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ASIC
Australian Securities & Investments Commission

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Contents

Notices under the Corporations Act 2001

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Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 341(1) – Variation 01/1084

Pursuant to subsection 341(1) of the Corporations Act 2001 the Australian Securities and Investments Commission hereby varies ASIC Class Order [98/109] by :

1. replacing the word "Law" where it appears in the heading with the words "Act 2001";

2. replacing the words "Corporations Law ("the Law")" where appearing in the first line with the words "Corporations Act 2001 (the "Act")";

3. replacing the word "Law" in all subsequent places where it occurs in the text of the class order with the word "Act";

4. in paragraph (a) first appearing, replacing the words "("the Act")" with the words "(the "ACWCI Act")";

5. in the paragraph immediately following paragraph (b) first appearing, replacing the words "and before 1 July 2000" with the words "and on or before 30 June 2003"; and

6. in Schedule B replacing the word "Act" in all places where it occurs with the words "ACWCI Act".

Dated the 4th day of September 2001

Brendan Byrne

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission
Corporations Act 2001 – Subsection 341(1) – Variation 01/1085

Pursuant to subsection 341(1) of the Corporations Act 2001 the Australian Securities and Investments Commission hereby varies ASIC Class Order [99/1225] by :

1. replacing the word "Law" where it appears in the heading with the words "Act 2001";

2. replacing the words "Corporations Law ("the Law")" where appearing in the first line with the words "Corporations Act 2001 (the "Act")";

3. replacing the word "Law" in all subsequent places where it occurs in the text of the Class Order with the word "Act"; and

4. in the first paragraph, replacing the words "on or before 30 June 2001" with the words "on or before 30 June 2003".

Dated the 21st day of September 2001

Brendan Byrne

Signed by Brendan Byrne
as a delegate of the Australian Securities and Investments Commission

01/1183

IN THE SUPREME COURT OF NEW SOUTH WALES **No. 1252 of 2001**
DIVISION: EQUITY
REGISTRY: SYDNEY

IN THE MATTER OF JAMES HENRY HUTCHINGS AND 4 Others

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

JAMES HENRY HUTCHINGS
First Defendant

TERRENCE WAYNE TINDALL
Second Defendant

DRASMINT HOLDINGS PTY LTD (ACN 079 264 743)
Third Defendant

JADAM MARKETING SERVICES PTY LTD (ACN 079 280 489)
Fourth Defendant

TINDALL MARKETING SERVICES PTY LTD (ACN 074 643 897)
Fifth Defendant

ORDERS

The Court Notes that:

1. For the purpose of these Orders, the following words have the following meaning:

   (a) ***"The Fund"*** means the fund or scheme comprising of:

      (i) monies ("the Monies") had and/or received by any of the First and Second Defendants;

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(ii) investment proceeds ("the Investment Proceeds") from the Monies; and/or

(iii) property derived directly or indirectly from the Monies and the Investment Proceeds,

pursuant to any:

(iv) loan contract, whether written or oral; and/or

(v) any agreement, whether written or oral, to invest in securities and/or futures contracts (including put and call options).

(b) ***"The HT Partnership"*** means the partnership business conducted by the First Defendant and the Second Defendant between 1998 and 2001.

(c) ***"The Cooranbong Property"*** means the property identified in Folio Identifier 1/333168 and known as 41 Alton Road, Cooranbong.

THE COURT DECLARES that:

2. The First and Second Defendants have contravened section 601ED of the Corporations Law by conducting a Managed Investment Scheme namely the Fund which had more than 20 members and which was not registered.

3. Each of the First and Second Defendants have contravened section 780 of the Corporations Law by:

(a) carrying on a securities business; and/or

(b) holding themselves out as carrying a securities business,

namely the Fund in circumstances where they did not hold a dealers licence and where they were not exempt dealers.

4. Each of the First and Second Defendants have contravened section 781 of the Corporations Law by:

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(a) carrying on an investment advice business; and/or

(b) holding themselves out as carrying an investment advice business,

in ~~association with the operation of the~~ Fund in circumstances where they did not hold a dealers licence and where they were not exempt investment advisers.

5. Each of the First and Second Defendants have contravened section 1142 of the Corporations Law by:

(a) dealing in futures contracts on another person's behalf; and/or

(b) holding themselves out as carrying a futures broking business,

in circumstances where they did not hold a dealers licence and where they were not exempt brokers.

6. Each of the First and Second Defendants have contravened section 1143 of the Corporations Law by:

(a) carrying on a futures advice business; and/or

(b) holding themselves out as a futures adviser,

in circumstances where they did not hold a dealers licence and where they were not exempt futures ~~advisers~~ brokers.

THE COURT ORDERS that:

7. The Fund be wound up pursuant to section 601EE of the Corporations Law.

8. Alexander Robert Mackay Macintosh be appointed Receiver ("the Receiver"), without security,

(i) for the purpose of winding up the Fund; and
(ii) of the HT partnership for the purpose of winding up the affairs of the partnership.

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9. The Receiver have all powers necessary for the purpose of winding up including, but not limited to, all the general and specific powers identified in subsections 420 (1) and (2) of the Corporations Law.

THE COURT FURTHER DECLARES that:

10. The Cooranbong Property was purchased by the Third Defendant with monies from the Fund.

11. The net proceeds of the sale of the Cooranbong property are an asset of the HT Partnership.

THE COURT FURTHER ORDERS that:

12. Each of the First and Second Defendants be permanently restrained from operating a Managed Investment Scheme including a business such as the Fund in contravention of section 601ED of the Corporations Law.

13. Each of the First and Second Defendants be permanently restrained from:

(a) carrying on a securities business; and/or

(b) holding himself out as carrying a securities business,

including a business such as the Fund in contravention of section 780 of the Corporations Law.

14. Each of the First and Second Defendants be permanently restrained from:

(a) carrying on an investment advice business; and/or

(b) holding himself out as carrying an investment advice business,

including a business such as the Fund in contravention of section 781 of the Corporations Law.

15. Each of the First and Second Defendants be permanently restrained from:

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(a) dealing in futures contracts on another person's behalf; and/or

(b) holding himself out as carrying a futures broking business,

in contravention of section 1142 of the Corporations Law.

16. Each of the First and Second Defendants be permanently restrained from:

(a) carrying on a futures advice business; and/or

(b) holding himself out as a futures adviser,

in contravention of section 1143 of the Corporations Law.

17. ~~Pursuant to section 206E of the Corporations Law~~, each of the First and Second Defendants be disqualified from managing corporations for life subject to the right to apply for variation of this order on three months' notice after the expiration of five years.

18. The First and Second Defendants pay the costs of the Plaintiff.

ORDERED: 22 June 2001

ENTERED: 13 August 2001

By the Court

Deputy Registrar

BHASKARI SIVA (L.S.)

To: The First Defendant
If you disobey paragraphs 12 to 17 inclusive of these Orders you will be liable to sequestration of property and to imprisonment.

To: The Second Defendant
If you disobey paragraphs 12 to 17 inclusive of these Orders you will be liable to sequestration of property and to imprisonment.

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New South Wales
Supreme Court

CITATION:	**ASIC v Parkes [2001] NSWSC 377**
CURRENT JURISDICTION:	Equity
FILE NUMBER(S):	SC 1464/99
HEARING DATE(S):	4, 5, 6, 7, 11, 12, 13, 14, 17, 19, 20 & 31 July 2000
JUDGMENT DATE:	10 May 2001
PARTIES:	Australian Securities & Investments Commission (P) Damien Parkes (D)
JUDGMENT OF:	Austin J
COUNSEL:	D R Stack (P) J Darvall (D)
SOLICITORS:	Jan Redfern, Solicitor for Australian Securities & Investments Commission (P) Defendant in person

CATCHWORDS: COMPANY LAW - insolvent under administration not to manage a corporation without leave of Court - distinction between managing a corporation and providing consultancy services to it - meaning of 'officer' - officer's duties to act honestly and not to make improper use of position - officer must not make a gift or transfer property with intent to defraud corporation - ingredients of contraventions where officer causes corporation to make payments

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LEGISLATION CITED: Corporations Law (prior to amendments effective 13 March 2000) ss 229, 230(1)(c), 232(2), 232(6), 596(b)

CASES CITED:
Australian Growth Resources Corp Pty Ltd v Van Reesema (1988) 13 ACLR 261
Australian Securities & Investments Commission v Sweeney [2001] NSWSC 114
Marchesi v Barnes [1970] VR 434
Poyser v CCA (Vic) [1985] VR 533
R v Byrnes (1995) 183 CLR 501
Re Altim Pty Ltd [1968] 2 NSWR 762

DECISION: See under heading 'Conclusions'

THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

01/1184

AUSTIN J

THURSDAY 10 MAY 2001

1464/99 AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION V DAMIEN PARKES

JUDGMENT

1 HIS HONOUR: These proceedings were commenced by summons filed on 22 February 1999, and subsequently continued by statement of claim. The plaintiff's case against the defendant falls into two quite distinct parts. First, the plaintiff contends that the defendant has contravened the provision of the Corporations Law which prohibits a bankrupt from managing a corporation. Secondly, the plaintiff contends that the defendant has contravened several provisions of the Corporations Law which prohibit an officer of a corporation from acting in breach of duty. The two parts of the plaintiff's case relate to different corporations and different events. However, the case is unified by the prayers for relief. The plaintiff seeks a declaration that the various provisions have been contravened, and an order prohibiting the defendant from managing a corporation (that is, any corporation) for such period as the Court thinks fit. In submissions, the plaintiff asked for a disqualification for 25 years.

