



Companies Auditors and
Liquidators
Disciplinary Board

**Annual Report
for the year ended 30 June 2005**



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Liquidators
Disciplinary Board

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Companies Auditors
and Liquidators
Disciplinary Board

26 August 2005

The Hon. Peter Howard Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

I am pleased to present the Board's Annual Report for the year ended 30 June 2005 in accordance with section 214 of the *Australian Securities and Investments Commission Act, 2001*.

Subsection 214(1) of that Act requires the Board to prepare a report describing its operations during the year and to give a copy of the report to the Minister as soon as practicable after 30 June and before 31 October, each year.

Subsection 214(2) provides that the Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he receives a copy of the report.

Yours sincerely

Donald Magarey
Chairman

Peter Geoffrey Barrett

It is with great sadness that we commence this report by recording the death of Board member Peter Barrett on 1 December 2004. Peter was a highly respected partner of KPMG when in practice in Adelaide and had been chairman of the South Australian State Council of the ICAA. He took a leading role in community affairs (particularly with the Kidney Foundation) and with his local church. Peter had been a deputy member of the Board since July 1997 and was appointed a member on 16 August 2004. His good humour, courtesy and common sense together with his professional experience and expertise made him a very valuable member of the Board. He is sadly missed.

Overview

In the reporting year to 30 June 2005 the following were the highlights:

- The changes brought about by CLERP9 became effective on 1 July 2004. This had a significant impact on the number of Board members and on the procedures of the Board.
- The powers of the Board are the subject of a constitutional challenge in the High Court of Australia. Since the end of the reporting year a second constitutional challenge against the Board's powers has been launched in the High Court of Australia.
- The number of "conduct" matters referred to the Board during the report year increased to 15 from 8 the previous year. The number of "administrative" matters referred reduced to 20 from 25 the previous year. The workload of the Board is expected to be higher in the 2005/06 financial year because of the increase in conduct cases referred.
- The expenses of the Board increased significantly (although being within budget) from the previous financial year mainly because of the increased workload of the Board and the increased number of members.

Role of the Board

The Board is an independent statutory body established by Part 11 of the *Australian Securities and Investments Commission Act 2001* ("ASIC Act"). The Minister responsible for the Board is the Commonwealth Treasurer.

The Board has an important role in the Australian economy, along with several other bodies including the Australian Securities and Investments Commission, the Australian Prudential Regulation Authority and the Financial Reporting Council and various professional associations, in the regulation of auditors and liquidators.

The competence and independence of auditors are vital to the reliability of audited information concerning corporations and other business entities. This in turn underlies the confidence of investors and creditors in those entities and in the securities and other financial markets in which they operate.

Market perceptions, particularly of companies and of the business environment are also greatly influenced by the effectiveness and reliability of liquidators in their various roles including administration of companies in financial difficulties, in maximising the returns to creditors of failed companies, ensuring early payment of recoverable moneys and identifying and reporting deficient conduct by company officers.

Market perceptions in all these areas are a significant determinant of the cost and availability of capital to companies. Increased capital cost and impaired ability to raise funds result in competitive disadvantage.

In Australia, the Board's role makes a significant contribution to a positive market perception of companies and other entities. The Board's responsibilities pursuant to the Corporations Act are intended to provide an incentive to registered auditors and liquidators to maintain high professional standards. The Board also has a public protective and educative role by virtue of its jurisdiction to cancel or suspend an auditor's or liquidator's registration.

Constitution

From 1 July 2004, following the changes made by CLERP 9, the Board comprises the following:

- a) a Chairperson;
- b) a Deputy Chairperson;
- c) 3 members selected from a panel of 7 nominated by the Board of the Institute of Chartered Accountants in Australia ("*ICAA members*");
- d) 3 members selected from a panel of 7 nominated by the Board of CPA Australia ("*CPAA members*"); and
- e) 6 business members selected by the Minister.

The Chairperson and the Deputy Chairperson must each be enrolled as a barrister, as a solicitor, or as a barrister and solicitor or as a legal practitioner of the High Court, any Federal Court or the Supreme Court of a State or Territory and must have been so enrolled for a period of at least five years. ICAA members and CPAA members are collectively referred to as "*accounting members*". Business members represent the business community and have qualifications, knowledge or experience in business or commerce, the administration of companies, financial markets, financial products and services, economics or law.

All appointments are made by the Minister and are part-time appointments. Appointments are for a period of no longer than three years. The appointees are eligible for re-appointment.

Functions

The Board is required by the Corporations Act 2001 ("the Act") to determine whether a registered auditor or liquidator has contravened provisions of the Corporations Act, has failed to carry out their duties and functions adequately and properly, is not a fit and proper person to remain registered, is subject to disqualification or is otherwise ineligible to remain registered. If the Board determines any of these matters to be established then the Board must decide whether to make any and, if so, what orders.

Applications to the Board

Applications to the Board can be made only by either the Australian Securities and Investments Commission ("ASIC") or the Australian Prudential Regulation Authority ("APRA"). In addition, where the registration of a person is suspended, the Board may, on an application by the person or of its own motion, by order, terminate the suspension.

The Board categorises its matters as *administrative matters* or *conduct matters*. The categorisation has been adopted by the Board as a procedural policy and will be reviewed from time to time.

Administrative Matters

The Board categorises as administrative matters those matters which arise from applications pursuant to the following provisions of the Act:

- s1292(1)(a)(i) - failing to lodge annual statement under s1287A (auditor)
- s1292(1)(a)(ii) - ceasing to be resident in Australia (auditor)
- s1292(2)(a)(i) - failing to lodge triennial statement under s1288 (liquidator)
- s1292(2)(a)(ii) - ceasing to be resident in Australia (liquidator)
- s1292(3)(a)(i) - failing to lodge a statement under s1288(5) (liquidator)
- s1292(3)(a)(ii) - ceasing to be resident in Australia (liquidator)
- s1292(7)(a) - becoming disqualified from managing corporations under Part 2D.6 (auditor or liquidator)
- s1292(7)(b) - becoming incapable because of mental infirmity of managing affairs (auditor or liquidator)

In general the Board has power to cancel or suspend the registration of a registered auditor or a registered liquidator, if any of these grounds has been established to the satisfaction of the Board. If a ground is established under s1292(7)(a) or (b) then the Board has no discretion, it must cancel the registration of the practitioner concerned.

