Penalty for alleged continuous disclosure breach

Following an ASIC investigation, an ASX company has paid a penalty of $33,000 for allegedly failing to comply with its continuous disclosure obligations.

The company made an announcement to the ASX in July last year regarding a commercial partnership, which was described as an 'outstanding commercial opportunity' and 'a real coup' for the company.

ASIC alleged in June last year that the company and the counterparty had entered into an agreement concerning a promotional campaign and in failing to inform the ASX of this agreement in June 2014, the company was in breach of its continuous disclosure obligations.

The commission issued the company with an infringement notice and the company paid the penalty.

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The information provided in this publication was provided by Colin Parker FCA, former member of the AASB.

TNR® FRA NEWS

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Welcome to this issue of 'TNR FRA News'.

Financial Reporting and Auditing News ('FRA News') provides you with our insight into current and emerging financial reporting, auditing and corporate governance matters on a monthly basis. FRA News contains items requiring immediate consideration (**Need to Know**), whereas other items are for general information (**Nice to Know**).

FRA News is prepared by Colin Parker, Principal, GAAP Consulting, and former member of the Australian Accounting Standards Board (2006-2009) with the input of staff of TNR and HLB Mann Judd.

In this FRA News, your attention is drawn to the following developments:

Aged-care company reissues financial report

Need to know

Sapphire Aged Care Pty Ltd reissued its financial report, including a reclassification of assets acquired in the purchase of the Parkwood Aged Care Group, after ASIC reviewed its financial report for the year ended 30 June 2014.

Following ASIC's inquiries, Sapphire has:

- Reclassified $54.5 million previously shown as related party loans and receivables to goodwill in connection with the purchase of the Parkwood Aged Care Group
- Wrote back a previous revaluation of bed licenses of $7.4 million, and
- Reduced cash outflows for borrowings from related parties by $51.8 million and cash inflows from accommodation bonds by $53.6 million in its cash flow statement.

Similar changes are reflected in a reissued financial report for Sapphire Care Pty Limited.

ASIC reminded companies that it was important for those who used financial reports that they reflected correctly assets and transactions. Identifiable intangible assets should be revalued upwards only when there was an active market.

SMSF independent auditor's report released

The Australian Taxation Office has released the new SMSF Independent Auditor's Report for reporting periods starting on or after 1 July last year.

Changes from last year's auditor's report include:

- Removal of sections 52B(2)(d) and 52B(2)(e) of SISA. The ATO expects the separation of assets compliance to be tested against SIS Regulation 4.09A only
- Removal of sections 69-71A, 73-75, 80 and 81 of SISA. It should be noted that while SMSF auditors no longer have to form an opinion on the sections above, sections 82-85, that cover in-house asset rules, remain. That is, SMSF auditors are still expected to identify part 8 associates of a fund's members and whether certain in-house assets are within the allowable limits
- Addition of section 105 of SISA, which requires the trustees to keep copies of all member or beneficiary reports for at least 10 years
- Addition of new paragraphs in part B of the report in relation to the auditor's independence and quality controls. Auditors must now confirm they have complied with auditing standard ASQC 1 'Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, Other Assurance Engagements and Related Services Engagements' and with the ethical requirements relating to assurance engagements prescribed in APES 110 'Code of Ethics for Professional Accountants'.

ASIC frees up auditor changes

ASIC has announced a fundamental change to the way it agrees to the resignation, removal and replacement of auditors. ASIC will now generally consent to the resignation of an auditor at any time of the year, subject to some conditions. Previously, ASIC consented to the resignation of an auditor of a public company only at an annual general meeting (AGM) unless there were exceptional circumstances.

ASIC will consent to the resignation of an auditor at any time if:

- It has no concerns about the resignation. ASIC might be worried if, for instance, management and an auditor disagree about an accounting treatment, and
- The change in auditor of a public company and the reasons for the change are communicated to members or in a disclosure notice, unless the change occurs at an AGM.

The new approach is outlined in revised Regulatory Guide 26 'Resignation, removal and replacement of auditors'. The revised guide also sets out how to apply for ASIC consent to the resignation, removal and replacement of auditors of registered schemes, Australian Financial Services licensees and credit licensee trust accounts.

Fraud-risk management – superannuation prudential guide

The Australian Prudential Regulation Authority (APRA) has released a response package for Superannuation Prudential Practice Guide SPG 223 'Fraud Risk Management'. The package includes the final SPG 223 and a letter outlining APRA's response to submissions about draft SPG 223.