2 Most of the provisions of the Corporations Law to which I shall refer were repealed and replaced by the Corporate Law Economic Reform Program Act 1999 (Cth), which commenced (relevantly) on 13 March 2000, after the events of this case occurred. For clarity and convenience, I shall refer to the provisions which were applicable when the facts of this case occurred, without making any qualification such as 'former'. However, it must be remembered that a process of analysis (which I shall set out) is necessary to determine whether and how the provisions to which I shall refer are applicable and available to the Court now, notwithstanding the intervening amendments.

Managing a corporation whilst insolvent

3 A sequestration order was made in respect of the estate of the defendant by the Federal Court of Australia on 10 June 1998. He remained an undischarged

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bankrupt, and therefore an 'insolvent under administration' (see definition, s 9), until the time of the hearing. The plaintiff alleges that the defendant managed three corporations contrary to the Corporations Law; the corporations being Credit Alliance Pty Ltd, W G Herle Pty Ltd and Barrack Mortgage Managers Pty Ltd.

4 Section 229 (1) provides:

> 'An insolvent under administration must not, without the leave of the Court, manage a corporation.'

5 This is a strict liability provision, in the sense that the prosecutor or plaintiff does not have prove that the insolvent under administration acted with a guilty mind: *Poyser v CCA (Vic)* [1985] VR 533. The prohibition is for the protection of companies and those to deal with them: *Re Altim Pty Ltd* [1968] 2 NSWR 762, 764.

6 Section 91A defines what, for the purposes of s 229, constitutes managing a corporation. The relevant parts of s 91A are as follows:

> '91A (2) A person manages a local corporation if the person, in this jurisdiction or elsewhere, is a director or promoter of, or is in any way (whether directly or indirectly) concerned in or takes part in the management of, the corporation. ...
>
> 91A (4) Except as provided in this section, a person is not taken to manage a corporation.'

7 All of the corporations involved in this case are companies formed under general Australian companies legislation, and are therefore 'local corporations' for the purposes of s 91A: see definition, s 9.

8 As to the issue of contravention of s 229 (1), the only question in the present case is whether the defendant has been concerned in, or has taken part in the management of a corporation at any time since 10 June 1998. There is no suggestion that he has obtained the leave of the Court. Later I shall consider the facts relevant to this issue.

9 If a contravention of s 229 (1) is established, various civil consequences follow. The criminal consequences of contravention are not relevant to this case. Perhaps the most important civil consequence is that the Court may, in the exercise of its inherent jurisdiction and statutory powers under the Supreme Court Act 1970

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(NSW), make declaratory and injunctive orders. I have recently reviewed the case law with respect to the making of declarations of Corporations Law contraventions: *Australian Securities and Investments Commission v Sweeney* [2001] NSWSC 114, paras 30-36. The same general considerations apply with respect to granting an injunction. Equity's traditional reluctance to enjoin the commission or repetition of a crime yields to the public interest in establishing and dealing with contraventions of a law of economic and social importance. The Court's general power to grant an injunction is underscored by s 1324, which makes it clear that an injunction may be granted, in the exercise of the Court's discretion, even if there is no threat of repetition of the contravention.

10 It is open to the Court, relying on these powers, to restrain the defendant from contravening s 229 (1). But the order cannot go beyond the contravention. Specifically, the Court has no power under ss 229 (1) or 1324, or under its general powers, to enjoin the defendant from managing a corporation after he has ceased to be an insolvent under administration.

11 The plaintiff's further amended statement of claim does not, in terms, seek to invoke the Court's power under s 1324 or its general declaratory and injunctive powers. Instead, the following is sought:

> 'an order pursuant to section 230 of the Corporations Law prohibiting the defendant, for such period as the Court may think fit, from managing a corporation.'

12 Section 230 is not available in direct consequence of a breach of section 229 (1). Instead, s 230 is a separate provision empowering the Court to make an order prohibiting a person from managing a corporation for a specified period, in four circumstances. The relevant part is:

> '230 (1) Where, on application by the Commission ... the Court is satisfied:
> ...
> (c) that:
>
> (i) a person (in this subsection ... called the 'relevant person') has repeatedly breached relevant legislation; and
> (ii) on 2 or more of the occasions when the relevant person breached relevant legislation, the relevant person was a relevant officer of a body corporate (whether or not the relevant person was a relevant officer of the same body corporate on each of those occasions); ...
>
> the Court made by order prohibit the relevant person, for such period as is specified in the order, from managing a corporation.'

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13 Once again, s 91A defines what, for the purposes of the section, constitutes managing a corporation.

14 According to s 230 (5):

> 'For the purposes of this section:
>
> (a) a ... person shall be taken to have breached relevant legislation if the ... person has contravened a provision of a relevant enactment; and
>
> (b) a ... person may be taken to have repeatedly breached relevant legislation if the ... person has:
>
> (i) on 2 or more occasions, contravened a particular provision of a relevant enactment;
> (ii) contravened 2 or more provisions of a relevant enactment; or
> (iii) contravened provisions of 2 or more relevant enactments.'

15 The words 'relevant enactment' are defined to mean the Corporations Law or a previous law corresponding to provisions of the Corporations Law: s 230 (6). In the present case the only relevant enactment is the Corporations Law, since all the facts occurred after the Corporations Law commenced in 1991.

16 Thus, contravention of s 229 (1) will enable the Court to make the order sought by the plaintiff only if it is shown that the defendant has contravened

- s 229 (1) on two or more occasions, or

- s 229 (1) and at least one other provision of the Corporations Law.

17 Sections 229 (1) and 230 are among the provisions that were repealed and replaced on 13 March 2000. The provision replacing s 229 (1) is s 260B (3) (coupled with s 206A (1)), which is in Part 2D.6. The provision replacing s 230 (1) is s 206E (1). Item 17 of s 1469 has the effect that, since ASIC's application under s 230 was made in this case before the commencement (on 13 March 2000) of s 206E, both s 230 of the old Law and s 206E of the new Law apply. As far as I can see, there is no relevant difference between the Court's power under the old s 230 and its power under the new s 206E, at least as regards the circumstances of this case. I shall proceed on the basis that the power I am asked to exercise is the power under the old s 230.

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18 In summary, in order to deal with the first part of the plaintiff's case, I must decide

- whether the defendant has been concerned in, or has taken part in the management of, a corporation at any time since 10 June 1998;

- whether the defendant has done so on two or more occasions, or has done so once and also contravened at least one other provision of the Corporations Law; and

- if the answer to both of these questions is affirmative, whether I should, in the exercise of my discretion under s 230, make an order prohibiting the defendant from managing a corporation and if so, the period of the prohibition.

Breach of the statutory duties of an officer of a corporation

19 The plaintiff alleges that in the period from 30 September 1994 to 31 January 1995 the defendant was an officer of Nambucca Investments Pty Ltd and Lawnkin Pty Ltd, and that he was an officer of Schoeller Australia Pty Ltd in the period from January 1996 to 14 January 1997. It contends that the defendant failed to discharge his statutory duties to act honestly and not to make improper use of his position as an officer to gain an advantage or cause detriment to the corporation, and that he made a gift or transfer of property of these corporations with intent to defraud them.

20 The plaintiff claims that the defendant contravened the following provisions of the Corporations Law:

> '232(2) An officer of a corporation shall at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office.'
>
> '232(6) An officer or employee of a corporation must not, in relevant circumstances, make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.'
>
> '596 A person who, while an officer of a company: ...
> (b) with intent to defraud the company or a related body corporate, or members or creditors of the company or of a related body corporate, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of, or charge on, or causes

> or connives at the levying of any execution against, property of the company or of a related body corporate; ...
>
> contravenes this section.'