Conduct Matters

The Board categorises as conduct matters those matters which arise from applications pursuant to the following provisions of the Act:

- s1292(1)(a)(ia) - contravening s324DB by playing a significant role in an audit without being eligible to do so (auditor)
- s1292(1)(a)(ia) - failing to comply with a condition of registration (auditor)

- s1292(1)(b)(i) - not performing any audit work for 5 years and as a result ceasing to have the necessary practical experience (auditor)
- s1292(1)(b)(ii) - not performing any significant audit work for 5 years and as a result ceasing to have the necessary practical experience (auditor)
- s1292(1)(d)(i) - failing to carry out the duties of an auditor (auditor)
- s1292(1)(d)(ii) - failing to carry out the duties or functions required to be carried out by a registered auditor (auditor)
- s1292(1)(d) - not being a fit and proper person to remain registered as an auditor (auditor)
- s1292(2)(d)(i) - failing to carry out the duties of a liquidator (liquidator)
- s1292(2)(d)(ii) - failing to carry out the duties or functions required to be carried out by a registered liquidator (liquidator)
- s1292(2)(d) - not being a fit and proper person to remain registered as a liquidator (liquidator)
- s1292(3)(d) - failing to carry out the duties of a liquidator of a body corporate or otherwise not being a fit and proper person to remain registered as a liquidator of that corporation (liquidator)

In general, the Board has power to cancel or suspend the registration of a registered auditor or registered liquidator where any of those grounds has been established to the satisfaction of the Board.

In relation to conduct matters under s1292(1)(d), (2)(d) or (3)(d) the Board has additional powers under s1292(9) to admonish, reprimand or require undertakings. These powers may be exercised in addition to or instead of the powers to cancel or suspend registration.

Registrar

The business and operations of the Board have been conducted by its Registrar, Mr Paul Coleman, who was seconded from ASIC. Since the end of the reporting year, Mr Coleman has transferred to a position in Canberra.

The Board pays tribute to Mr Coleman for his valuable contribution as Registrar over a period of nearly eight years and wishes him well in his future career.

The acting Registrar is Mr Ron Swinney who is seconded from ASIC. During the reporting year, an assistant to the Registrar was appointed.

Operations

The Board's office is at Level 16, 60 Margaret Street, Sydney, as is the Board's principal hearing room. Hearings are also held, as needed, at other locations around Australia, and by telephone or videolink. It is the policy of the Board that a hearing will normally be held in the capital city of the State or Territory of residence of the Respondent. The application of this policy may be varied in individual cases.

Procedures have been adopted by the Board and are contained in its *Manual of Practice and Procedure*. This sets out the mechanisms for mentions, pre-hearing

conferences and hearings and the procedures to be followed in relation to the exchange of documents and other material between parties prior to a hearing.

The Board has also issued a *Costs Practice Note* and *Mediation Guidelines* and a pro forma *Mediation Agreement*.

The *Manual of Practice and Procedure*, the *Costs Practice Note* the *Mediation Guidelines* and draft *Mediation Agreement* are provided to all parties involved in proceedings before the Board and are available on request to interested persons generally. All are reviewed and updated from time to time.

Pre-Hearing Conferences

The Board encourages the parties in conduct matters, to meet and negotiate to refine and reduce the matters in dispute prior to a hearing. To assist this process and maximise its effectiveness, the Board conducts a pre-hearing conference which encourages contact between the parties as early as possible.

The aim is to reduce the length of the hearing and the overall costs of the proceedings. The Board's pre-hearing procedures are under constant review in order to ensure that pre-hearing procedures are as effective and efficient as possible and result in savings in costs and time for all parties.

Telephone conferencing is normally used for pre-hearing conferences unless it is considered not to be practicable in any particular case. The parties are encouraged by the Board to meet each other in person to discuss their respective contentions and determine common ground.

The benefits which flow from these procedures include shortening of proceedings and in some cases, agreement on acceptable outcomes. Agreed terms of order are referred in draft to the Board. The Board retains the right to determine the appropriate order.

The pre-hearing conference is also used as a means of agreeing on a timetable for finalisation and exchange of documentation and evidence and for fixing a hearing date.

Mediation

The Board encourages resolution of areas of dispute by mediation. This may be by an external mediator agreed upon by the parties or a Board member (who does not thereafter have any role in relation to that application nor communicate with the Board concerning the mediation or the application generally).

In both the negotiation and mediation processes the Board stresses to the parties that the proceedings before the Board are disciplinary hearings and whilst the parties may develop a form of acceptable draft order it still remains a matter for the Board to make a determination in accordance with its statutory function and to arrive at an appropriate order.

Panels

The changes made by CLERP 9 have significantly affected the way in which the Board now conducts hearings. These changes only affect hearings of applications which are made to the Board on or after 1 July 2004.

The new procedure introduced by CLERP 9 is basically for hearings to be conducted and decisions to be made by a Panel of the Board rather than by the full Board. The membership of the Board has been expanded from 3 to 14 and the Chairperson will determine the members of the Board who are to constitute a Panel to conduct a particular hearing. That Panel will then make the determination and any orders under s1292 in relation to that particular application.

A Panel will normally consist of five persons including the Chairperson or Deputy Chairperson, an ICAA member, a CPAA member and two business members. On certain occasions (such as hearing administrative matters), the Chairperson may consider it appropriate to constitute a Panel with three members, in which case the members would normally be the Chairperson (or Deputy Chairperson), one accounting member and one business member.

Hearings

All matters referred to the Board (unless withdrawn) must proceed to a hearing, at which a Panel will make a determination and orders. A Panel may adjourn the hearing to enable it to consider and formulate its reasons for a determination or its orders. Hearings are required to be held in private unless a public hearing is requested by a person who is entitled to be given an opportunity to appear at the hearing (other than ASIC and APRA).

For contested conduct matters, a Panel will usually hold a hearing with all members and parties physically present. In other matters, a Panel may arrange hearings by videolink with one or more members constituted for that hearing or parties in different locations. Legal representation is permitted at hearings, for all parties. Parties may also represent themselves.

Panel decisions

In relation to each application, the Panel makes a decision as to whether or not it is satisfied that the contentions have been established and, if so, whether or not to exercise any of the Board's powers under s1292 or whether or not it is required to make an order under s1292(7). The Panel will also make a decision on penalty and costs (if applicable) and, for that purpose, may hold a separate hearing and deliver a separate decision.

Pursuant to s1296, written notice of a decision and the reasons for it must be given to the practitioner concerned. A copy of the notice must be lodged with ASIC.

The notice of decision is available for inspection at ASIC except when the Panel has decided to refuse to exercise its powers under s1292 or has decided that it is not required to make an order under s1292(7) (see s1274(2)(a)(iii)).