SPG 223 focuses on current and emerging fraud-risk factors affecting the superannuation industry while taking into account broader risk-management-related matters raised in Prudential Standard SPS 220 'Risk Management' and Prudential Practice Guide SPG 220 'Risk Management'. While SPG 223 provides guidance for the superannuation industry, it might also be of benefit to authorised deposit-taking institutions, general insurers and life insurers that need to consider fraud-risk management.

ASIC to focus on asset values

ASIC will focus on asset values, accounting-policy choices and material disclosures when it examines the 30 June reports of listed and other entities of interest to many stakeholders.

The commission will review the financial reports of proprietary companies and unlisted public companies based on complaints and other intelligence. It will also identify and follow up companies that are required to lodge financial reports but have not done so.

ASIC encourages preparers and auditors to consider with care the need to impair goodwill and other assets. It continues to find impairment calculations that use unrealistic cash flows and assumptions, as well as material mismatches between the cash flows cited and the assets being tested for impairment. Fair values attributed to financial assets should be based on appropriate models, assumptions and inputs. Assets of companies in extractive industries and mining support services should be especially careful. Asset values may also be affected by digital disruption.

Preparers and auditors should focus on the appropriateness of key accounting policy choices that can significantly affect results. These include off-balance sheet arrangements, revenue recognition, expensing of costs that should not be included in asset values, and tax accounting.

ASIC's surveillance continues to focus on material disclosures of information useful to investors and others using financial reports such as assumptions supporting accounting estimates, significant accounting policy choices, and the impact of new reporting requirements.

Even though directors do not need to be accounting experts, they should seek explanation and professional advice on the accounting treatments chosen if needed and, where appropriate, challenge estimates and treatments. They should particularly seek advice where a treatment does not reflect their understanding of the substance of an arrangement.

Reforms to superannuation governance draft legislation

The federal Treasury has released for public consultation an exposure draft of legislation to improve governance in superannuation. Amendments to legislation proposed in the exposure draft include:

- All APRA-regulated superannuation funds be required to have a minimum of one third independent directors on their trustee board and an independent chairperson
- The definition of 'independent' is to include persons who do not have a substantial holding in the trustee or do not have (or have not had within the past three years) a material relationship with the trustee, including through their employer
- Trustees of funds that do not have a majority of independent directors be required to report on an 'if not, why not basis', and
- A three-year transition period to apply for existing funds.

The exposure-draft legislation takes into account feedback received on governance reforms in response to the 'Better regulation and governance, enhanced transparency and improved competition in superannuation' discussion paper the government released in November 2013 and the final report of the Financial System Inquiry.

Closing date for submissions is Thursday, 23 July.

Directors’ role in assessment of asset impairment

ASIC has released an information sheet to help directors and audit committees in considering whether the value of non-financial assets in a company’s financial report remained supportable. The commission continues to find issues with several companies about the impairment of goodwill and other non-financial assets. The new information sheet is a resource to assist directors when considering the need for impairment and the adequacy of impairment work.

ASIC Information Sheet 203 ‘Impairment of non-financial assets: The role of directors and audit committees’ discusses:

- The need for impairment testing
- The process for assessing impairment
- Common issues with impairment calculations, and
- Questions that may be asked of external auditors.

ASIC encourages directors to consider the need to impair non-financial assets such as goodwill, identifiable intangibles, property, plant and equipment. Common issues include impairment calculations that use unrealistic cash flows and assumptions, and mismatches between the cash flows used and the assets being tested for impairment.

While calculations supporting impairment or valuation of significant assets can be complex, directors can review cash flows and assumptions prepared by others using their knowledge and understanding of their businesses, the assets and the businesses’ future prospects.

ASIC has emphasised that even though directors do not need to be accounting experts, they should seek explanations and expert involvement if needed and, where appropriate, challenge asset values cited.

Auditor’s responsibilities for other information included in annual reports

Nice to know

The Australian Auditing and Assurance Standards Board (AUASB) has issued a proposal to revise the existing Australian Auditing Standard ASA 720 ‘The Auditor’s Responsibilities Related to Other Information in Documents Containing an Audited Financial Report’. The proposed new standard, which has been re-titled ASA 720 ‘The Auditor’s Responsibilities Related to Other Information’, deals with an auditor’s responsibilities relating to other information included in annual reports. Its revision is part of the AUASB’s project to enhance auditor reporting.

The revisions proposed seek to enhance the value of an audit without changing its scope and improve the transparency of auditors’ responsibilities by requiring them to articulate them and the outcome of their work relative to other information.