21 These three provisions apply only in respect of an 'officer'. Section 82A (1) (c) defines 'officer', in relation to a body corporate or entity, to include 'a director, secretary, executive officer or employee of the body or entity.' Section 9 includes the following definition:

> ''executive officer' of a body corporate means a person who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director of the body).'

22 Section 60 (1) states that a reference to a director, in relation to a body, includes a reference to:

> '(a) a person occupying or acting in the position of director of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;
>
> (b) a person in accordance with whose directions or instructions the directors of the body are accustomed to act; ...'.

23 The requirement in s 232 (2) that the officer must at all times act 'honestly' has produced some differences of opinion in the case law. In *Marchesi v Barnes* [1970] VR 434, 438, Gowans J expressed the view that the requirement to act honestly was a requirement to act in good faith in the interests of company. A breach of the obligation to act in good faith in the interests of the company involved, in his Honour's view, consciousness that what was being done was not in the interests of the company, and deliberate conduct in disregard of that knowledge. However, in *Australian Growth Resources Corp Pty Ltd v Van Reesema* (1988) 13 ACLR 261, King CJ expressed the view (at 272) that the section encompasses constructive fraud which may not involve moral turpitude. Officers may fail to act honestly even though they are acting honestly according to their lights. It has been suggested that King CJ's view is more likely to prevail now that s 232 (2) has become a civil penalty provision: *Ford's Principles of Corporations Law* (looseleaf), para [8.300]. For reasons I shall explain, it is unnecessary to attempt a resolution of the conflicting authorities in this case.

24 The reference in s 232 (6) to doing an act 'in relevant circumstances' is a reference to doing the act in any physical location, since all of the relevant corporations in

this case are 'local corporations': see s 232 (6A) and the definition of 'local corporation' in s 9. As to the meaning of 'improper', in *R v Byrnes* (1995) 183 CLR 501, Brennan, Deane, Toohey and Gaudron JJ said (514-5):

> 'Impropriety does not depend on an alleged offender's consciousness of impropriety. An impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the alleged offender by reasonable persons with knowledge of the duties, powers, and authority of the position and the circumstances of the case. When impropriety is said to consist of an abuse of power, the state of mind of the alleged offender is important: the alleged offender's knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power are important factors in determining the question whether the power has been abused. But impropriety is not restricted to abuse of power. It may consist in the doing of an act which a director or officer knows or ought to know that he has no authority to do.'

25 Sections 232 (2) and (6) are civil penalty provisions. If the Court is satisfied that a person has contravened a civil penalty provision, s 1317EA the applies. The following provisions of that section are relevant:

> '1317EA (1) This section applies if the Court is satisfied that a person has contravened a civil penalty provision, whether or not the contravention also constitutes an offence because of section 1317FA.
>
> (2) The Court is to declare that the person has, by a specified act or omission, contravened that provision in relation to a specified corporation or registered scheme, but need not so declare if such a declaration is already in force under Division 4.
>
> (3) The Court may also make against the person either or both of the following orders in relation to the contravention:
>
> > (a) an order prohibiting the person, for such period as is specified in the order, from managing a corporation;
> >
> > (b) an order that the person pay to the Commonwealth a pecuniary penalty of an amount so specified that does not exceed 2000 penalty units.
>
> (4) The Court is not to make an order under paragraph (3) (a) if it is satisfied that, despite the contravention, the person is a fit and proper person to manage a corporation. ...
>
> (7) Section 91A defines what, for the purposes of this section, constitutes managing a corporation.'

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26 The civil penalty provisions in Part 9.4B were substantially overhauled by the amendments which took effect on 13 March 2000. The power to make an order disqualifying a person from managing corporations was taken out of Part 9.4B and is now found in s 206C, although the power still depends on a declaration of contravention of a civil penalty provision, and is not materially different from the old s 1317EA. However, s 1473 (1) provides that Part 9.4B of the old Law continues to apply, notwithstanding the amendments which took effect on 13 March 2000, to a contravention of a civil penalty provision listed in s 1317DA of the old Law. Section 1317DA of the old Law listed, inter alia, s 232 (2) and s 232 (6).

27 Thus, if the Court makes a declaration of contravention of ss 232 (2) or 232 (6) (the only civil penalty provisions relied upon by the plaintiff), it may make an order of the kind sought by the plaintiff in this case, under s 1317EA (3) (a), in the exercise of its discretion and without proof of any further matters.

28 Section 596 (b) has not been amended since the events in this case happened. It is not a civil penalty provision. There is no direct statutory power for the Court to make an order disqualifying the defendant from managing corporations on the ground that a contravention of s 596 (b) is established. The civil consequences of a contravention are generally the same as for a contravention of s 229 (1) - namely that the Court may make a declaratory order in the exercise of its general jurisdiction to do so, having regard to the discretionary considerations that I adverted to in *ASIC v Sweeney*, and may grant an injunction in the exercise of its general power or under s 1324, subject to similar discretionary considerations. In contrast with s 229 (1), where the substance of the provision is that the bankrupt may not manage a corporation, an injunction restraining contravention of s 596 (b) is not an order relating to the general management of a corporation.

29 A contravention of any of ss 232 (2), 232 (6) or 596 (b) has another significance which should be noted. If the defendant is found to have contravened any of those provisions on two or more occasions, there is a 'repeated breach' for the purposes of s 230 of the old Law (s 206E of the new Law): see ss 230 (1) (c) and 230 (5). In those circumstances the Court has the statutory power under s 230 (1) to make an order prohibiting the defendant from managing a corporation for such period as it thinks fit, even though the contraventions do not relate to the management of a

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corporation as such. Equally, these provisions allow such an order to be made where there is a contravention of s 229 (1) and at least one of the other provisions I have mentioned.

30 To summarise, if I find that there has been any contravention of s 232 (2) or s 232 (6), and I make a declaration of contravention accordingly, I have the statutory power under s 1317EA to make a disqualification order without more. If I find no contravention of either of those two civil penalty provisions, but I find two or more contraventions of s 596 (b), or two or more contraventions of s 229 (1), or one or more contraventions of both of those provisions, then I have the statutory power to make a disqualifying order under s 230.

31 A threshold issue to be determined for the purposes of ss 232 (2), 232 (6) and 596 (b) is whether the defendant was at the relevant times an officer of each of the three corporations identified by the plaintiff for the purposes of this part of its case, namely Nambucca Investments, Lawnkin and Schoeller. I shall consider this question separately, and then consider whether the ingredients of any of the three statutory provisions are satisfied on the facts with respect to the Nambucca, Lawnkin and Schoeller payments.

Was the defendant concerned, or did he take part in, the management of Credit Alliance, W G Herle or Barrack Mortgage?

32 Extracts from ASIC's records indicate that since 20 June 1997 there have been no directors in office for Credit Alliance, contrary to the requirements of the Corporations Law. In the case of W G Herle, the directors were replaced by Mr Duffy who was appointed a director on 13 November 1998 and has been the sole director at all subsequent relevant times. In the case of Barrack Mortgage, ASIC's records show that the defendant ceased to be a director on 9 June 1998, the day before he became bankrupt. He was then replaced by Mr Miller. Mr Duffy was appointed a director on 21 December 998. Mr Miller and Mr Duffy have been directors of Barrack Mortgage at all subsequent relevant times.

33 Since the documentary records do not show the defendant to have been a director of any of the companies after he became bankrupt, the plaintiff's case is based on the claim that he was concerned, or took part, in the management of three companies as a matter of fact. The plaintiff relies on the evidence of five

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witnesses, Mr Michalik, Mr Rich, Ms Valiontis, Mr Duffy and Mr Miller. I shall examine the evidence of each of these witnesses.

34 The defendant denies that he was concerned in the management of the three companies. He says he provided services to Credit Alliance and W G Herle as a management consultant. Barrack Mortgage was the trustee of his family trust but, he says, he resigned in favour of Mr Miller prior to becoming bankrupt and has not controlled the company since that time, although he admits to assisting the incoming director. He also relies on his own evidence, and the evidence of Ms Barrett, Mr Lissa and Mr Harris. I shall also examine this evidence below.

Mr Michalik

35 Mr George Michalik was a client of Credit Alliance. He gave evidence by affidavit to the following effect. In about June 1998 he received a telephone call from Mr Nathan Miller, who said he represented Credit Alliance, a finance company. Mr Michalik was considering retirement from the public service and so he was interested in what Credit Alliance had to offer. Mr Miller called at his home, and in July 1998 he attended a meeting with the defendant and Mr Miller at the company's offices in O'Connell Street, Sydney.