Where the Panel has decided to exercise any of the powers under s1292 or has decided that it is required to make an order under s1292(7), the Board is required pursuant to s1296 (1) to publish in the Commonwealth Gazette a notice setting out the decision. By arrangement with the ICAA, IPAA, CPA Australia and the Tax Agents Registration Board, copies of the notices published in the *Commonwealth Gazette* are now provided to those bodies.

Decisions gazetted by the Board during the reporting year are set out at the conclusion of this report.

Costs

At the end of a hearing a Panel may make an order for costs, and when the Panel makes such an order, the Board refers the parties to its *Costs Practice Note*.

A Panel may also order payment by a party of costs of and incidental to a hearing.

Review Of Board Decisions

A review of any decision made under s1292 may be sought before the Administrative Appeals Tribunal (“AAT”) by ASIC or by any person whose interests are affected by the decision.

A person who is aggrieved by a Board decision may also apply to the Federal Court of Australia or the Federal Magistrates Court under the provisions of the Administrative Decisions (Judicial Review) Act 1975 for an order of review in respect of a decision.

Generally, reviews before the AAT are re-hearings of the application while those by the Federal Court of Australia are based on questions of law arising out of the proceedings.

Procedural Initiatives

The Board has a policy of continuous improvement to its procedures which are intended to keep to a minimum the time of parties and the Board.

Stage 1 of the Board's database project was completed during the year. The addition of a number of useful features has now resulted in the automation of a very large proportion of the Registry function.

Stage 2, which involved the creation of a database of all Board decisions and the decisions of the reviews of Board decisions by the AAT and Federal Court of Australia was also substantially completed.

Security considerations have resulted in a delay in delivering the facility to all members. It is expected these issues will be resolved in the 2005/06 year.

Board Membership

Board members during the reporting year were as follows:

Donald Rees Magarey BA LLB (Hons)(Syd) LLM (Harv) FAICD	Chairman
David Frank Castle BA LLM (Syd)	Deputy Chairman
Brian Thomas Morris BA(Acc) FCPA	Accounting Member CPAA
Patrick Joseph Ponting BBus FCPA	Accounting Member CPAA
Peter Geoffrey Barrett BEc FCA (deceased)	Accounting Member ICAA
Patrick Martin Burroughs BSc (Hons) FCA FAICD	Accounting Member ICAA
David John Olifent FCA	Accounting Member ICAA
David Barnett BComm (Acctg) CPA	Business Member
Tom Bostock LLB (Hons) (Melbourne) FAICD	Business Member
John Keeves LLB (Hons) BEc FSIA	Business Member
Professor Ian Ramsay BA LLB (Hons) (Macq) LLM (Harv)	Business Member
John Story BA LLB FAICD	Business Member
Simon Frederick Stretton LLB LLM GDLP	Business Member

Donald Magarey

Donald Magarey is a solicitor and was formerly a partner of Blake Dawson Waldron for 36 years specialising in corporate law and commercial transactions. He is a Fellow of the Australian Institute of Company Directors. Donald has previously been chairman of the Corporations Committee of the Law Council of Australia, a member of the Corporations and Securities Panel, a member of the Companies and Securities Law Review Committee and chairman of the Social Security Appeals Tribunal.

David Castle

David Castle is a solicitor and a Consultant to the Sydney office of Dibbs Abbott Stillman, specialising in business law. He is the Chairman of the Tax Agents Board of NSW and a member of the Law Society Business Law Committee. He has practised in business, revenue, commercial and company law for over 40 years and has extensive experience in disciplinary and conduct areas of the Law Society of NSW, the Migration Agents Registration Authority, the Australian Stock Exchange and the Tax Agents Board of NSW. He is a qualified and experienced mediator and a costs assessor appointed by the Supreme Court of New South Wales.

Brian Morris

Brian Morris is an accountant. He is a senior partner of a well known Adelaide accounting firm who has specialised in forensic accounting and assurance services. He is also a qualified mediator and member of the Institute of Arbitrators and Mediators of Australia. He has been a member of the Urgent Issues Group, has been an Australian representative to the International Accounting Standards Committee, a member of the Auditing Standards Board and has chaired the National Technical Standards Committee of CPA Australia.

Patrick Ponting

Patrick Ponting is a CPA and Auditor and is in practice on his own account on the Gold Coast. He was National President of CPA Australia in 1999-2000 and has been involved in the disciplinary processes of that body for 11 years including 3 years as chairman of the Discipline Committee in Queensland. He has chaired the CPA Professional Standards Committee and Public Practice Committee and is a member of the accounting profession's Joint Task Force on Audit Independence.

Patrick Burroughs

Patrick Burroughs, BSc (Hons) FCA FAICD. He is a Chartered Accountant and Company Director. He was a Senior Partner of one of the big four accounting firms, based in Melbourne and held various responsibilities during his career with that firm. These included major listed client responsibilities as well as firm management responsibilities. At the time of his retirement from the firm he was Head of its Financial Services practice. During his career with that firm he served as a member of various external bodies, including committees of the ICAA and the Reserve Bank of Australia. He is currently a Director of a number of companies, operating in both the not-for-profit and for-profit sectors of the economy.

David Olifent

David Olifent is a Chartered Accountant and was formerly a partner of PricewaterhouseCoopers for 22 years specialising in insolvency and business reconstruction. He now acts as a consultant and director. He has been a member of both state and national committees of the Insolvency Practitioners Association of Australia and the South Australian regional liaison committee to the Australian Securities and Investment Commission.

David Barnett

David Barnett is the Assistant Manager of the Companies Department (Sydney), Australian Stock Exchange Limited. He has a Bachelor of Commerce (Accounting) and is a member of CPA Australia.

Tom Bostock

Tom Bostock is a special counsel to Gadens Lawyers specialising in corporate law. He was a partner of Mallesons Stephen Jaques from 1970 until 2004. He is a Fellow of the Australian Institute of Company Directors and is a member of the Institute's Law Committee. He is also chairman of the Companies and Business Organisations Committee of the Law Institute of Victoria and was a member of the Legal Committee of the Companies and Securities Advisory Committee.

John Keeves

John Keeves is a partner in the law firm Johnson Winter & Slattery, with offices in Sydney, Melbourne and Adelaide, specialising in corporate and securities law, corporate governance and commercial transactions. He is the Chairman of the Corporations Committee of the Law Council of Australia, a Fellow and National Councillor of the Institute of Securities, Finance and Banking (formerly the Securities Institute of Australia), as well as a member of the Australian Institute of Company Directors, Taxation Institute of Australia, Australia and New Zealand Intellectual Property Society, and Banking and Financial Services Law Association.

