

## Director of responsible entity banned

ASIC has banned Mr David Hodgson of Queensland from providing financial services for two years after an ASIC investigation found that Mr Hodgson, a director of Exalt Global Funds Limited, failed in his duty to ensure that Exalt complied with its obligations as a 'responsible entity' under the Corporations Act.

Exalt has held an Australian financial services (AFS) licence since September 2011. Between March 2013 and July 2014, Exalt was found to have:

- Produced misleading product disclosure statements that said that investing in the Paladin Monetizer Fund (PMF) was low risk
- Failed to keep proper financial records for the PMF, and
- Failed to lodge with ASIC annual profit-and-loss statements and balance sheets for the financial years ended 30 June 2013 and 30 June 2014, financial reports and a director's report and the PMF for financial years ended 30 June 2013 and 30 June 2014, an audited compliance plan for the PMF for financial years ended 30 June 2013 and 30 June 2014.

Mr Hodgson initially did not register the PMF, relying on a fundraising exemption under section 708 of the Act. However, as fundraising approached the limits of the exemption, he arranged for investors in the unregistered scheme to be 'transitioned' into the registered PMF. The transition failed, and, as a result, the PMF was unable to meet ASIC compliance obligations.

ASIC commissioner Greg Tanzer said: 'Responsible Entities are entrusted with property that belongs to others and, accordingly, are held to a high standard by ASIC. The directors of responsible entities must take their compliance obligations seriously or risk being removed from the financial-services industry.'

Following concerns raised by ASIC, both registered and unregistered PMFs no longer operate. Exalt has also requested that its AFS licence be cancelled. ■

### Queries

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## 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:

#### Need to know:

- CEO and CFO plead guilty to falsifying books
- Miner reissues financial report
- IASB defers standard
- Residual-value clarity for NFP public-sector entities
- ASIC releases surveillance results
- Acquittal guidance released
- Continuous-disclosure guidance updated
- Updated discount rates for AASB 119 'Employee Benefits'
- Fair-value disclosure relief for NFP public-sector entities
- ATO updates SMSFs contravention instructions

#### Nice to know:

- ACNC round-up
- Addressing disclosures in auditing financial statements
- Governance of Australia releases new 'minutes' guide
- Court appoints liquidator to ASX-listed company
- Continuous-disclosure breaches penalised
- Integrated-reporting assurance
- ATO releases new guide on tax risks
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- APRA releases 'shared computing' information paper
- ASIC disqualifies SMSF auditor
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## CEO and CFO plead guilty to falsifying books



Following an ASIC investigation, the former managing director and chief executive of Sigma Pharmaceuticals Ltd, Elmo De Alwis, and chief financial officer, Mark Smith, have pleaded guilty to charges relating to falsifying the company's books.

The pair accounted for four financial transactions between June 2009 and March 2010 that resulted in Sigma's overstating its income, profits, and inventory.

Between June 2009 and March 2010 Mr De Alwis and Mr Smith were involved in arranging transactions for Sigma to purchase wholesale pharmaceutical

drugs at inflated prices. The amounts of the inflated payments were returned to Sigma and recorded falsely in the company's books as revenue.

Mr De Alwis and Mr Smith allegedly gave false information to Sigma's auditors and board about how the transactions were being accounted for.

As a result, for the full year ended 31 January 2010, Sigma's publicly reported income was overstated by \$15,500,616, its inventory value was overstated by \$11,313,224, and its profit after tax was overstated by \$9,599,000. Sigma subsequently made adjustments to its accounts to reverse these anomalies.

Mr De Alwis and Mr Smith each pleaded guilty to two charges of falsifying Sigma's books under s1307 of the Corporations Act, and indicated that they would each plead guilty to two charges under s1309 of the Corporations Act for giving false or misleading information to Sigma's auditors and board.

The offences under section 1307 each carry a maximum penalty of \$11,000 or imprisonment for two years or both. The offences under s1309 each carry a maximum penalty of \$22,000 or imprisonment for five years or both.