36 According to Mr Michalik's affidavit, the defendant introduced himself as the 'managing director' of Credit Alliance. The defendant advised Mr Michalik to invest in a trust that was operated, he said, by Credit Alliance. Mr Michalik accepted that advice. On 24 July 1998 Mr Michalik attended another meeting with the defendant and Mr Miller during which he handed over USD19,000 to the defendant for investment in the trust. Shortly thereafter, he was provided with a draft trust deed in which the defendant was nominated as settlor. He arranged for the deed to be signed and returned. Mr Michalik said that one of the terms of the investment was that he could have access to the funds invested. In the weeks prior to Christmas 1998 he told the defendant that he needed $3000 for Christmas and the holidays. He said the defendant promised to arrange payment, but it was only in January 1999 that he received the money, after many requests. Mr Michalik's evidence is that from February 1999 the defendant told him that there were problems with Credit Alliance. Apart from the $3000, his investment has not been repaid.

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37 Mr Michalik altered his evidence in cross-examination. He resiled from the assertion that the defendant had called himself 'managing director'. He acknowledged that the words 'managing director' came into the picture during a meeting between him and officers of the plaintiff. He agreed that he had handed over his money to Mr Miller rather than the defendant. He agreed that at the meeting on 24 July 1998 the defendant had joined him and Mr Miller in what appeared to be Mr Miller's office, which had the appearance of the office of a principal of the company.

38 Although Mr Michalik altered his evidence, I did not find him to be an unreliable witness. In my view, his evidence indicates that the defendant represented himself to be in charge of Credit Alliance, the 'principal' of the company, although I accept that the defendant did not use the words 'managing director'. Mr Michalik's evidence is inconsistent with the defendant's claim that he was no more than a management consultant to, and creditor of, Credit Alliance. Mr Michalik contacted the defendant to inquire about the status of the investment and to arrange for withdrawal of funds, and the defendant agreed to attend to those matters. These are not the actions of a management consultant.

Mr Rich

39 Mr Gavin Rich gave affidavit evidence that in mid-1998 he was approached by the defendant, who invited him to apply for a job with Credit Alliance. He said that on 24 July 1998 he was approached by Ms Kim Barrett, the defendant's personal secretary, and was given $2000 in US currency. She told him to go to any bank except the ANZ and change it to Australian dollars. He came back with $3,171.60 in cash. He and other staff received their weekly wages in cash later in the afternoon. In early September 1998 he attended a meeting at the offices of the company and was informed by Mr Ian Harris that there would be changes to the corporate structure, and that all existing employees would have to re-apply for available positions. He decided not to re-apply, and resigned.

40 Mr Rich's evidence is only of limited significance. In cross-examination he could not recall by whom, on behalf of Credit Alliance, his employment application had been confirmed as successful. However, there is some significance in his evidence, which I accept, that it was the defendant who approached him to apply for a job.

That conduct suggests an involvement in management of the company, rather than simply a consultancy role.

Ms Valiontis

41 Ms Erefili Valiontis gave affidavit evidence that in May 1997 she commenced employment with MIT Schoeller, for which the defendant and Mr Miller worked at that time. Shortly after she joined that firm, the defendant told her that he was restructuring it. He said he would set up a company which would offer management consultancy services and conduct a mortgage broking business. Credit Alliance was then formed and Ms Valiontis commenced employment with it late in June 1997.

42 Originally the offices of the company were at Hunter Street Sydney, but in about November 1997 the offices were moved to 2 O'Connell Street Sydney. She believed the move was organised by the defendant and Mr Miller.

43 According to her observation, the defendant's role in the company was to focus on the consultancy side of the business, while Mr Miller's role was to focus on generating revenues from mortgage broking (principally home credits and negative gearing proposals). She said that Mr Miller was presented as the managing director of the company, but she believed that the defendant was the person visibly in charge.

44 Her duties were to assist client companies to resolve their business problems, by such things as locating errors in accounts and invoices, reconciling accounts and cash flow monitoring. She said she received her instructions from, and reported to, the defendant. Final decisions on proposed courses of action for clients were the defendant's responsibility.

45 In about July 1998 the defendant told the staff that the consulting side of the business would be wound down, and the company's focus would be on developing Mr Miller's side of the business. This, of course, was shortly after the defendant became bankrupt. A pamphlet was prepared setting out the business and services offered by Credit Alliance, and the defendant told Ms Valiontis that he was exploring options for the company working under a trademark.

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46 In about August 1998 Ms Valiontis and the defendant quarrelled over staff superannuation. Ms Valiontis said that superannuation had not been paid.

47 On about 7 September 1998 Mr Harris, believed by her to be an associate of the defendant, met with staff and informed them that the had been sold and would close on 14 September 1998. A new company called Meralinda Pty Ltd had been established and staff were advised to direct applications for employment to that company, marked to the attention of Mr Miller as general manager. After hesitation, Ms Valiontis applied for a position but was unsuccessful, and her employment was terminated on 14 September 1998.

48 Subsequently she demanded payment of unpaid wages, superannuation and termination payments, but did not receive them. The defendant wrote her a letter dated 12 October 1998, using letterhead which described him as 'management consultant', in which he said that Credit Alliance was having difficulties with cash flow but that her payment had been listed as a priority. She subsequently took proceedings in Parramatta Local Court to recover $3092.37.

49 In cross-examination it emerged that Ms Valiontis had a very low opinion of Mr Miller. She could not specifically recall Mr Miller asking her to perform any tasks, but she did not deny that this was possible, although she acknowledged that she would not have done anything for him even if he had asked.

50 Plainly Ms Valiontis was antagonistic towards the defendant because she had not been paid her entitlements when her employment was terminated. She did not like Mr Miller. However, in my opinion, her antagonism did not distort her evidence. She impressed me in the witness box as a capable person who had a clear recollection of events. A crucial part of her evidence was that, throughout her employment with Credit Alliance, she received her instructions from the defendant, whom she regarded as being in charge. That was so even after she had been informed, in August 1998, that a new managing director had been appointed.

51 Her evidence of general impressions would not, of itself, be compelling, but it is combined with recollections of specific events. That being so, the evidence as a whole strongly indicates that the defendant was concerned in the management of Credit Alliance after he became bankrupt on 10 June 1998, at least until Ms Valiontis left the company on 14 September 1998. The defendant's letter of 12

October 1998 provides some evidence that he was continuing to occupy a management role even at that time. Although the letter describes him as a management consultant, the contents of the letter relate to a matter of management of a kind to which an officer of the company, rather than a consultant, would attend.

Mr Duffy

52 Mr Kenneth Duffy gave affidavit evidence that he came to Australia from Ireland in 1996, on a working holiday, and since October 1997 he has worked at the Republic Bar located at 16 O'Connell Street Sydney. He was promoted to bar manager in December 1998 and since that time has worked in that position for 55 to 60 hours per week.

53 He said that in about May 1998 he became friendly with a customer whom he now knows to be Mr Miller. He said Mr Miller told him that he was a director of Credit Alliance, a finance company, but that he wanted to give people the impression that he was involved with the company though not actually a director of it. Shortly afterwards, Mr Miller offered Mr Duffy a job as a sales consultant. At the premises of Credit Alliance he observed that the defendant occupied one of the two main offices. Mr Duffy said he arranged for three clients to sign the re-financing mandates with Credit Alliance, but he did not receive the commissions that became due to him for doing so.

54 On 21 September 1998 the defendant asked Mr Duffy to help him out by becoming a director of Barrack Mortgage. Other evidence shows that Barrack Mortgage was trustee of the defendant's family trust, and its only operation was the management of a trust asset, being a property at Vaucluse which was occupied by the defendant's family. Mr Duffy's evidence is that the defendant told him that he would be the director 'in name only' and that the defendant would 'run things'. He agreed to do so. He signed an ASIC form which said that he would be the new director of Barrack Mortgage. The post office box used by Barrack Mortgage belonged to the defendant.

55 Mr Duffy said that while he was a director of Barrack Mortgage he was never involved in the executive management of the company and did not make decisions in relation to it. He never employed or terminated any staff. At all times, he acted

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in accordance with the instructions and directions of the defendant. He attended the defendant's office for less than an hour per week to sign documents as directed by the defendant.

56 Mr Duffy's evidence is that in late September 1998 the defendant asked him to sign a lease of a motor vehicle as a director of Barrack Mortgage, and he agreed to do so. On 25 September 1998 he signed a lease agreement between Barrack Mortgage and Esanda Finance, on behalf of Barrack Mortgage. The motor vehicle was used principally by the defendant.