Ian Ramsay

Ian Ramsay is the Harold Ford Professor of Commercial Law in the Faculty of Law at the University of Melbourne where he is Director of the Centre for Corporate Law and Securities Regulation. He is a member of the Takeovers Panel, a member of the Corporations and Markets Advisory Committee, a member of the National Law Committee of the Australian Institute of Company Directors and a member of the Corporations Committee of the Law Council of Australia. He was head of the Federal Government inquiry on auditor independence.

John Story

John Story is the non-executive Chairman of the Board of Corrs Chambers Westgarth. He has been a Partner of the firm for more than 30 years, practising principally in the areas of corporate and commercial law, mergers and acquisitions, public trusts, public fundraising and commercial documentation. He is the Chairman of Suncorp Metway Limited and a member of the Boards of Tabcorp Holdings Limited and CSR Limited. He is president of the Queensland Council of the Australian Institute of Company Directors and a member of the Institute's National Board of Directors.

Simon Stretton

Simon Stretton is Crown Solicitor for the State of South Australia and a member of the Corporations and Markets Advisory Committee (CAMAC). Formerly an ASIC Regional Commissioner, General Counsel to the NSW Independent Commission Against Corruption, and Chairman of the SA Law Society's Commerce Corporations and Taxation Committee he has also had an extensive corporations, general insolvency and commercial litigation practice at the Independent Bar and spent several years as probity auditor of a range of major Government projects.

At the date of this report two positions for accounting members (one to be nominated by each of the ICAA and CPAA) remained vacant.

Financial Statements

The Board is provided with an allocation of funds from the budget of ASIC. The Board's expenditure for this and previous financial years, as audited in the accounts of ASIC, consisted of:

	2001/02	2002/03	2003/04	2004/05
	\$	\$	\$	\$
Administrative Expenses:	81,025	244,588	278,260	322,532
Salaries and sitting fees:	<u>116,898</u>	<u>130,787</u>	<u>196,013</u>	<u>358,253</u>
Total:	197,923	375,375	474,273	680,785

The increase in the Board's administrative expenses during the reporting year was a direct result of increased travel costs associated with the larger Board and increased Panel sizes for hearings following the enactment of the CLERP 9 legislation.

The increase in the size of the Board and the increased workload also impacted on the Board's expenses in relation to salaries and sitting fees. Additional salary costs were incurred by the addition of another full time staff member to the Registry staff at the APS 3 classification.

Current estimates (based on current applications received by the Board) indicate a significant further increase in expenditure for the 2005/06 financial year.

Activities

The following tables have been compiled from the records of the Board.

Matters before the Board during the report year

	Auditors		Liquidators	
	Conduct	Administrative	Conduct	Administrative
Balance pending 1/7/04	6	19	2	-
Add applications	5	18	10	2
Deduct dealt with	7	3	4	1
Deduct withdrawals	1	25	-	-
Balance pending 30/6/05	3	9	8	1

Occasionally a person referred to the Board is registered as both an auditor and a liquidator. Where such a person is referred in respect of both registrations, this has been treated as two referrals in the above summary and in the following tables.

Matters referred to the Board according to State and Territory

	ACT					NSW				
	00/01	01/02	02/03	03/04	04/05	00/01	01/02	02/03	03/04	04/05
Auditors	-	1	-	-	1	3	15	4	5	5
Liquidators	-	-	-	-	-	2	5	7	2	7
Total	0	1	0	0	1	5	20	11	7	12
	NT					QLD				
	00/01	01/02	02/03	03/04	04/05	00/01	01/02	02/03	03/04	04/05
Auditors	-	-	-	-	-	3	5	-	2	5
Liquidators	-	-	-	-	-	1	-	1	-	1
Total	0	0	0	0	0	4	5	1	2	6
	SA					TAS				
	00/01	01/02	02/03	03/04	04/05	00/01	01/02	02/03	03/04	04/05
Auditors	1	-	1	-	5	-	-	1	-	-
Liquidators	-	1	-	-	1	-	1	-	-	-
Total	1	1	1	0	6	0	1	1	0	0
	VIC					WA				
	00/01	01/02	02/03	03/04	04/05	00/01	01/02	02/03	03/04	04/05
Auditors	8	5	4	22	5	-	3	-	1	2
Liquidators	1	3	-	1	3	-	-	-	-	-
Total	9	8	4	23	8	0	3	0	1	2

Results by nature of sanction

Results of Application	00/01	01/02	02/03	03/04	04/05
Registration cancelled	11	9	1	2	4 ¹
Registration suspended	12	5	4	4	6 ²
Admonition	-	-	-	-	1 ³
Reprimand	3	1	1	1	3 ⁴
Undertakings required to be given	-	3	5	5	9 ⁵
Dismissed	-	-	-	-	-
No action by Board	-	1	-	-	-
Withdrawn by Commission	10	15	3	15	26

Notes

1. Three auditors and one liquidator.
2. Four auditors and two liquidators.
3. One liquidator.
4. Two auditors and one liquidator.
5. Seven auditors and two liquidators were required to give undertakings (NB This may be in addition to other orders.)

The results shown are after review or appeal (with one exception) and include orders by consent.

ASIC Watchlist

ASIC has advised the Board that it has a Watchlist that is an intermediate measure for dealing with conduct which in ASIC's opinion, while significant, is not sufficiently serious to warrant formal enforcement action. The Board supports the use of those arrangements in relation to less serious conduct matters and believes that the arrangements have operated to date to complement the Board's role.

REVIEWS OF BOARD DECISIONS DURING THE YEAR ENDED 30 JUNE 2005

Vanda Russell Gould

On 21 December 2004, the Board ordered that Mr Gould's registration as a liquidator be suspended for a period of three months pursuant to s1292(2)(d) of the Act and that he give certain undertakings pursuant to s1292(9). Mr Gould sought review of the Board's decision in the Administrative Appeals Tribunal under the Administrative Appeals Tribunal Act, 1975.

At the reporting date, Mr Gould's application to the Tribunal remained outstanding.

Other Proceedings

Vanda Russell Gould

On 17 June 2005, Mr Gould commenced proceedings in the High Court of Australia claiming that the provisions of the Corporations Act and the ASIC Act relating to the Board are invalid in that they confer on the Board the judicial power of the Commonwealth contrary to Chapter III of the Commonwealth Constitution. That chapter prohibits the exercise of judicial power except by a court.