The matters have been adjourned to 17 September for a plea hearing. [\[1\]](#)

## Miner reissues financial report

Jervois Mining Limited reissued its 30 June 2014 financial report to correct errors in its tax-effect accounting and its capitalisation of exploration and evaluation assets. Following ASIC's inquiries, Jervois has reissued both June and 31 December 2014 reports.

In its 30 June report the company has:

- Written back a deferred tax liability of \$1.5 million (2013: \$0.9 million)
- Removed an income-tax expense of \$0.3 million at 30 June 2013
- Reduced exploration-and-evaluation-asset balances by \$0.7 million (2013: \$0.5 million), and
- Reduced impairment expense by \$0.4 million (2013:\$0.1 million).

In its 31 December 2014 financial report, the company has made similar adjustments, but also reduced revenue by \$0.5 million (2013: \$0.7 million) related to a research-and-development-tax offset, and reduced the carrying value of exploration and evaluation assets. [\[1\]](#)

## IASB defers standard

The International Accounting Standards Board (IASB) has confirmed a one-year deferral of the effective date of revenue standard IFRS 15 'Revenue from Contracts with Customers'. The standard will begin operating on 1 January 2018. The AASB will follow the IASB decision with AASB 15 'Revenue from Contracts with Customers'.

The standard was issued jointly by the IASB and the US Financial Accounting Standards Board (FASB) in May 2014 with an effective

date of 1 January 2017. Both boards have confirmed the one-year deferral. Companies using IFRS may apply the standard earlier.

The standard's formal amendment, specifying the new effective date, is expected to be issued in September.

Later this month, the IASB will publish for public consultation some proposed clarifications to the standard to help companies implement it. [\[1\]](#)

## Residual-value clarity for NFP public-sector entities

The AASB has issued an agenda decision that might change the practices of some NFP public-sector entities and could result in increased depreciation and further componentisation of assets. The decision addresses a request received to clarify whether residual value, as defined in AASB 116 'Property, Plant and Equipment', includes cost savings from the re-use of parts of an infrastructure asset. The AASB concluded that residual value in AASB 116 did not include such cost savings. [\[1\]](#)

## ASIC releases surveillance results

ASIC has announced the results from a review of the 31 December 2014 financial reports of 100 listed and other public-interest entities. It made enquiries of 23 entities on 36 matters, seeking explanations of accounting treatments. Most of the commission's findings related to impairment of non-financial assets and inappropriate accounting.

ASIC identified concerns over assessments of the recoverability of assets' carrying values, including goodwill, other intangibles, exploration and evaluation expenditure, and property, plant and equipment.

ASIC's enquiries related to the following:

Topic	No	Findings
Impairment and other asset values	10	<p><i>Determining the carrying amount of cash generating units (CGUs)</i></p> <p>There were cases where entities:</p> <ul style="list-style-type: none"> <li>■ Identified CGUs at too high a level despite cash inflows being largely independent, resulting in cash flows from one asset or part of the business being incorrectly used to support the carrying values of other assets</li> <li>■ Did not include all assets that generate the cash inflows in the carrying amount of a CGU, such as inventories, trade receivables and tax balances</li> <li>■ Incorrectly deducted liabilities from the carrying amount of a CGU.</li> </ul> <p><i>Reasonableness of cash flows and assumptions</i></p> <p>Cash flows and assumptions used in determining recoverable amounts were not reasonable or supportable with respect to historical cash flows, economic and market conditions, and funding costs. In particular, where:</p> <ul style="list-style-type: none"> <li>■ Cash flows for value-in-use calculations incorrectly included estimated future cash inflows or outflows expected to arise from future restructuring or development plans</li> <li>■ Assumptions derived from external sources were not assessed for consistency and relevance</li> <li>■ Forecast cash flows did not appear reasonable and had exceeded actual cash flows for several reporting periods.</li> </ul> <p><i>Fair value assessments of recoverable amounts</i></p> <p>Entities used discounted cash-flow techniques to determine fair value where the calculations were dependent on many management inputs. Where it is not possible to reliably estimate the value that would be received to sell an asset in an orderly transaction between market participants, the entity must use the asset's value-in-use as its recoverable amount.</p> <p><i>Impairment indicators</i></p> <p>Some entities did not have sufficient regard to impairment indicators, such as significant adverse changes in market conditions, and reported net assets exceeding market capitalisation.</p> <p><i>Disclosures</i></p> <p>Several entities were not making necessary disclosures of:</p> <ul style="list-style-type: none"> <li>■ Sensitivity analysis, where there is limited excess of an asset's recoverable amount over the carrying amount, and where a reasonably possible change in one or more assumptions could lead to impairment</li> <li>■ Key assumptions, including discount rates and growth rates, and</li> <li>■ For fair values, the valuation techniques and inputs used.</li> </ul> <p>ASIC stressed the importance of these disclosures to investors and other users of financial reports, given the subjectivity of these calculations and assessments. The disclosures enable users to make their own assessments about the carrying values of the entity's assets and risk of impairment given the estimation uncertainty associated with many asset valuations.</p>