57 Mr Duffy said that during October 1998 the defendant approached him, accompanied by Mr Miller. The defendant explained that he needed $10,000 to pay mooring and repair fees for his yacht, 'Freight Train', so he could bring it to Sydney from Cairns and use it for cruises on the harbour. The defendant asked Mr Duffy to lend that amount to him for one month, and promised to pay interest of $1000. Mr Duffy agreed and then went with Mr Miller to Westpac Bank, and obtained a cash advance of $10,000 on his Visa card. He later handed $10,000 in cash to the defendant. He received a letter dated 16 October 1998 on the Credit Alliance letterhead, signed by Mr Miller, acknowledging receipt of the $10,000 as a cash advance to the company, and undertaking to pay it in 30 days, with interest of $1000.

58 A short time later the defendant telephoned Mr Duffy from Cairns, arranged to borrow $1600 for air fares for himself and his children to fly from Cairns to Sydney.

59 In early November 1998 the defendant told Mr Duffy that Credit Alliance would be going into liquidation with huge debts. The defendant said he would open a new 'clean' company called W G Herle, and asked Mr Duffy to be the sole director in name only. According to Mr Duffy, the defendant said that the debts of Credit Alliance would stay with Credit Alliance but the assets would go to W G Herle. Mr Duffy's evidence is that the defendant said that the only option was for Mr Duffy to be the director, because Mr Miller was bankrupt and the defendant had 'a problem with the ASIC', and if Mr Duffy wanted to recover the money he had lent for the yacht and airline tickets, he would have to become the director. Mr Duffy agreed. The defendant told him he could not repay the $10,000 because there was a problem with the yacht, which was still in Cairns.

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60 On 13 November 1998 Mr Duffy signed ASIC forms saying that he was the new director and secretary of W G Herle, and handed them to the defendant. His evidence is that while he was a director of W G Herle, he did not make any decisions in relation to the company, and did not employ or terminate any staff. He said that all the steps he took were taken at the direction and instruction of the defendant. On 13 November 1998 he also signed a first ranking mortgage debenture between Credit Alliance as mortgagor and W G Herle as mortgagee. According to Mr Duffy, Mr Miller told him that the defendant had asked him to arrange for Mr Duffy to sign the document, which would result in the assets of Credit Alliance being transferred to W G Herle. On 17 November 1998 Mr Duffy signed two forms of transfer of shares in W G Herle, both transferring a single share to him as transferee.

61 Mr Duffy's evidence is that at about the same time, the defendant told him that it would be necessary to arrange for various credit cards and a cheque account, and he would have his secretary, Ms Barrett, sort out the forms. On 26 November 1998 the defendant told Mr Duffy that a new photocopier was needed for the company, and he would arrange for Ms Barrett to prepare the necessary paperwork for Mr Duffy to sign. On the same day Ms Barrett gave him a letter on W G Herle letterhead to sign, addressed to Eastcoast Business Equipment Pty Ltd, to procure a new photocopier on a finance arrangement. Mr Duffy also signed an application form for a cheque account for W G Herle with St George Bank, and was later issued with a cheque book and bank cards, one of which was for the defendant to use.

62 Mr Duffy's evidence is that at the beginning of January 1999 the defendant told him that W G Herle could not trade until some problems had been sorted out. Later in that month he told Mr Duffy that the first Credit Alliance company had stopped trading, and that the new Credit Alliance company had the name of its ACN, 'trading as Credit Alliance'. Mr Duffy said that the defendant told him that the purpose of this arrangement was to force creditors to find out which company to sue.

63 According to Mr Duffy, early in February 1999, the defendant asked him to sign eight blank cheques on the St George account, to permit the defendant to pay some debts and staff wages. Mr Duffy signed eight blank cheques.

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64 On 11 February 1999, when he returned from holidays, Mr Duffy and his parents confronted the defendant. Mr Duffy demanded to see the books and accounts of W G Herle. The defendant at first said that there were none. Mr Duffy demanded to resign from W G Herle and the defendant agreed, saying he had someone to buy the company for $2. The defendant said he would assign the proceeds of a loan, which he called 'the Avanti loan', to Mr Duffy to repay money owing to him.

65 Subsequently Ms Barrett handed Mr Duffy a ring folder containing some company records of W G Herle. They included a balance sheet and profit and loss account as at December 1998 which Mr Duffy had not previously seen. The defendant also handed Mr Duffy a letter dated 11 February 1999, signed by him and Mr Miller, purporting to assign their right to the proceeds of the Avanti loan to Mr Duffy. On 12 February 1999 Mr Miller handed to Mr Duffy's father a receipt, signed by the defendant, for the $1600 lent for air fares.

66 The defendant has attacked Mr Duffy's evidence on several grounds. First, the defendant submits that Mr Duffy's perception of the defendant as running Credit Alliance was based only on what he was told by Mr Miller. That is not quite true. Mr Duffy also observed the premises of Credit Alliance. The witnesses were not entirely clear as to the physical location of the various offices in the Credit Alliance premises, but I accept Mr Duffy's evidence that he saw that the defendant was occupying a substantial office.

67 Secondly, the defendant submits that Mr Duffy was an unconvincing witness, giving evidence in a script performance. As I observed him in the witness box, Mr Duffy was somewhat nervous and clearly had rehearsed his evidence. He had an obvious grievance against the defendant. However, I did not find him to be an unreliable witness. My overall impression was that Mr Duffy had a level of naivete in his dealings with the defendant, approaching plain stupidity, but he was quite frank about the situation.

68 Mr Duffy was challenged in cross-examination about his evidence that he had attended a meeting of Barrack Mortgage. He was presented with minutes of a meeting, and said 'it wasn't a meeting as such '. I do not find that evidence to be contradictory. It is not unusual for discussion about the affairs of a proprietary company to be later recorded as minutes of a meeting.

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69 It is true that Mr Duffy's evidence fluctuated during cross-examination on certain points. The following aspects of his evidence were unsatisfactory: that he was unaware of a proposal to license the name of Credit Alliance; that he was the sole signatory of the W G Herle bank account (when it emerged in cross-examination that Mr Miller had become a signatory); that he had no contact with Mr Lissa concerning the ordering of a company; and that he had not employed anyone for W G Herle (although he acknowledged in cross-examination that he might have signed some sales consultancy agreements). However, the qualifications to his evidence made in cross-examination were fairly minor, and referable to lapses of memory.

70 Subject to those qualifications, I accept Mr Duffy's evidence. It is supported to a degree by the documentary evidence annexed to his affidavit. It is quite strong evidence that the defendant was actively concerned in the management of W G Herle and Barrack Mortgage. It also provides some corroboration for other evidence that the defendant was concerned in the management of Credit Alliance.

Mr Miller

71 Mr Miller gave affidavit evidence and was extensively cross-examined. Much of his evidence amounted to an attempt by him to establish that his actions as a director of Credit Alliance and Barrack Mortgage were undertaken at the direction of the defendant and without any exercise of independent discretion by him. I do not find it plausible, in light of Mr Miller's cross-examination and the other evidence, that Mr Miller acted only under the direction of the defendant. Indeed, the plaintiff did not make that submission. Nevertheless, I do not believe it would be right to reject his evidence comprehensively. His evidence is, by and large, a case of exaggeration rather than falsehood. I shall refer to parts of it which, in my view, support the conclusion that the defendant took part in the management of Credit Alliance. In my view, there is nothing of any significance in Mr Miller's evidence with respect to the defendant's role in the other two companies.

72 Mr Miller was approached by the defendant in June 1997. I accept Mr Miller's evidence that the defendant said he could not be a director because he had some domestic problems with his wife, and problems with the Commission arising from a former business. This is consistent with other evidence that Schoeller had

collapsed in January 1997 and the Commission had conducted examinations of Mr Gould (a director of Schoeller) on 13 June 1997; Ms Canty on 16 May 1997; and Mr Parkes on 10 July 1997.

73 The company was set up by Mr Lissa, the defendant's accountant, and was called Credit Alliance. Mr Miller gave evidence that the defendant said to him, 'You'll be the sole director, but I'll tell you what to do as the director'. Mr Miller said 'Good, I'm looking forward to it'. I find it unlikely that the defendant and Mr Miller would have had the conversation to which Mr Miller deposes, although it is likely that the defendant said something to the effect that the only reason he was not also a director was because of the difficulties referred to above. Such a statement would imply that the defendant would be involved in management, but not that he would be in total control.