FOI and Section 13 AD(JR) Act Requests

The Board did not receive any applications for information under the Freedom of Information Act 1982 nor any requests for reasons pursuant to s13 of the Administrative Decisions (Judicial Review) Act 1977 during the year.

Contact Officer

The contact officer for this Annual Report is the Acting Registrar, Mr Ron Swinney, phone (02) 9911 2970, facsimile (02) 9911 2975, GPO Box 3731, SYDNEY 2001. Email: ron.swinney@caldb.gov.au.

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 19, 20 and 21 July 2004 and 6 August 2004 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied on an application by the Australian Securities and Investments Commission ("Applicant") that **RALPH DAVID GOODMAN** a registered auditor ("Respondent"), had failed, within the meaning of section 1292(1)(d)(i) of the Act, to carry out or perform adequately and properly the duties of an auditor in relation to the review of the financial report of The Satellite Group for the half-year ended 31 December 1999 in that he:

- I. in breach of para .07 of AUS 902 did not obtain sufficient appropriate evidence, or alternatively in breach of para .24 of AUS 902 he did not document matters which are important in providing evidence to support the review report in relation to providing a moderate level of assurance regarding:
 - i. compliance with para .10 as explained in paras iv and xiii (acquisition of assets to be measured at acquisition date at fair value) of ASRB 1015 (Acquisition of Assets);
 - ii. compliance with paras 5.6 (net assets to be measured at fair value) and 5.7 (measurement of goodwill) of AASB 1013 (Accounting for Goodwill); and
 - iii. the validity of the goodwill balance of approximately \$6.5 million;
- II. in breach of para .07 of AUS 902 did not obtain sufficient appropriate evidence, or alternatively in breach of para .24 of AUS 902 he did not document matters which are important in providing evidence to support the review report in relation to TSG's review of the unamortised goodwill balance performed by TSG in accordance with para 5.4 of AASB 1013; and
- III. failed to consider the going concern issue for TSG in the relevant period in breach of:
 - i. para .12 of AUS 708; and
 - ii. para .07 of AUS 902, or alternatively in breach of para .24 of AUS 902 he did not document matters which are important in providing evidence to support the review report in relation to the going concern issue for TSG in the relevant period;

by order, suspended the Respondent's registration as an auditor for a period of twelve months to commence 14 days after the date on which this order comes into effect. The Board further ordered, pursuant to section 1292(9) of the Act, that the Respondent undertake that, following the one year period of suspension:

for each of the first four times he is engaged to review the half year financial report of a public company, and

for each of the first two times (either or both of which may be within the four matters referred to in paragraph (a)) he is engaged to conduct an audit or a review of the annual or half year financial report of a public company relating to a period during which the company made a major acquisition of assets,

he will not sign the requisite report unless and until he has received (and supplied to ASIC a copy of) a written statement from the national BDO partner in charge of audit that the review or audit has been conducted to an acceptable standard.

The Board further ordered pursuant to s223 of the ASIC Act, that the Respondent pay the Applicant's costs. The Board allowed the costs of senior counsel. The costs are to be agreed between the parties or, failing agreement within 60 days from this order, to be determined in accordance with the Board's Practice Note on Costs.

Dated: 12 August 2004
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

The Australian Securities and Investments Commission ("ASIC") made application to the Companies Auditors & Liquidators Disciplinary Board ("the Board") pursuant to section 1292(1)(d) of the Act to have **SARAH MERRIDEW** ("the Respondent") a registered company auditor dealt with under section 1292 of the Corporations Act, on the basis that the Respondent satisfies one or more of the criteria specified in paragraphs 1292(1)(d)(i) and (ii) of the Act in relation to the audits of compliance plans of twenty-seven (27) registered managed investment schemes for which the company Landmark Property Syndicates Limited ACN 061 586 212 ("Landmark") was the Responsible Entity for the financial years ended 30 June 2001 and 2002; and

- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

It is the decision of the Board, being satisfied on the application of ASIC, that the Respondent has failed to carry out or perform adequately and properly the duties of an auditor as provided in paragraph 1292(1)(d) of the Act in that:

1. the Respondent issued individual unqualified audit reports in respect of the Compliance Plans of nineteen (19) Landmark Schemes for the year ended 30 June 2001, but failed to ensure that eight (8) compliance plan audits were completed by 30 September 2001;
2. the failure to issue compliance plan audit reports on seven (7) managed investment schemes represents non-compliance with the Act contrary to subsection 601HG(3) of the Act;
3. the Respondent did not adequately document the extent of audit procedures and by that omission failed to comply with the requirements of subsection 601HG(3) of the Act;
4. the Respondent as auditor of the Landmark Schemes compliance plans for the year ended 30 June 2001, failed to notify ASIC that the managed investments schemes in six (6) syndicates and trusts had failed to lodge financial reports by 30 September 2001 in accordance with sections 314 and section 315 of the Act. The Respondent should not have signed the audit opinion in respect of a Compliance Plan until after sighting the audit opinion and financial report for each respective scheme;
5. in respect of two (2) Landmark Schemes, the Respondent signed an unqualified compliance plan audit report on 27 September 2001 failing to note that they had breached Clause 4.8 of the schemes' constitutions during the year ended 30 June 2001 by the two (2) schemes acquiring real property in other schemes without approval by special resolutions of the owners;
6. the Respondent as auditor of the Landmark Schemes compliance plans for the year ended 30 June 2002, failed to notify ASIC that the audit of the Landmark Scheme compliance plans at 30 June 2002 would not be completed by 30 September 2002 – being a failure to have regard to subsection 601HG(4) of the Act.

The Board therefore orders that Sarah Merridew be reprimanded for her conduct as auditor of compliance plans in respect of registered managed investment schemes for which Landmark Property Syndicates Limited ACN 061 586 212 was the Responsible Entity for the years ended 30 June 2001 and 2002.

The Board notes that the Respondent has ceased to practice as an auditor and has previously tendered her registration as a company auditor which ASIC will accept within seven (7) days of the date of this order.

The Board also requires the following undertaking pursuant to section 1292(9) of the Act – and notes that the Respondent consents to give it in writing within fourteen (14) days of the date of this order – namely that the

Respondent shall not reapply for auditor registration for a period of five (5) years from the date of this order.

The Board further orders, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001, that the Respondent pay ASIC's costs to be agreed between the parties, or failing agreement within fourteen (14) days of the date of this order to be taxed by the Board pursuant to the Board's Costs Practice Note dated 6 December 1993 (as amended) in accordance with the Second Schedule of the Federal Court Rules 1979 (as amended).

