,814
QLD	61	1,356
SA	28	458
WA	61	740
TAS	8	69
NT	2	38
ACT	23	176
Total	513	9,244

E-commerce initiatives



The ECR launch: L to R - Ken Christensen (Information Technology Services Branch), Susan Charteris (Corporate Express), Senator Alston, Jillian Segal (ASIC Commissioner), Dreda Charters-Wood (Director, ASIC Business Services)

Policy activities

We are developing policy to meet rapid changes in electronic commerce, including the availability of prospectuses on the internet and electronic application forms for disclosure documents.

An interesting project currently underway with Melbourne University is about how to deal with multimedia disclosure documents should the need arise.

At the rate business is adopting cyberspace, the use of multimedia prospectuses will inevitably eventuate.

Legislation before the Parliament proposes a 7 day "free look" at prospectuses before applications can be processed.

One technological and policy challenge will be to make these fundraising documents available to the public very shortly after they are lodged with us. ■

Electronic Company Registration

At the recent launch of our electronic company registration (ECR) service ASIC Commissioner Jillian Segal said just as e-commerce had the potential to provide benefits to business and consumers, there was also the potential for problems. Part of our aim is to guard against the problems by staying ahead of the game.

The ECR system, launched last month by the Minister for Communications, Information Technology and the Arts, Senator Alston, enables the registration of Australian companies electronically within minutes and is linked to an electronic payment facility.

This system is Australia's first commercial application of smart cards for digitally signing information. As far as we know, this technology is a world first.

ECR allows clients to:

- electronically prepare applications for registration
- digitally sign them using private keys stored on commercial cryptographic smart cards
- transmit them securely to ASIC over the internet; and
- make payments electronically.

Corporate Express was the first company to write a software package which allowed it to integrate with our new software to incorporate companies over the internet.

The managing director of Corporate Express, Susan Charteris, estimated the system cuts costs to business by about 25 per cent.

Clients key in information about the company they want to register directly onto the website of Corporate Express which is in turn integrated with our system to incorporate the company.

"Instead of having to physically attend busy ASIC business centres to register a company over the counter, the entire process can now be conducted via the internet," says Jillian Segal.

For details of Corporate Express and other ECR software providers, and for other ECR information including frequently asked questions, visit our website at www.asic.gov.au ■

Consumer Education

Our Office of Consumer Protection and the Consumer Advisory Panel (CAP) have nearly completed their first research project.

The project looked at what information and education sources are available to consumers of financial services and products. It also considered what are the shortfalls and what gaps need to be filled.

The Financial Services Consumer Policy Centre did the research. Director, Chris Connolly, says that the project uncovered more consumer education material than was expected.

Education material is strongest in three areas:

- credit and debt
- budgeting; and
- consumer rights (including complaints).

The weakest areas are:

- superannuation choice
- new technology financial services
- tax effective investment schemes
- retirement savings accounts
- deeming
- internet transactions; and
- direct share investment

Chris warns that these gaps are based on looking at what is available, not on what consumers say they want. A final report will be prepared soon.

As a separate project, the Office of Consumer Protection is researching the main consumer issues from a consumer point of view. Contact Peter Kell on 02 9911 2092 for more information. ■

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Hot rocks to hot stocks

It's not every day that a mining company goes into the internet and hi-tech business—or is it?

This was the question our Western Australian Regional Office faced when they started looking at some junior explorers who proposed to acquire internet sites and associated intellectual property rights in return for an issue of shares. This would have given the internet company a substantial interest in the mining company.

We've become aware of a number of recent cases of such companies sending out documents with inadequate disclosure before shareholder meetings. At those meetings, shareholders were able to vote on the acquisition of internet and other high-tech assets.

ASIC Chief Accountant Jan McCahey wrote to the Institute of Chartered Accountants, Australian Society of Certified Practising Accountants and Australian Institute of Company Directors expressing our concern about the inadequate disclosure.

Shareholders need to be given an information memorandum and independent expert's report so they can properly consider the transaction.

Our review of one junior explorer's information memorandum and independent expert's report found substantial deficiencies. These included independent experts, usually accountants, simply accepting the book value of the company's exploration tenements and not obtaining an independent valuation by a geologist or other expert in valuing mining tenements. We also found independent experts making statements about the expected usage and financial viability of the internet site without setting out in detail the basis for their conclusions. ■

True tales of GREED & GULLIBILITY



The Gull Awards have been up on our website since 19 May and we've already received about a dozen new Gull entries. The financial industry and consumer groups have given us positive feedback and encouragement for the Gull Awards.

Some Gulls were considered serious enough to pass on to our Complaints Department and are being acted upon. One scam is the subject of an investigation.

If you haven't visited the Gull Awards page, you'll find it by clicking on the Gull Awards banner on the What's New page of our website www.asic.gov.au.

The inaugural Gull of the Month was awarded to a new scam to hit the US known as the "rip and tear". Not finding it enough to rip off investors by "cold calling", this group of swindlers hits victims again, by having telemarketers call and falsely tell them they could help recover their losses.

The telemarketers pretend to be Federal law enforcement agents. So not only did investors lose their money the first time round in a dodgy investment, they lose money again when they pay the telemarketers a "fee" to help them recover their money.

If you know of a financial scam which you think would be a good candidate for the Gull Awards, you can e-mail a brief description to us. Every story will be reviewed, and you'll be in the running for the Gull of the Month. Even if you don't win the Gull of the Month, all interesting stories will be published. ■

Non-discretionary portfolio services

This policy proposal paper covers the approach we are proposing to take when we apply the managed investment, dealers licence and fundraising provisions of the Corporations Law to a non-discretionary portfolio service.

The concept of a non-discretionary portfolio service includes what is commonly known as a "member discretionary master fund" and a "wrap account service".