## Acquittal guidance released

Topic	No	Findings
Off-balance sheet arrangements and business combinations	8	Enquiries of three entities for non-consolidation of entities and of two entities on the accounting for joint arrangements.  Enquiries of three entities with respect to their accounting for business combinations, which relate to reverse-acquisition accounting, and the recognition of goodwill rather than identifiable intangible assets.
Revenue recognition	5	Enquiries about recognition of revenue, including the treatment of deferred income and the timing of bringing the revenue to account.
Tax accounting	5	Enquiries of two entities concerning their accounting for income tax, and in particular, the substantiation of their tax-expense positions. This included situations in which there appeared to be unusual reconciling items between accounting profit and tax expense/benefit that resulted in either significant tax benefits or tax expenses.  Making enquiries of three entities as to whether it was probable that future taxable income would be sufficient to enable the recovery of deferred tax assets relating to tax losses.
Non-IFRS financial information	4	Enquiries of entities regarding the use of non-IFRS financial information. In particular, entities should not disclose income or expense items as extraordinary items, including where the presentation is intended to achieve the result but the term 'extraordinary items' is not used, and applying the guidelines in RG 230 'Disclosing non-IFRS' financial information in presenting non-IFRS information outside the financial report to help reduce the information's risk of being misleading.
Treatment of expenses	3	Enquiries into the treatment of expenses relating to stripping costs in the extractive industries, the pattern of amortisation of deferred acquisition costs in the insurance industry, and certain expenses taken to equity.
Other matters – estimates and accounting-policies judgements	1	ASIC made general comments about the importance of disclosures concerning accounting estimates and accounting policies.  The commission observed instances where entities needed to improve the quality and completeness of disclosures in relation to estimation uncertainties and significant judgments in applying accounting policies.  The disclosure requirements are principle-based and should include all information necessary for investors and others to understand the judgements made and their impact.  This may include key assumptions, reasons for judgements, alternative treatments, and appropriate quantification.  These disclosures are important to allow users of a financial report to assess an entity's financial position and performance.  Following the approval of a new international auditing standard, auditors will be required to disclose information on key audit matters in future reports. Directors should ensure that relevant information is already disclosed in financial reports and operating and financial reviews.

Enquiries did not necessarily lead to material restatements. Matters involving seven entities were concluded without any changes to their financial reporting. ASIC did not pursue immaterial disclosures that might add unnecessary clutter to financial reports.

The commission's risk-based surveillance of public-interest entities' financial reports for 30 June 2010 to 30 June 2014 led to material changes to 4 per cent of those reviewed. The main changes related to impairment of assets, revenue recognition and expense deferral.

From 1 July 2014, ASIC has announced publicly when, following contact from the commission, a company makes material changes to information previously provided to the market. These announcements are intended to make directors and auditors of other companies more aware of ASIC's concerns so that they can avoid similar problems. To date, the total adjustments to these entities' profits has amounted to more than \$630 million. [iii](#)

The AUASB has issued a new guidance statement GS 022 'Grant Acquittals and Multi-Scope Engagements', recognising that a single-subject grant acquittal and a multi-scope engagement may give rise to several practical application problems.