74 Subsequently Mr Miller signed an ASIC form relating to his appointment as sole director. According to Mr Miller, the defendant told him he would be the sole signatory on Credit Alliance's bank account, but that the defendant would tell him what bills to pay and would monitor cash flow. Again, it seems to me more likely that the defendant simply said that he would assist, rather than that he would dictate the use of the cheque account. I do not accept Mr Miller's evidence that he wrote cheques (other than for minor expenses) only on the defendant's directions, but I accept that the defendant was involved in some important decisions as to the payment of accounts.

75 Mr Miller's evidence about the selection of new premises, first in 1997 and then in 1998, shows that both Mr Miller and the defendant were involved in management of those processes, although only Mr Miller signed the lease.

76 Mr Miller said that during the period from about July 1998 to December 1998 there were approximately 30 telemarketers working for Credit Alliance, but only about eight worked at any one time. The defendant told him that he would interview applicants for positions as telemarketers, but that Mr Miller would sign the letters of employment. Mr Miller agreed, and signed about 11 letters of employment as a director of Credit Alliance, in accordance with directions of the defendant. Mr Miller said he did not conduct any interviews or employ any staff. Mr Miller also gave evidence that in about May 1998 the defendant told him that he had arranged for a computer expert to establish a telemarketing system for Credit Alliance. The

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expert, Mr James Cross, attended the office of Credit Alliance on a daily basis from about May 1998 until about November 1998. Mr Miller said he did not take any part in engaging Mr Cross and did not give him instructions.

77 It is not easy to decide where the truth lies with respect to these matters. Mr Miller's evidence is consistent with the general observations of Ms Valiontis, but it would also be consistent with the view that Mr Miller was responsible for marketing to hold that he had a greater role in the engagement of telemarketers than he admitted to in evidence. Again, it seems to me more likely that Mr Miller and the defendant were both actively engaged in the staffing processes.

78 In about January 1998 Mr Miller noticed one of Credit Alliance's employees recording varied expenses of the company as advances to him. He raised the matter with the defendant, who told him that the company needed to look solvent, and by recording payments as advances and therefore assets, he was able to make the balance sheet look good. I am sceptical about this evidence. I would be surprised if the defendant would have engaged in such a transparent and unsubtle deception. There is other evidence that Mr Miller incurred debts to the company.

79 In about June 1998 the defendant asked Mr Miller to be a director of Barrack Mortgage, due to problems he was having with the Commission. Mr Miller said he agreed and then signed ASIC forms consenting to be a director and notifying ASIC of his appointment.

80 Mr Miller gave evidence of a conversation with the defendant in about August 1998 in which the defendant told him that he had lost confidence in his ability, and was replacing him as a director of Credit Alliance. The new director was to be a person called Ben Taylor. The defendant told Mr Miller that he would remain as marketing director, concentrating on sales. Shortly after this conversation the defendant gave Mr Miller new business cards with the title 'marketing director'. Mr Miller said he never met or spoke to Mr Taylor. This evidence was corroborated, to a degree, by the evidence of Ms Valiontis, and on balance I accept it.

81 According to Mr Miller, in November 1998 the defendant told him that he would protect the name of Credit Alliance and its assets by changing the name of the company to its ACN number and making the name 'Credit Alliance' a trademark.

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The trademark would be purchased by a new company, W G Herle, which would operate under the Credit Alliance name. The external evidence is a first ranking mortgage debenture signed by Mr Duffy on behalf of W G Herle and by Mr Miller on behalf of Credit Alliance. There is nothing on the face of it to show that the defendant was involved in the transaction. On the other hand, observing the defendant, Mr Duffy and Mr Miller in the witness box, I formed the view that the transfer of assets scheme was more likely to have been the product of the defendant's agile mind than of the more limited financial imagination of Mr Miller or the very limited financial understanding of Mr Duffy. On balance, I accept this part of Mr Miller's evidence.

82 Mr Miller gave some evidence to the effect that the defendant deleted financial records in anticipation of a requirement for production of the information to ASIC. It is not necessary for me to come to a conclusion about this evidence. It is difficult to do so, given that neither the defendant nor Mr Miller was an entirely trustworthy witness and obviously there was considerable animosity between them. I shall not make a finding about that evidence.

83 Mr Miller also gave evidence concerning attempts by the defendant to raise money through Credit Alliance towards a mortgage on his property at Vaucluse. According to Mr Miller, the defendant asked him to find an investor who was prepared to advance $30,000 on second mortgage security over the Vaucluse property. Mr Miller contacted Mr Alfred Glendinning, who provided the funds. There are serious allegations of misrepresentation about this transaction, which it is unnecessary for me to explore. It appears to me that the transaction does not provide evidence that the defendant was taking part in the management of Credit Alliance, since his actions could be explained as actions of the mortgagor rather than of a mortgage broker. I make similar comments about Mr Miller's evidence of attempts to raise $20,000 on the security of another property for the defendant.

84 Of more significance in the present context is Mr Miller's evidence of a conversation he had with the defendant on 23 October 1998. Mr Miller told the defendant he had run out of money and could not afford to buy groceries for his family. The defendant said he would give Mr Miller a Credit Alliance cheque, but Mr Miller said that he needed cash immediately to buy groceries. The defendant contacted the supermarket and made an arrangement for Mr Miller to use a Credit

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Alliance cheque. The defendant prepared a letter addressed to the supermarket on Credit Alliance letterhead, signed by him as 'Financial Controller', confirming that Mr Miller was authorised to use the company's cheque for purchases at the supermarket. I regard this as clear evidence of an occasion upon which the defendant was concerned, or took part, in the management of Credit Alliance.

Mr Parkes

85 The defendant gave a brief answer to the plaintiff's allegations in his Amended Defence filed on 17 March 2000. Until the time of the final hearing, the defendant was a litigant in person. Fortunately, however, he was represented by counsel for most of the hearing. He had previously filed numerous affidavits but they were inadmissible to a very substantial extent, for one reason or another. I decided at the hearing that there would be a risk of unfairness to the defendant if his evidence in chief stood or fell on the admissibility of his affidavits. I therefore allowed him to give extensive oral evidence in chief, and on that basis no attempt was made to read his numerous affidavits.

86 The defendant denied that he took part or was concerned in the management of any of the three companies after he became bankrupt on 10 June 1998. It is established that he carries on business as a management consultant, and has done so at all material times. The defendant claimed that Credit Alliance was a client of his management consulting practice, and that the company and its director, Mr Miller, are debtors of the defendant. He denied that he controlled Credit Alliance, or operated its bank account, or hired or fired staff, or negotiated products or leases. He claimed that Mr Miller had misappropriated considerable funds from Credit Alliance, which would otherwise have been available to pay its creditors.

87 According to the defendant, W G Herle was also a client of the management consulting practice. The defendant said that he engaged an accountant to acquire the company on the instruction of Mr Duffy, its director, and provided ongoing advice and assistance to Mr Duffy in the preparation of business plans. He said that he was not paid an account rendered for his services. He denied ever controlling the company, and said he did not even know where its bank accounts were.

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88 The defendant was a director of Barrack Mortgage, but he resigned from that office in favour of Mr Miller when he presented the debtor's petition, which led to his becoming bankrupt. According to the defendant's evidence, from the date of his resignation as a director he did not control the company or take part in the management of its affairs. Because of his long association with the company, however, he assisted the incoming director, Mr Miller, with information and support, as would be expected (in his submission) from a responsible outgoing director.

89 For reasons that I shall develop in my findings of fact on the second part of the plaintiff's case, I do not regard the defendant as a reliable witness. I would not accept his evidence on any material matter in the absence of corroboration. But on the first part of the plaintiff's case there are some elements of his evidence that tend to support the plaintiff's witnesses, albeit to a limited degree. He agreed that his post office box was used by Credit Alliance, and that he had his own 'Credit Alliance' business card, and that at one stage he was taking a share of profits from the company.

Ms Barrett

90 Ms Barrett gave evidence that was generally supportive of the position taken by the defendant. Her evidence portrayed Mr Miller as the initiator in the formation of Credit Alliance and as the person who engaged her to work for the company. It represented Mr Miller as the manager of the company, giving instructions to the defendant, who received payment upon invoices submitted by him with respect to advisory work, rather than directors' fees, salary or wages. She gave evidence of having seen Mr Miller give specific directions to the defendant. She said that she and Mr Miller interviewed and engaged staff and the defendant did not, and that cheques were drawn by Mr Miller and not by the defendant, who was not consulted with respect to them. She also gave evidence that portrayed Mr Duffy as the initiator in the formation of W G Herle and as the active controller of that company.