Key enhancements for all audits include:

- Broadening and clarifying the scope of other information to be the ‘annual report’
- Clarifying and enhancing an auditor’s work effort on other information
- Retention of the key existing concept that the auditor does not audit other information and that– consequently no assurance is expressed on other information, and
- Requires an ‘other information’ section to be included in an auditor’s report in certain circumstances

ASA 720 and related conforming amendments will be effective for periods ending on or after 15 December 2016.

Comments on ED 02/15 are sought by 10 August.

Chairman charged with fraud

Bradley Sherwin, chairman of Wickham Securities Limited and principal of Sherwin Financial Planners Pty Ltd, has faced court charged with various fraud offences following an ASIC investigation.

Mr Sherwin appeared in the Brisbane Magistrates Court charged with 33 counts of dishonestly causing detriment totalling nearly $10 million between May 2009 and December 2012. The charges relate to the use of SMSFs of former clients of Sherwin Financial Planners.

Mr Sherwin was also charged with one count of dishonestly breaching his duties as a director of Wickham Securities Limited between November 2009 and October 2010. The matter will return to court in July.

Wickham Securities collapsed, owing more than $27 million to some 300 debenture holders. It was placed into administration in December 2012 and liquidation in February 2013. Sherwin Financial Planners was placed into administration in January 2013 and liquidation in February 2013, along with other companies of which Mr Sherwin was a director, including Reacroft Pty Ltd, Astor Funds Pty Ltd and Blue Diamond Investments Pty Ltd. These companies had also collapsed, owing more than $30 million to clients of Sherwin Financial Planners.

In September 2013, ASIC banned Mr Sherwin from providing financial services for two years and seven months as a result of his bankruptcy. In April, the former chief executive of Wickham Securities, Garth Robertson, was charged with fraud. In June 2013, ASIC cancelled the registration of the auditor of Wickham Securities after forming the view that he had failed to carry out or perform adequately and properly his duties.

ASIC to continue class orders

ASIC has released a consultation paper proposing to continue five class orders that are due to expire ('sunset') in 2015 and 2016. The class orders affect the disclosures made in financial reports and the manner in which financial reports are presented to security holders.

It has also proposed to continue a limited, technical exemption from lodging financial reports afforded to some grandfathered large proprietary companies. This exemption cures some technical drafting anomalies in the law.

The class orders proposed to be remade are:

- Class Order [CO 05/638] 'Anomalies preventing certain large proprietary companies from being grandfathered'
- Class Order [CO 05/639] 'Application of accounting standards by non-reporting entities'
- Class Order [CO 05/642] 'Combining financial reports of stapled security issuers'
- Class Order [CO 05/644] 'Disclosing post balance date acquisitions and disposals', and
- Class Order [CO 06/441] 'Including different registered scheme financial reports in a single document'.

ASIC proposes to remake these orders as they are operating effectively and efficiently and continue to form a necessary and useful part of the legislative framework. No significant changes are proposed.

Consultation Paper 233 'Remaking ASIC class orders on financial reporting' outlines the class orders to be remade and the commission's rationale for continuing them.

Franchising Code of Conduct – Auditor's Report

The AUASB has issued revised guidance statement GS 018 'Franchising Code of Conduct – Auditor's Reports'. GS 018 should assist assurance practitioners engaged in solvency audits for a franchisor entity that is required to meet certain financial-detail disclosure obligations under the Competition and Consumer (Industry Code – Franchising) Regulation 2014, which was applicable from 1 January. In its appendices, the statement provides an example of a solvency audit report.

The information provided in this publication was provided by Colin Parker, a former member of the AASB.

Defined benefit plan proposed amendments

The AASB has issued ED 266 'Remeasurement on a Plan Amendment, Curtailment or Settlement/Availability of a Refund from a Defined Benefit Plan'. Its proposed amendments address whether other parties' power to enhance benefits for plan members or wind up a plan affects the availability of a refund. They would clarify accounting when a plan amendment, curtailment or settlement occurs during a period. Comments on ED 266 are requested by 21 September.

Brisbane financial adviser banned for life

ASIC has permanently banned Lee Robin of Queensland from providing financial services. ASIC found that he had engaged in conduct that was misleading or deceptive while issuing unsecured fixed-interest notes in Protect Ensure Pty Ltd. ASIC also found that he had failed to comply with financial-services laws.

Mr Robin had been a director of Protect Ensure since 18 April 2006. The company was placed into liquidation on 12 June 2015.