The issues include:

- Determining which AUASB standards and requirements are relevant and how to apply them
- Planning and performing these types of engagements effectively and efficiently to address multiple objectives, including multiple subject matters and different levels of assurance
- Reporting appropriately in accordance with AUASB standards and engagement mandates, especially when an auditor

seeks to issue a single tailored report

- Demands for the use of prescribed auditor's reports, and
- Engagements that require both assurance and agreed-upon procedures.

The guidance statement is centred on a selection of 13 common practical issues, such as setting different levels of materiality to address subject matters that comprise a multi-scope engagement. Each issue is presented with several suggestions as to how an auditor might deal with it.

The statement includes several references to AUASB standards that illustrate requirements and principles that can be applied. It contains 10 appendices, including illustrative engagement letters, representation letters and auditor's reports. [iii](#)

## Continuous-disclosure guidance updated

The Australian Securities Exchange (ASX) has updated its 'Guidance Note 8 Continuous Disclosure' (GN8), which helps businesses comply with continuous-disclosure obligations under listing rules 3.1, 3.1A and 3.1B. The changes, which are included in section 7, expand the guidance given for analyst and investor briefings, analyst forecasts, consensus estimates, and earnings surprises. GN8 is operative after 1 July. The ASX has also updated its 'Continuous disclosures, an abridged guide' to reflect the changes made in GN8. [iii](#)

## Updated discount rates for AASB 119 'Employee Benefits'

Research in May by Milliman Australia concluded that Australia had a deep enough market in high-quality corporate bonds that corporate-bond rates could be used for the purposes of AASB 119 'Employee Benefits'. Updated June discount-rate yield-curve information to support using corporate-bond rates to discount long-term employee obligations under AASB 119 is available on the Group of 100 (G100) website ([www.group100.com.au](http://www.group100.com.au)).

The finding means that Australian entities, other than public-sector NFPs, should be reconsidering the rate being used to discount their post-employment benefits and other long-term

employee liabilities (such as long-service leave). Public-sector NFP entities must continue to use government rates.

Entities most likely to be affected are those with defined benefit plans, large numbers of employees or big accumulated long-service leave balances. Liabilities will generally reduce due to lower rates. Any material change will need to be treated as a change in accounting estimate and applied prospectively in accordance with AASB 108 'Accounting Policies, Changes in Accounting Estimates and Errors' (AASB 108.36).

Please remember to update your accounting-policy references for the corporate-bond rate. [iii](#)

## Fair-value disclosure relief for NFP public-sector entities

The AASB has issued AASB 2015-7 'Amendments to Australian Accounting Standards – Fair Value Disclosures of Not-for-Profit (NFP) Public Sector Entities'. The standard is effective for annual reporting periods beginning on or after 1 July next year, and may be adopted early.

AASB 2015-7 amends AASB 13 'Fair Value Measurement' to provide relief to NFP, public-sector entities from certain disclosures about fair-value measurements of property, plant and equipment held for service potential rather than to generate net cash inflows. This includes relief from disclosures of quantitative information about significant unobservable inputs used in fair-value measurements and the sensitivity of certain of them to changes in unobservable inputs. [iii](#)

## ATO updates SMSFs contravention instructions

The Australian Taxation Office (ATO) has released updated instructions to help SMSF auditors and actuaries to complete an auditor-actuary contravention report.

Changes from last year's instructions include:

- Test 4 of reporting criteria: For trustee-behaviour test, a new comment added for a breach of section 66 of SISA. The ATO's view is that even though a breach of section 66 is a one-off contravention, if it remains unrectified in following years then it should continue to be reported under Test 4
- Section E: Contraventions examples 2 and 3 have been added to assist SMSF auditors to complete contravention reports. The ATO has emphasised that it expects auditors to report prior years' contraventions that remain unrectified even when they are aware that the ATO has advised

trustees that it would take no further action in relation to the contravention. Example 3 shows what happens when some contraventions cannot be rectified and should be reported only in the year they occur.