91 I shall assess the general credibility of Ms Barrett's evidence by dealing first with her assertion that she was the office manager of Credit Alliance, appointed by Mr Miller to that position. That assertion is inconsistent with evidence given by Mr Miller, Mr Duffy and Ms Valiontis. In my view, regardless of whether her position

might formally have been described as 'office manager', her real job was as the defendant's personal assistant. That conclusion is consistent with my overall view, supported by other evidence, that the defendant had a substantial role in the management of Credit Alliance both before and after he became bankrupt. Other pertinent points emerged during Ms Barrett's evidence. She had been engaged as the defendant's personal assistant at Schoeller from November 1995 until its collapse in January 1997. She was his personal assistant at MIT Schoeller from January to June 1997. There is evidence that the defendant took steps to secure her employment with Credit Alliance. Her workspace was located within the defendant's office, although there was a partial separation between their desks.

92 Ms Barrett appeared to be very well aware of matters relating to the defendant's business affairs. For example, she was aware of the defendant's problems with the Commission prior to the commencement of the operations of Credit Alliance. They were obviously friendly, and the defendant had described her, in the presence of others, as the person he most trusted at Credit Alliance. Ms Barrett conceded that it would be appropriate to describe the defendant's position within Credit Alliance as though he were manager, and that Mr Duffy spent very little time in the Credit Alliance offices.

93 Observing her in the witness box, I formed the view that Ms Barrett was giving evidence in order to help her old friend, and was prepared to put an interpretation on the facts that was most favourable to the defendant. That overall assessment has led me to decide that I should not accept her evidence in the absence of corroboration, and that I should prefer the evidence of the plaintiff's witnesses.

Mr Lissa

94 Mr Gary Lissa, a chartered accountant, gave evidence that Mr Miller was introduced to him by the defendant, and that Mr Miller was the initiator in the formation of Credit Alliance, instructing him to form the company. He said he had cause to have contact with Mr Miller almost weekly after the formation of the company in June 1997, and at all times it appeared to him that Mr Miller was in charge of Credit Alliance and the defendant was an adviser. Mr Lissa gave some advice to Mr Miller concerning the formation of a family company, and provided him with a shelf company known as Meralinda Pty Ltd (although he modified this evidence in cross-examination). According to Mr Lissa, Mr Miller decided in

October 1998 to sell Credit Alliance to his friend Ben Taylor, who would become the director.

95 Mr Lissa gave evidence that he had discussions with Mr Miller about the many disputes between Mr Miller and the clients of Credit Alliance. Mr Lissa said that he may have conferred with the defendant as well, since the defendant and Mr Lissa were both concerned for the future of the company and its employees. He said that many of the issues that he discussed with the defendant would not have arisen if the defendant had some management control, and he had raised them with the defendant so that the defendant could persuade Mr Miller to resolve the issues.

96 According to Mr Lissa, Mr Duffy became a client of his on the recommendation of the defendant. Mr Duffy instructed him to purchase a company. He found that Mr Duffy, like Mr Miller, had a very 'hands-on' management style.

97 It is clear from Mr Lissa's evidence that both he and the defendant were aware of the risk that the defendant's activity with respect to the three companies could be regarded as being concerned in their management, contrary to the Corporations Law. Mr Lissa said he advised the defendant on the subject and warned him not to overstep the line between management consultancy and management. I accept that evidence, but in my opinion both Mr Lissa and the defendant were mistaken as to where the line between management consultancy and management is to be drawn. Even on Mr Lissa's evidence, the defendant was quite actively involved in dealing with management questions, mediating between Mr Lissa and Mr Miller. The fact that the defendant was not able to sign cheques or curtail Mr Miller's activities does not mean that he was acting merely as a consultant. Therefore, even on Mr Lissa's evidence, I am inclined to the view that the defendant was concerned in the management of, at least, Credit Alliance, both before and after 10 June 1998.

98 However, it seems to me that Mr Lissa, possibly through not knowing all the circumstances, tended to minimise the management involvement of the defendant in the affairs of the three companies. Since he was in constant contact with the defendant, it is likely that his impression was influenced by the information, and possibly misinformation, supplied to him by the defendant. At the same time, he had little actual information about the business operations of Credit Alliance, as became plain in his cross-examination. I am satisfied by the evidence given on

behalf of the plaintiff, that the defendant's involvement was more extensive than represented by Mr Lissa.

Mr Harris

99 Mr Harris, who has known the defendant for approximately 40 years and has worked with him for 16 years, gave evidence of three relevant matters. First, he says he was present at a conversation on the day of the defendant's bankruptcy, at which Mr Miller offered to be a director of Barrack Mortgage, and the defendant agreed. Mr Harris observed that Mr Miller did not appear to be acting under direction. Subsequently Mr Miller and he had many conversations in relation to Barrack Mortgage's activities.

100 Secondly, Mr Harris was engaged as a consultant to Credit Alliance for one week in September 1998, to evaluate the performance of the company and its costs and productivity. His evidence is that he formed the view that Mr Miller was acting as the managing director and was anxious to make his own decisions. He said that the defendant was not involved in Mr Harris' consultancy, apart from counselling staff who were made redundant as a result of Mr Harris' recommendations. He said that the defendant informed him that he did not want to be seen as a party to management functions.

101 Thirdly, Mr Harris gave evidence that he met Mr Duffy and gained the impression that Mr Duffy was his own man, using the defendants' information and skills but not allowing him to participate in the management of his company.

102 In my opinion, Mr Harris' evidence on these subjects is not persuasive. According to my observation, he was unconvincing in the witness box. His only direct involvement in the affairs of Credit Alliance was for one week, and he appears to have already formed views about the relationship between the defendant and Credit Alliance before he began that work. He admitted in cross-examination, contrary to previous inconsistent evidence of his, that the defendant had a large office. After substantial cross-examination, he said that he had 'a lot of doubt in my mind about a lot of things'.

Conclusions

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103 The evidence establishes, in my view, that the defendant was involved in the management of Credit Alliance, W G Herle and Barrack Mortgage after he became bankrupt on 10 June 1998. Since there are at least three in contraventions of s 229 (1) (that is, at least one contravention respect of each of the three companies), the Court has the statutory power under s 230 (1) (c) to make an order prohibiting the defendant from managing a corporation for such period as the Court thinks fit. I shall return to discretionary considerations after I have examined the plaintiff's allegations of more serious contraventions of ss 232 (2), 232 (6) and 596 (b).

Was the defendant an officer of Schoeller, Nambucca and Lawnkin?

104 The plaintiff claims that the defendant was an officer during the period from at least January 1996 until 14 January 1997. In my opinion, the evidence supports that assertion. ASIC's records show that he was a director of Schoeller, and its secretary, from 25 October 1996 to 14 Jan 1997.

105 Evidence of examinations conducted by the plaintiff indicates that in 1995 Mr Bruce Gould made an arrangement with the defendant for the defendant to purchase Gould Anderson Ltd, and he agreed to continue as a non-executive director. On 11 October 1995 Gould Anderson Ltd changed its name to Schoeller Australia Ltd. Mr Lissa, the defendant's accountant, was also a director of Schoeller for the period from 27 November 1995 until 14 January 1997.

106 According to Mr Gould, from 1996 the defendant was in total control of Schoeller and held the title of chairman, and he was paid pursuant to a consultancy agreement. Ms Sandot, who joined Schoeller as an accountant/bookkeeper on 14 November 1995, gave evidence confirming that the defendant was in total control of Schoeller's finances.

107 The defendant described his role in Schoeller as one of convener and governor. He was appointed chairman by Pan Pacific Bankers Trust, the majority shareholder, and was described in Schoeller's business plan (March 1996) as executive chairman. According to Mr Lissa, the defendant explained that he did not initially become a director because the majority shareholder wanted a totally independent board and required that no one involved in day-to-day operations of the business could be a board member. However, according to Mr Lissa the defendant was

totally responsible for the day-to-day operations of the business, and in effect occupied the role of managing director.

108 This evidence is ample to establish that the defendant was an executive officer of Schoeller from late 1995, within the definition in s 9 of the Corporations Law, and that he was a director within the definition of s 60, although not appointed as such until 25 October 1996.

109 The defendant refused to admit that he was an officer of Nambucca or Lawnkin, but in my opinion the evidence establishes that he was an officer of both companies during at least the period from 30 September 1994 to 31 January 1995, as alleged by the plaintiff.

110 Nambucca and Lawnkin were companies within the Nambucca group. Lawnkin was a subsidiary of Nambucca, and Nambucca was owned by a company called Planroad Pty Ltd. The ownership structure was established in September 1994, when Mr John Poynten transferred his interest in Planroad to Mr Phillip Hall and Mr John Florent, leaving Messrs Hall and Florent each holding 50% of the shares in Planroad. In September 1994 the directors of both companies were Mr Leslie Hall, Mr Poynten, and Mr Frederick Bennett, but Mr Phillip Hall replaced Mr Poynten and Mr Bennett on 21 December 1994. The group conducted a finance business.