The policy proposal paper is available on the Policy and Practice page of our website www.asic.gov.au. We have also issued Media Release 99/163 which is on our website.

Your comments on this new policy proposal paper are welcome. Comment closes on Tuesday 6 July. ■

ASIC hearings: what to expect

Our new *Hearings Practice Manual*, which replaces the old *Hearings Manual*, gives people attending ASIC administrative hearings a detailed guide on what to expect.

The manual reflects the need to clarify and confirm our approach to administrative hearings, particularly proposed banning or other licensing action.

ASIC National Enforcement Director, Joe Longo, said experience has shown that people and their advisers have expected an administrative hearing to be a formal trial, when in fact matters of this kind are handled quickly and informally.

The *Hearings Practice Manual* and information sheet are available on our website www.asic.gov.au or from Infoline on 1300 300 630.

We welcome your feedback on the new manual. Please send your comments to: Megan Chalmers, SIC Enforcement Co-ordination Unit, PO Box 4866, Sydney NSW 1042. ■

ASIC speaks on MANAGED INVESTMENTS

Our next ASIC Speaks public seminar is on managed investments. The seminar will be held over lunch in Sydney on 28 June and Melbourne on 30 June.

The main speakers at the seminar will be Alan Cameron ASIC Chairman, Shane Tregillis National Director Regulation, and Pauline Vamos National Compliance Adviser Managed Investments Team.

The topics include:

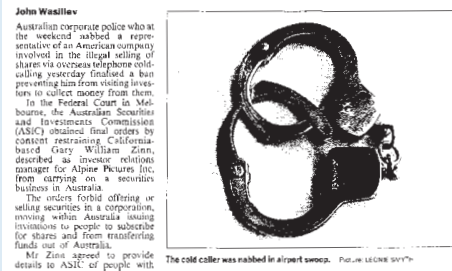
- ASIC's focus on compliance – what does it mean to industry?
- the results of our managed investments survey and what we have done about issues raised by the survey
- an industry check after 12 months of the managed investment regime.

For more information contact Annette Mackay on 02 9911 2407 or email Pauline Vamos at pauline.vamos@asic.gov.au ■

In a statement today...

We obtained Federal Court orders restraining Californian-based Garry William Zinn from selling securities in Australia. Mr Zinn became known to ASIC investigators after our overseas "Cold-Calling" campaign earlier this year. He was part of a film company called Alpine Pictures Inc and has sold about 250 Australians more than \$3 million in investments offshore.

Cold caller gets frozen out



ASIC, the Australian Stock Exchange Ltd and Computershare Ltd agreed that ASX would consult ASIC before making any decisions relating to the listing of Computershare on ASX.

This agreement will last for as long as Computershare and ASX have alternative proposals relating to the Sydney Futures Exchange.

The agreement was reached after all parties recognised the potential difficulties of ASX and Computershare having rival proposals and at the same time ASX supervising Computershare's listing on ASX.

We clarified comments made by GIO company secretary Frank Bush who claimed we had disadvantaged shareholders by not granting AMP an extension of its bid for GIO in January. AMP never made a formal application to us to extend its bid. We made it clear that we will only consider written applications for relief and any decision made by us, including those for approval in principle, will also be in writing.

We put a quick stop to an international bank bill trading program by obtaining interim restraining orders against the proprietors of Sponduli Consultancy, Brian Fitzgibbon and David Whiting.

Neither Fitzgibbon or Whiting hold dealers or investment advisers licenses or a proper authority to act on behalf of a licence holder. Sponduli Consultancy was sending money obtained from more than 60 investors to a Bahamas company, which then invested in European bank bill trading programs. Obtaining the orders only 24 hours after we became aware of the scheme means many investors may get to see their money again.

The two directors of Empire Systems computers, Misagh Roussi and Rohyeh Rohani, were banned for 10 years by the courts. In handing down his decision, Justiceinfeld said he did not believe either of the directors would act honestly as directors or comply with their legal obligations at any time.

A provisional liquidator has been appointed to WA finance broker Roweena Nominees which traded as Graeme Grubb Finance Broker. The appointment was made by the Supreme Court of WA after Roweena and the directors gave us an undertaking not to carry on any further finance broking or mortgage management business. Our concerns related to how they managed the handling of client trust money and inadequate record keeping.

Victoria Police Major Fraud Group helped us obtain court orders preserving investors funds taken on deposit by the Eagle Bank Inc, Nauru. It is alleged that the president of Eagle Bank, Dr Hans Jost, obtained about \$2 million of depositors' funds which have been used to finance a private resort development on Flinders Island in Tasmania. ■

SUPER ACTION

Our latest investor alert urges investors to check their superannuation statements. We issued the alert after we became aware that a former insurance agent may have lost \$150,000 to \$200,000 of clients' superannuation money. Instead of rolling over clients' super money from one fund to another, we allege that the former agent paid the money into investment bond accounts he owned or controlled. If super members have not received a superannuation statement or have recently rolled-over their superannuation fund, we have advised them to check what has happened to their money.

Super members use annual statements to check their superannuation. Annual statements are the main way super funds can communicate with their members. We've encouraged fund members to seek an explanation if they don't understand their statements.

Our new booklet *Super decisions: A guide through the superannuation maze* is an additional tool super funds can use to help their members. The booklet is a new consumer guide jointly written and published by ASIC and the Australian Superannuation Funds Association.

The guide targets employees and looks at superannuation from the consumer standpoint.

It looks at the decisions employees have to make about what type of fund to join, how to follow what is happening to their superannuation savings, whether to change funds and what to do if they have a problem or complaint.

You can order bulk copies of the guide through Infoline on 1300 300 630 and the guide is available on our website www.asic.gov.au. For further information, contact Michael Dunn on 02 9911 2017. ■