- Question 16 'Has the contravention been fully rectified?' An example has been included illustrating the ATO's expectations for reporting prior years' breaches that were rectified part way through a current year, and
- Section G – other regulatory information. Guidance has been included about the types of information that might need to be reported and when not to report under this section.

The new reporting criteria applies for reporting periods starting on or after 1 July last year. [\[1\]](#)

## ACNC round-up

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

- Revoked the registration of Indigenous Foundation of Australia Limited following an investigation into its operations
- Warned that more than 5000 registered charities that have failed to report on time will receive a 'red mark' against their names
- Released a report on Australian charities involved overseas, and
- Issued new and updated guidance on advocacy, frequently asked questions and common financial-reporting errors. [\[1\]](#)



## Addressing disclosures in auditing financial statements

The IAASB has released a revised auditing standard 'Addressing Disclosures in Audit of Financial Statements'. The revisions make changes to 10 ISAs and conforming amendments to five others that aim to make auditors focus on disclosures throughout an audit and drive consistency in auditing behaviour in applying the ISAs requirements.

Complementing the revisions, the

board has also released 'Addressing Disclosures in the Audit of Financial Statements', which describes financial-reporting disclosure trends and their possible implications for auditors. It also highlights how revised ISAs guide auditors in handling disclosures.

The revisions affect audits for periods ending on or after 15 December next year in line with the effective date for

the new and revised auditor-reporting standards and ISA 720 (revised) 'The Auditor's Responsibilities Relating to Other Information'.

The AUASB will issue an Australian equivalent to 'Addressing Disclosures in the Audit of Financial Statements' in due course. [\[1\]](#)

## Governance of Australia releases new 'minutes' guide

Governance of Australia has released a new guide 'Issues to consider when recording and circulating minutes of directors' meetings'. It recommends that minutes should be written into a dedicated book within a month after meetings to comply with legal requirements and while memories are fresh.

The best minutes-taking indicates that directors have considered sufficiently matters under consideration, the guide says.

The guide should be read with the updated Good Governance Guide 'Board minutes – what to record, the business judgement rule'. [\[1\]](#)

## Court appoints liquidator to ASX-listed company

Following a successful ASIC application to the Federal Court of Australia, a liquidator was appointed to ASX-listed Sino Strategic International Limited. The order follows an ASIC investigation.

ASIC was concerned that:

- Sino Strategic had been involved in multiple contraventions of the Corporations Act and was not complying with its obligations under the legislation. It had failed to lodge financial reports and convene annual general meetings
- The affairs of Sino Strategic had not been properly managed for some time and the assets of the company were at risk, and
- Sino Strategic's continued failure to comply with basic regulatory requirements of a listed company was contrary to the interests of the company's shareholders.

ASIC applied to the Federal Court to wind

up Sino Strategic on just and equitable grounds. The commission also sought and obtained orders to freeze \$115,300 in Sino Strategic's bank account.

ASIC's application was made because Sino Strategic failed to:

- Lodge its annual financial reports for four years from to 30 June 2011 to 30 June 2014 in breach of section 319(1) of the Corporations Act
- Lodge its half-year financial reports for five years from 31 December 2010 to 31 December 2014 in breach of section 320(1)
- Report to members for four years from 30 June 2011 to 30 June 2014 in breach of section 314(1)
- Hold annual general meetings for the five years from 30 June 2010 to 30 June 2014 in breach of section 314(1)
- Provide any explanation to shareholders for the delays in financial reporting since 31 October 2013

■ Comply with section 201A(2) of the Corporations Act by not having two directors resident in Australia since 20 November 2012, and

■ Comply with section 204A(2) of the Corporations Act by not having a company secretary for more than 16 months.

In November 2014, Sino Strategic was convicted and fined \$18,000 for failing to hold annual general meetings and lodge financial reports.