Dated: 9 September 2004
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

The Australian Securities and Investments Commission ("ASIC") made application to the Companies Auditors & Liquidators Disciplinary Board ("the Board") pursuant to section 1292(1)(d) of the Act to have **MARK O'SHEA** ("the Respondent") a registered company auditor dealt with under section 1292 of the Corporations Act, on the basis that the Respondent satisfies one or more of the criteria specified in paragraphs 1292(1)(d)(i) and (ii) of the Act in relation to audits of registered managed investment schemes ("Landmark Schemes") for which the company Landmark Property Syndicates Limited ACN 061 586 212 was the Responsible Entity for the financial year ended 30 June 2001 and of related half-yearly financial reports for the six months ended 31 December 2001; and

- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

It is the decision of the Board, being satisfied on the application of ASIC, that the Respondent has failed to carry out or perform adequately and properly the duties of an auditor as provided in paragraph 1292(1)(d) of the Act in that:

1. the Respondent, as auditor of the Landmark Schemes for the year ended 30 June 2001, signed an unqualified audit report in respect of

Landmark Property Portfolio - Syndicate No. 4 and by doing so failed to identify that it had failed to comply with Clause 4.8 of the Syndicate's Constitution and Clause 17.3 of the Compliance Plan during the year ended 30 June 2001 by the scheme acquiring real property in another scheme without approval by special resolution of the owners;

2. the Respondent as review auditor of the Landmark Schemes for the half-year ended 31 December 2001, failed to identify that another Landmark Scheme, the Toowong Syndicate, had failed to comply with Clause 4.8 of the Syndicate's Constitution and Clause 17.3 of the Compliance Plan during that half-year by the scheme acquiring real property in another scheme without approval by special resolution of the owners; and
3. the Respondent failed to notify ASIC that the managed investment schemes in six (6) syndicates and trusts had failed to lodge financial reports by 30 September 2001 in accordance with sections 314 and 315 of the Act.

The Board therefore orders that MARK O'SHEA be reprimanded for his conduct as auditor of registered managed investment schemes for which Landmark Property Syndicates Limited ACN 061 586 212 was the Responsible Entity for the financial year ended 30 June 2001 and of related half-yearly financial reports for the six months ended 31 December 2001.

The Board also requires the following undertakings, pursuant to section 1292(9) of the Act – and notes that the Respondent consents to give them:

1. that the Respondent will not for a period of 12 months from the date of this order sign an audit report that is required to be signed by a registered company auditor;
2. that the Respondent will attend an additional 15 hours of continuing professional education in relation to audit practice and procedure, in particular in relation to Auditing Standards (AUS's) issued by, or on behalf of, CPA Australia and the Institute of Chartered Accountants, in addition to that required by the Institute of Chartered Accountants Professional Development Program; and
3. that the Respondent will provide ASIC with proof of compliance with paragraph 2 within 30 days of the completion of the 12 month period beginning on the date of this order.

The Board further orders, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001, that the Respondent pay ASIC's costs to be agreed between the parties, or failing agreement within fourteen (14) days of the date of this order to be taxed by the Board pursuant to the Board's Costs Practice Note dated 6 December 1993 (as amended) in accordance with the Second Schedule of the Federal Court Rules 1979 (as amended).

Dated: 9 September 2004
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

1. The Australian Securities and Investments Commission (“ASIC”) made application to the Companies Auditors and Liquidators Disciplinary Board (“the Board”) pursuant to subsection 1292(2)(d)(i) of the Act to have **ELIZABETH ANN OCCLESHAW** (“the Respondent”), a registered liquidator, dealt with under section 1292 of the Act, on the basis that the Respondent satisfies the criteria specified in subsection 1292(2)(d)(i) of the Act;
2. ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval; and
3. the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter.

The Board was satisfied on the application of ASIC that the Respondent had failed to carry out or perform adequately and properly the duties of a liquidator as provided in subsection 1292(2)(d)(i) of the Act, in that she made a statement to ASIC which was false and misleading in a material particular without taking reasonable steps to ensure that the statement was not false or misleading.

The Board ordered that the Respondent be reprimanded.

The Board further ordered, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001, that the Respondent pay ASIC’s costs in the sum of \$2,500 within 30 days of this order coming into effect.

Dated 3 December 2004
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 22 February 2005 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **BRIAN ANTHONY HENSHAW** ("Respondent"), a registered Auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1288 of the Act. The Board, by order cancelled the Respondent's registration as an Auditor.

The Board further ordered pursuant to section 223 of the Australian Securities and Investments Commission Act, 2001 that the Respondent pay the Applicant's costs in the sum of four hundred dollars (\$400).

Dated 24 February 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 22 February 2005 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **ANATOL SCHILIN** ("Respondent"), a registered Auditor, to be dealt with under section 1292 of the Act, that the Respondent had contravened section 1288 of the Act. The Board, by order cancelled the Respondent's registration as an Auditor.

The Board further ordered pursuant to section 223 of the Australian Securities and Investments Commission Act, 2001 that the Respondent pay the Applicant's costs in the sum of three hundred dollars (\$300).

Dated 24 February 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 22 February 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") made the following orders:

WHEREAS:

1. The Australian Securities and Investments Commission ("ASIC") made application to the Companies Auditors & Liquidators Disciplinary Board ("the Board") pursuant to section 1292(2) of the Act to have **DARYL WAYNE SCOTT** ("the Respondent") a registered auditor dealt with under section 1292 of the Act, on the basis that by reason of the matters set forth in the statement of facts and contentions filed with the Board that the Respondent has contravened section 1292(1)(d)(i) of the Act in that he has failed to carry out the duties of an auditor;
2. The Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
3. ASIC and the Respondent have reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

AGREED FACTS

4. ASIC has filed a statement of facts and contentions in which it contends that the Respondent has failed to carry out or perform adequately and properly the duties of an auditor in relation to the audit of Mitchell Investments Limited, ACN 007 150 807 for the year ended 30 June 2003 in that he:
 - (a) Failed to obtain sufficient appropriate audit evidence in accordance with Australian Auditing Standard (AUS) 502, [Audit Evidence] para .02, to plan the audit appropriately in accordance with AUS 302 [Planning] paras .02 and .12, and to prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit as required by AUS 208 [Documentation] para .05 as the Respondent:
 - i Failed to send external confirmation letters prior to signing the audit opinion and therefore did not receive any external confirmation of loan balances prior to signing the audit opinion.
 - ii Failed to adequately consider and incorporate external confirmation testing of loans in the planning phase of the audit.
 - iii Failed to adequately obtain and record details relating to the external loan confirmations.
 - (b) Failed to obtain sufficient appropriate audit evidence in accordance with AUS 502 [Audit Evidence] para .02, to plan the audit appropriately in

accordance with AUS 302 [Planning] paras .02 and .12, and to prepare working papers that are sufficiently complete and detailed to provide an understanding of the audit as required by AUS 208 [Documentation] para .05 as the Respondent:

- i Failed to send external confirmation letters prior to signing the audit opinion and therefore did not receive any external confirmation of deposit balances prior to signing the audit opinion.
 - ii Failed to adequately consider and incorporate external confirmation testing of deposits in the planning phase of the audit.
 - iii Failed to adequately obtain and record details relating to the external deposit confirmations.
- (c) Failed to meet the requirements of AUS 702 [The Audit Report on a General Purpose Financial Report] para .35 by signing the audit opinion prior to the directors signing or approving the directors' declaration.
- (d) Failed to comply with AUS 206 [Quality Control for Audit Work] paras .02 .04 .07 and .08 as the Respondent could not produce a policies or procedures manual used in the audit by the firm Lockwood and Partners, when requested.
- (e) Failed to comply with AUS 206 [Quality Control for Audit Work] paras .08 and .15 and AUS 208 [Documentation] para .05 as audit check lists had not been completed in several audit areas and the audit working papers were deficient in several respects.
- (f) Failed to meet the requirements of AUS 706 [Subsequent Events] para .04 and AUS 208 [Documentation] para .05 by not obtaining and documenting sufficient appropriate audit evidence that all events up to the date of the audit report that may require adjustment of, or disclosure in, the financial report, had been identified.

DECISION

It is the decision of the Board that we are satisfied on the application of ASIC that, on the basis of the agreed facts, that each of the contentions set out above in paragraph 4 has been established and accordingly that the Respondent has failed during the course of the audit of Mitchell Investments Limited for the year ended 30 June 2003 to carry out or perform adequately and properly the duties of an auditor in accordance with section 1292(1)(d)(i) of the Act. We therefore order that:

1. The registration of the Respondent as an auditor be cancelled.
2. Pursuant to section 223 of the ASIC Act, the Respondent within 30 days pay the costs of ASIC fixed at \$12,000.

Dated 24 February 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 22 February 2005 pursuant to section 1294 of the Corporations Act, 2001 ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied, on an application by the Australian Securities and Investments Commission ("Applicant") for **BELA JOZSEF VASS** ("Respondent"), a registered Auditor and a registered Liquidator, to be dealt with under section 1292(7) of the Act, that the Respondent was disqualified from managing corporations pursuant to Part 2D.6 of the Act. The Board, by order cancelled the Respondent's registrations as an Auditor and as a Liquidator.

The Board made no order as to costs.

Dated 24 February 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 2 June 2004 and 25 June 2004 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") being satisfied on an application from the Australian Securities and Investments Commission ("Applicant") that **ALAN ROBERT CRAWFORD** a registered auditor ("Respondent"), had failed, within the meaning of section 1292(1)(d)(i) of the Act, to carry out or perform adequately and properly the duties of an auditor in relation to the audit of the trust accounts of Knightsbridge Finance Pty Limited (in liquidation) for the year ended 31 December 1999 in that he:

- (1) failed to obtain sufficient appropriate audit evidence in respect of his audit of the Knightsbridge BPM trust account for the year ended 31 December 1999 in accordance with AUS502;
- (2) failed, as required by section 60(2) of the Finance Brokers Control Act, to properly examine the statement prepared by the finance broker under section 60(1) of that Act, so as to establish that the figure of \$166,629.22 held in the business cheque account trust on behalf of other persons was correct;
- (3) failed to qualify the audit report in accordance with AUS702 of the Knightsbridge trust accounts despite being aware of there being overdrawn balances to the BPM trust account;
- (4) failed to qualify the audit report in accordance with AUS702 of the Knightsbridge trust accounts despite being aware of there being overdrawn balances in the BCT trust account;

by order suspended the Respondent's registration as an auditor for a period of six months. The suspension is to commence at the end of the day on Friday 9 July 2004. The Board further ordered, pursuant to section 1292(9) of the Act, that the Respondent be required to undertake that:

- (1) during the period of suspension the Respondent will not conduct any trust account audits, whether or not required to be conducted by a registered company auditor; and
- (2) that for a period of 12 months immediately following the period of suspension he will conduct trust account audits (being all trust account audits, whether or not required to be conducted by a registered company auditor) only under the supervision (at Mr Crawford's expense) of a registered company auditor approved in advance by ASIC as being suitably qualified for that purpose.

The supervisor must be engaged by Mr Crawford on the basis that the supervisor must certify to ASIC whether or not each trust account audit conducted by Mr Crawford during that further period was conducted to an acceptable standard. That further period will be the longer of the following:

- (a) 12 months following the period of suspension; and
- (b) until Mr Crawford has completed 6 trust account audits which the supervisor has certified to ASIC were conducted to an acceptable standard.

The Board further ordered, pursuant to s223 of the ASIC Act, that the Respondent pay 80% of the Applicant's costs, such costs to be agreed between the parties or, failing agreement within 60 days from this order, to be determined in accordance with the Board's Practice Note on Costs.

Dated 2 March 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 21 March 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied on an application by the Australian Securities and Investments Commission ("Applicant") that **AVITUS THOMAS FERNANDEZ** a registered liquidator ("Respondent") that:

1. Pursuant to section 1292(2)(d)(i) of the Act, the Respondent has failed to carry out or perform adequately or properly his duties as a liquidator.

2. Pursuant to section 1292(2)(d)(ii) of the Act, the Respondent has failed to carry out or perform adequately or properly duties or functions required by Australian law to be carried out or performed by a registered liquidator.
3. Pursuant to section 1292(2)(a)(i) of the Act, the Respondent has contravened section 1288(3) of the Act.

The remaining contention of ASIC contained in the SOFAC was withdrawn at the hearing.