An ASIC investigation found that between July 2013 and December the following year, Mr Robin had:

- Behaved dishonestly by depositing clients' monies into an entity associated with the Protect Ensure group, using those funds for personal expenses and making payments to other noteholders
- Engaged in misleading and deceptive conduct in failing to provide an information memorandum, and failed to disclose properly that client funds would be pooled with other monies in the Protect Ensure business
- Failed to lodge accurate annual accounts on time and corresponding auditor's reports
- Failed to report these significant breaches to ASIC
- Failed to know the financial position of Protect Ensure
- Failed to ensure Protect Ensure had adequate financial resources to provide its services and supervise its representatives, and
- Failed to ensure Protect Ensure complied with conditions of its Australian Financial Services (AFS) Licence.

'Business Combinations' post-implementation review

The International Accounting Standards Board (IASB) has announced completion of its post-implementation review of IFRS 3 'Business Combinations'. It showed general support for the accounting requirements in the standard but identified areas where further research would be undertaken, including accounting for goodwill.

Many preparers, auditors and regulators identified implementation challenges in the requirements, in particular applying the definition of a business, measuring the fair value of contingent consideration, contingent liabilities and intangible assets, and testing goodwill for impairment on an annual basis.

The IASB added two projects to its research agenda to explore further the key findings. These projects will focus on the following issues:

- The effectiveness and complexity of testing goodwill for impairment
- Subsequent accounting for goodwill
- Challenges in applying the definition of a business, and
- Identification and fair-value measurement of intangible assets such as customer relationships and brand names.

ASIC takes civil action against a miner and two directors

ASIC has started civil penalty proceedings against Padbury Mining Limited and two of its directors regarding Padbury's announcement last year of a multi-billion dollar funding deal for the Oakajee port and rail project in Western Australia. ASIC's civil action in the Federal Court of Australia is against Padbury, its managing director Gary Stokes and executive director and chairman Terence Quinn.

The proceedings relate to the company's announcement on 11 April last year to the Australian Securities Exchange (ASX) that $6 billion in funding had been secured for the development of the project. The announcement was made after Padbury entered into an agreement days earlier about funding with Superkite Pty Ltd and Alliance Super Holdings Pty Ltd.

Following enquiries from ASIC and the ASX, Padbury announced in late April 2014 that the parties had terminated the agreement.

ASIC alleges that:

- The announcement was misleading as the funding agreement was subject to conditions precedent that had not yet been met. The conditions precedent required Padbury to procure some $1.3 billion in demand guarantees in three tranches
- The company breached its continuous disclosure obligations by failing to disclose the conditions precedent and by failing to disclose the identity of the funding providers, together with the fact that it had not independently verified the capacity of those providers to raise the funds
- The directors were involved in the breach by the company of its continuous disclosure obligations and thereby breached their own continuous disclosure obligations in the Corporations Act, and
- The directors breached their duties of care and diligence by causing or otherwise permitting the company to make a misleading announcement and also by failing to ensure that the company met its continuous disclosure obligations.

The commission is seeking financial penalties against Messrs Stokes and Quinn as well as orders banning them from managing companies in such amounts and for such periods as the court deems appropriate.

ASIC is also seeking declarations that Padbury breached its continuous disclosure obligations and engaged in misleading or deceptive conduct, and that Messrs Stokes and Quinn breached continuous disclosure laws and their directors' duties.

The proceedings are listed for a directions hearing in Perth on 15 July.

Conceptual framework proposals

The AASB has issued exposure draft 264 'Conceptual Framework for Financial Reporting' and ED 265 'Updating References to the Conceptual Framework', which incorporate IASB ED/2015/3 'Conceptual Framework for Financial Reporting' and IASB ED/2015/4 'Updating References to the Conceptual Framework'.

The proposed amendments progress the IASB's project on revising its conceptual framework with the object of improving financial reporting by providing a more complete, clear and updated set of concepts. They build on earlier IASB amendments on general-purpose financial reporting and qualitative characteristics of useful financial information, which the AASB incorporated into its framework in December 2013.

The AASB has asked for comments on ED 264 and 265 by 5 October.

ACNC round-up

During June, the Australian Charities and Not-for-profits Commission (ACNC):

- Revoked the charity status of the Mature Age Group Charity Association
- Revoked the registration of 5,500 'double defaulter' charities for failing to complete their reporting for two consecutive years
- Reminded charities that nearly 15,000 of them had yet to submit their 2014 annual information statements by 30 June, and
- Reminded charities that many had still not updated their subtypes. This was required by 1 July.