ASIC commissioner John Price said: 'ASIC is targeting poor corporate culture and poor governance practices in listed companies to ensure investors have confidence in the Australian market. Failure to report to members and file accounts is unacceptable. ASIC will seek to wind up companies that disregard important legal obligations which exist to protect investors.' [\[1\]](#)

## Continuous-disclosure breaches penalised

Coal Fe Resources Ltd (now Aus Asia Minerals Ltd) has paid a \$33,000 penalty after ASIC served an infringement notice for the company's alleged failure to comply with continuous-disclosure obligations.

The conduct relates to an independent geological consulting firm's valuation report that was attached to a notice of meeting and lodged with ASIC on 15 August last year.

ASIC alleged that by 18 July 2014, Coal Fe was aware that this report valued the Abadi Coal Project at about US\$300,000. Coal Fe's interim financial report for the half-year ended 31 December 2013 placed a value of \$1,897,584 on the Abadi project. ASIC alleged that Coal Fe should have revised the valuation earlier.

'Continuous disclosure is crucial to market integrity and to making sure investors are confident and informed,' ASIC

commissioner John Price said. 'If we think companies are falling short of the mark, we will take action'.

ASIC has fined Waterberg Coal Company Limited (WCC) and its 45.88 per cent controlled entity Firestone Energy Limited (FSE) \$33,000 each over breaches of continuous-disclosure obligations.

The fines follow ASX announcements by FSE and WCC on 31 July 2014 in connection with their June 2014 quarterly-activities report. WCC and FSE announced a new loan agreement between WCC and FSE of up to \$3 million, and the extension of the term of an earlier loan for a similar amount. FSE and WCC took 15 days to disclose the information.

ASIC alleged that by 16 July 2014 both companies were aware that the board of WCC had resolved to enter and execute the new loan agreement and extend the earlier one. [\[1\]](#)

## Integrated-reporting assurance

The <IR> working group of the International Auditing and Assurance Standards Board (IAASB) has released a publication 'Exploring Assurance on Integrated Reporting and Other Emerging Developments in External Reporting'. The publication's release coincides with the International Integrated Reporting Council's (IIRC) 'Overview of Feedback and Call for Action'. [\[1\]](#)

## ATO releases a new guide on tax risks

The ATO has released a 'Tax risk management and governance review guide' aimed mainly at big businesses.

It will allow entities to evaluate their governance frameworks and strategic and operational tax risks.

The guide is based on tax-governance 'better practices' and will help boards to:

- Develop their own tax-governance frameworks
- Test frameworks' robustness against benchmarks, and

- Understand how an entity can demonstrate to stakeholders the effectiveness of its internal controls.

The guide was developed in consultation with tier-one advisory firms, the Law Council, and members of the Corporate Tax Association and the Tax Institute. It will be updated on a regular basis. The principles within the guide indicate the ATO's expectations and are consistent with other jurisdictions' tax regulators. [\[1\]](#)

## Director jailed

Mr Ali Hammoud, the director of ERB International Pty Limited (ERB) was jailed for dishonestly breaching his duties as a director and making false statements. In November last year, Mr Hammoud pleaded guilty to a count of dishonestly using his position as a director by misappropriating more than \$2.6 million from ERB shortly before the company was put into liquidation, and a count of making a false statement to obtain a financial advantage.

Mr Hammoud was sentenced to two years' jail and a two-year good-behaviour bond. In sentencing Mr Hammoud, Judge Haesler emphasised that company directors held important positions of trust and needed to be aware that they faced jail if they breached it and acted dishonestly. [\[1\]](#)



## APRA releases 'shared computing' information paper

The Australian Prudential Regulation Authority (APRA) has released an information paper on prudential considerations and key principles to be followed when using shared computing services.

The paper uses the term 'shared computing services' (whether labelled 'cloud' or otherwise) to differentiate arrangements that involve the sharing of IT assets (including hardware, software and data storage) with other parties from those where assets are dedicated to a single entity.

While shared computing services can bring benefits – such as economies of scale – they also bring risks that can vary

considerably.