The Board ordered:

- A. That the registration of the Respondent as a liquidator be suspended for a period of three months from the date which is 90 days after this order takes effect;
- B. That the Respondent is required to give the following undertakings:
 1. That during the 90-day period referred to in A, he will accept no appointments, the qualification for which is being a registered liquidator, other than as liquidator of A and M Davis Pty Ltd, which must be a joint appointment with Mr Paul Burness;
 2. That he will comply with all of his obligations in respect of the liquidations, administrations and receiverships to which he is currently appointed and, in particular, ensure that all outstanding lodgments be rectified within a period of 60 days from today;
 3. That he will arrange for a registered liquidator to supervise his activities in respect of existing administrations;
 4. That following his suspension, he will not, for a period of 12 months, accept new appointments, the qualification for which is being a registered liquidator, otherwise than as joint appointments with another registered liquidator; and
- C. That the Respondent pay ASIC's costs of this application within 60 days of the date of this order; such costs to be agreed between the parties, but failing agreement within such 60 days, such costs to be determined and paid under the Board's Practice Note on costs.

Dated 22 March 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 21 March 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") made the following orders:

WHEREAS:

1. The Australian Securities and Investments Commission ("ASIC") made application to the Companies Auditors and Liquidators Disciplinary Board ("the Board") pursuant to section 1292(2) of the Act to have **MARK JAMES SHEALES** ("the Respondent") a registered liquidator, dealt with under section 1292 of the Act on the basis that the Respondent has failed to carry out the duties of a liquidator for the period 8 September 1995 to 24 November 2004 ("the period") in that he has failed to lodge and maintain security under section 1284 of the Act by not complying for the period with the alternative arrangements for liquidators under Policy Statement 33 (PS33) where ASIC agrees not to take enforcement action against a liquidator under section 1284 of the Act provided that the liquidator:
 - (a) holds a public practice certificate from either the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants (the latter being added in PS33.9A on 22 June 2004); and
 - (b) provides to ASIC, and complies with, an undertaking that the liquidator will maintain professional indemnity insurance in accordance with PS33.9B.
2. The Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before the Board, in relation to the matter; and
3. ASIC and the Respondent have agreed on a draft form of orders to be submitted to the Board for its consideration.

AGREED FACTS

- A. The Respondent:
 - (i) was registered as a liquidator on 19 January 1993 and remains registered;
 - (ii) was in breach of section 1284 of the Act for the period as the Respondent did not fully comply with the alternative arrangements in PS33;
 - (iii) was issued a public practice certificate from the National Institute of Accountants on 24 November 2004; and

- (iv) provided to ASIC details of the professional indemnity insurance policy (together with a copy of the certificate of currency for the policy) under cover of a letter dated 18 January 2005; and
- B. ASIC acknowledges that during the period the Respondent has not been appointed as liquidator of any company or undertaken any liquidations.

DECISION

It is the decision of the Board that, in accordance with subparagraph 1292(2)(d)(i) of the Act, we are satisfied on the application of ASIC that the Respondent has failed during the period 8 September 1995 to 24 November 2004 to carry out or perform adequately and properly the duties of a liquidator.

We therefore order that:

1. The respondent is admonished.
2. The Respondent within 30 days must pay ASIC's costs fixed at \$400.

Dated 22 March 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

At a hearing held on 1 April 2005 pursuant to section 1294 of the Corporations Act ("Act"), the Companies Auditors and Liquidators Disciplinary Board ("Board") was satisfied on an application by the Australian Securities and Investments Commission ("Applicant") that **NEIL JOHN CAMERON SMITH** a registered auditor ("Respondent") had failed, within the meaning of section 1292(1)(d)(i) of the Act, to carry out or perform adequately and properly the duties of an auditor in relation to the audit of the consolidated financial statements of the Edge Group for the year ended 30 June 1999.

The Board ordered:

- A. that the registration of the Respondent as an auditor be suspended for a period of six months commencing 14 days after this order takes effect; and
- B. that the Respondent is required to give an undertaking that he will not, for a period of one year following his suspension, sign an audit opinion without first obtaining the written concurrence of the partner in charge of KPMG's department of professional practice - audit or his delegate that Mr Cameron Smith has complied with AUS 708 in the conduct of the relevant audit; and

- C. that the Respondent pay 55 per cent of ASIC's costs in relation to the hearing on a party and party basis, such costs to be as agreed between the parties, or failing agreement within 60 days after this date, such costs to be determined in accordance with the Board's practice note on costs; and
- D. that ASIC's costs of Senior Counsel be allowed.

Dated 7 April 2005
Paul J Coleman
Registrar

Corporations Law
SECTION 1296(1)(c)
NOTICE OF DECISION

WHEREAS:

The Australian Securities & Investments Commission ("ASIC") made application to the Companies Auditors and Liquidators Disciplinary Board ("the Board") pursuant to section 1292(1)(d) of the Act to have **WILLIAM MATTHEW SCHOCH** ("the Respondent") a registered company auditor dealt with under section 1292 of the Corporations Act, on the basis that the Respondent satisfies one or more of the criteria specified in paragraph 1292(1)(d)(i) of the Act in relation to the audit of the consolidated financial statements of Future Corporation Australia Limited (formerly Telco Australia Limited) ACN 075419715, and controlled entities for the financial year ended 30 June 2000; and

- the Board, pursuant to section 1294 of the Act, has provided ASIC and the Respondent with an opportunity to appear and make submissions to, and adduce evidence before, the Board in relation to the matter; and
- ASIC and the Respondent have conducted negotiations and reached a settlement which ASIC and the Respondent have submitted to the Board for approval.

It is the decision of the Board that it is satisfied on the application of ASIC that the Respondent has failed to carry out or perform adequately and properly the duties of an auditor as provided in paragraph 1292(1)(d)(i) of the Act in that:

1. the Respondent failed to conduct the audit in compliance with the Australian Auditing Standards;
2. the Respondent failed to act adequately and properly in his conduct and methodology of the audit; and
3. the Respondent failed to satisfy himself whether the financial statements were prepared in accordance with Australian Accounting Standards.

The Board, therefore, orders that William Schoch be reprimanded for his conduct in the audit of the consolidated financial statements of Future Corporation Australia Limited (formerly Telco Australia Limited) ACN 075419715, and controlled entities for the financial year ended 30 June 2000.

The Board notes that the Respondent has ceased to practice as a company auditor and has previously tendered his resignation as a registered company auditor which ASIC will accept within seven days of the date of this order.

The Board also requires the following undertaking pursuant to section 1292(9) of the Act; namely, that the Respondent shall not reapply for auditor registration for a period of five years from the date of this order.

The Board further orders, pursuant to section 223 of the Australian Securities and Investments Commission Act 2001, that the Respondent pay ASIC's costs of \$34,000 (as agreed between the parties), such payment to be made within 60 days of the date of this order.

Dated 20 April 2005
Paul J Coleman
Registrar