Low-risk uses involve IT assets with low criticality and sensitivity. Of greater risk is exposing IT assets to 'un-trusted' environments, necessitating a greater degree of caution and supervision. For such arrangements, APRA encourages prior consultation.

The information paper also discusses weaknesses that APRA has identified, reflecting that risk management and mitigation techniques are yet to fully mature. It is not commonly recognised that the 'public cloud' is mature to the point that disrupting it could be calamitous for users. [\[1\]](#)

## ASIC disqualifies SMSF auditor

ASIC has disqualified Peter Brennan from being an approved Self-Managed Superannuation Fund (SMSF) auditor. ASIC disqualified Mr Brennan after finding that the work he performed in auditing three SMSFs for 2011 and 2012 was deficient.

Mr Brennan failed to obtain sufficient appropriate audit evidence about the funds' compliance with the Superannuation Industry (Supervision) Act 1993. Consequently, he failed to identify several significant contraventions. Mr Brennan also failed to provide written audit reports.

The ATO referred concerns about Mr Brennan's conduct to ASIC under the SIS Act. [\[1\]](#)

## Government to review ASIC's capabilities

The federal government has commissioned a review to consider ASIC's capabilities. The review will ensure that ASIC has the appropriate governance and systems to meet objectives and future regulatory challenges.

The announcement forms part of the government's response to the Financial System Inquiry (Murray Inquiry), which recommended periodic reviews of financial regulators, commencing with a review of ASIC in 2015.

Review findings will feed into the government's consideration of an inquiry recommendation that ASIC's regulatory activities be funded by industry.

The review may examine, and make recommendations on how efficiently and effectively ASIC operates to achieve its strategic objectives, including:

- Identification and analysis of immediate and forward-looking priorities or risks
- Resource prioritisation and responsiveness to emerging

issues, including how ASIC allocates its current resources among its regulatory tools, such as supervision, surveillance, education, policy, enforcement and litigation and how the commission allocates its resources across its regulated population

- The skills, capabilities and culture of the commission and its staff, including the effectiveness of internal reviews and improvement mechanisms, and
- Organisational governance and accountability arrangements.

The review will take into account how comparable international regulators operate and relevant legislation, including the Public Governance, Performance and Accountability Act 2013.

In assessing ASIC's approach to its statutory objectives, the review may provide observations, but not make recommendations on ASIC's regulatory framework or powers.

It is to be completed by the end of 2015. [\[1\]](#)

## ASIC to recover costs of some investigations

ASIC is about to recover expenses and costs of some of its investigations. The commission's new approach and the factors it will consider before using it are detailed in information sheet 204 'Recovery of investigation expenses and costs'.

Generally, ASIC pays its investigations costs. However, under s91 of the Australian Securities and Investments Commission Act 2001, the commission may make an order to recover investigation expenses and costs if the investigation led to a successful prosecution or civil proceeding.

To date, ASIC has rarely recovered its costs. However, the commission has reviewed its approach and considers that it should more frequently seek to recover them. Accordingly, ASIC will consider making recovery orders when legislative requirements are met.

The new approach will apply to investigations from 29 July 2015 as well as some investigations begun before then. [\[1\]](#)

## Non-compliance with laws and regulations proposals – the audit implications

The IAASB has released an exposure draft 'Proposed Amendments to the IAASB's International Standards – Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations', that proposes limited amendments to the board's standards in response to the International Ethics Standards Board for Accountants' (IESBA) May 2015 re-exposure draft 'Responding to Non-compliance with Laws and Regulations'.

The IESBA's draft proposes a framework for professional accountants in deciding how best to act in the public interest

when they come across an act or suspected act of non-compliance with laws and regulations. The framework is relevant for auditors.

The focus of the IAASB's draft is proposed amendments to ISA 250 'Consideration of Laws and Regulations in an Audit of Financial Statements'. Changes are proposed to seven other standards. The IAASB's proposals seek to acknowledge IESBA's enhancements to professional accountants' code of ethics and clarify and emphasise key aspects of the IESBA's proposals.

The AUASB will seek comments on the proposals. [\[1\]](#)