111 The defendant controlled and operated a company called Austwide Capital Pty Ltd, which provided financial and management consulting services. Prior to April 1994 the business had been conducted by another of the defendants companies, Seriwood Pty Ltd, trading as Austwide Capital, and prior to September 1993 the defendant personally owned and conducted the business.

112 The defendant had had business dealings with Mr James Kearns, who in June 1994 was deputy chairman of the Equitable Insurance Group of New Zealand. In June or July 1994 the defendant and Mr Kearns discussed a proposal whereby the defendant would make available as security a property he owned in Shute Harbour and Mr Kearns would borrow against that security sufficient funds to carry out a management buy-out of Equitable Insurance. The defendant expected to participate in the buy-out. They approached Mr Phillip Hall as a potential lender.

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Mr Hall indicated that he was in control of the Nambucca group, which had capacity to provide finance.

113 Upon investigation, the defendant found that the Nambucca group had a positive net asset position and could provide security for an external lender, but it did not have the resources to be a lender itself. A proposal was developed that Equitable Insurance would take over the Nambucca group and use the group's assets to enable Mr Kearns to acquire a larger equity holding in Equitable Insurance. The proposal to use the Shute Harbour property was put to one side. On 29 September 1994 the proposed takeover by Equitable Insurance was documented.

114 The transaction involved a great deal of effort by the defendant and his colleague, Mr Ian Harris. His role in the transaction is far from clear. He claims that he was acting, through Austwide Capital, as a consultant to Nambucca, and that a written management agreement and a minute of appointment were executed. As I shall explain, the plaintiff contests that claim. For present purposes, the important point is that, through the negotiations and after the documentation of the transaction on 29 September 1994, the defendant was given a substantial role in the management of the Nambucca group companies. Once all of the documents had been signed on 29 September 1994, Mr Kearns had a discussion with Mr Phillip Hall in the presence of the defendant. Mr Kearns said that he was taking over the group, and then he said that 'Parkes is in control. His instructions are my instructions and are to be taken as my instructions.'

115 Following the meetings of 29 September 1994, the defendant was actively involved in setting up a strategic plan to address the principal issues and problems within the Nambucca group. He applied himself fully to the task, although he insisted he did so through Austwide Capital. He spoke to financiers, accountants, auditors, people within the Nambucca group and people outside it, who might assist in achieving profitability for the group. The defendant and Mr Harris conducted 'visitations up and down the coast'. The defendant gave this evidence:

> 'We had inherited the management essentially of this group that was running - that had a hotel that was losing an enormous amount of money, subdivisions. So we have a lot of people working very quickly on specific issues.'

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116 The defendant explained that he put in place a reporting system for each of the companies to report to him. Summary reports were usually done by Mr Phillip Hall. The defendant said that Mr Phillip Hall was running Lawnkin initially, but about four weeks after the takeover Mr Lee Dunn became involved in Lawnkin and the subdivision companies. He said he was not very familiar with those companies, but became involved extensively in the hotel. Nevertheless his evidence is that Mr Phillip Hall reported to him.

117 Mr Harris gave evidence that he regarded the defendant as the overall controller of the Nambucca group, and in cross-examination he accepted that the position of general manager described the defendant's position within the group. Mr Hall gave evidence that he regarded the defendant as the controller of the group. Ms Duncan gave evidence to the same effect. There is documentary evidence that the defendant authorised payments by Nambucca and put in place protocols which gave him control of the financial affairs of the group in Sydney. There are specific documents that confirmed the defendant's role - perhaps the clearest is a letter dated 25 October 1994 from Planroad to the National Australia Bank describing the corporate structure of the Nambucca group and identifying the defendant as general manager.

118 The defendant does not deny an extensive level of involvement in the affairs of the Nambucca group after 29 September 1994, but claims that his involvement was in the capacity of a consultant, providing services through Austwide Capital in return for fees under a management consultancy agreement. But the facts are inconsistent with the best claim. It is clear from the way he operated after 29 September 1994 that the defendant was merely providing advice to be implemented by others who were the executive managers of the group. He adopted a 'hands-on' executive role in which he took and implemented management decisions, relying on the authority given to him by Mr Kearns.

119 In my opinion, the evidence establishes clearly that after 29 September 1994, if not before, the defendant became an executive officer of Nambucca within the definition in s 9 of the Corporations Law, and occupied or acted in the position of a director of Nambucca, and was therefore a director within the meaning of s 60. That role continued until 31 January 1995. The position with respect to Lawnkin is not quite so clear, but in the end it is the same. The defendant's involvement in the

business of Lawnkin was not as active as his involvement in the business of Nambucca, but his own evidence is that he required Mr Phillip Hall, who had the day-to-day management of the affairs of Lawnkin, to report regularly to him, and Mr Hall did so. It is clear from Mr Hall's evidence, which I accept, that by that process the defendant had an active role in management decisions in Lawnkin. According to Mr Hall, the defendant adopted the role of financial superintendence (especially as to such matters as cash flow) of the operations of Lawnkin, while Mr Dunn supervised the Lawnkin business. It seems to me that this role was sufficient, in the circumstances, to make the defendant an officer of Lawnkin.

The plaintiff's allegations of breach of duty

120 The plaintiff identifies six transactions with respect to Nambucca or Lawnkin which, it alleges, involved breaches of statutory duties by the defendant. I shall deal, first, with the 'Luscombe' payment, and then I shall deal together with the Penok, Seriwood, McIntyre, Harris and Hood payments.

121 The plaintiff identifies a series of payments made by Schoeller during 1996, which it also alleges involved breaches of the defendant's statutory duties. I shall deal with the Schoeller payments as a group.

The 'Luscombe' payment

122 The plaintiff alleges that the defendant caused Nambucca to pay to Austwide Capital the sum of $35,000, on the pretence that those moneys would be lent by Austwide on behalf of Nambucca, to a company called Luscombe Mining Pty Ltd, at a high rate of interest. In fact, the plaintiff alleges, Austwide did not lend any of the money to Luscombe Mining and used the $35,000 for its own expenses.

123 Mr Luscombe, a director of Luscombe Mining, gave evidence that in April 1993 he responded to an advertisement by contacting the defendant at Austwide, to inquire as to whether he could obtain finance to exploit and develop a peat bog in Victoria. I accept this evidence. The defendant met with Mr Hall on 29 November 1994 and according to Mr Hall's evidence, which I accept, the defendant said:

> 'Nambucca Investments is in funds at the moment. There is no point leaving the money in the bank earning low interest. I have arranged for some loans that are at a much higher interest rate than we are getting at the bank. One of them is for a short period of time to Luscombe Mining for $35,000 and I am charging them an exorbitant fee.'

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124 On 21 December 1994 a cheque for $35,000, in favour of Austwide Capital was drawn on the account of Nambucca. The cheque butt was endorsed 'Payee: Austwide Cap a/c Luscombe Mining P/L loan advance'. The evidence proves that this cheque was deposited into Austwide's bank account. In Nambucca's 'Payments Listing' record, which appears to be a reconciliation with bank statements, there is an entry 'Austwide Capital Loan Luscombe 35,000'. All of this evidence points to the conclusion, which I draw, that the defendant represented to Mr Hall, and through him to Nambucca, that the purpose of the payment was to permit Austwide to on-lend the funds to Luscombe Mining at a high rate of interest for the benefit of Nambucca.

125 The plaintiff has adduced evidence of substantial expenditure by Austwide Capital during the period from 21 December 1994 to 10 January 1995. The net effect of this evidence is that Austwide's account was in debit of $2190.61 on 21 December 1994, and had a credit balance of $1017.37 on 10 January 1995. In the meantime the only substantial credit to the account was the deposit of $35,000, which had almost been exhausted by 10 January 1995 by various miscellaneous payments out of the account. During that period no funds passed out of the account directly to Luscombe Mining.

126 On 28 February 1995 Luscombe Mining wrote to the defendant at Austwide Capital, noting that considerable time had elapsed since he had commenced the process of seeking finance, and also noting that the process had been unsuccessful. The letter withdrew Austwide's authority to negotiate finance on behalf of Luscombe Mining. The fact that Luscombe Mining did not receive finance was confirmed by Mr Luscombe's evidence.

127 Thus, the plaintiff's evidence proves that the defendant, operating through Austwide, procured $35,000 from Nambucca on the basis of a representation that the money would be on-lent to Luscombe Mining on terms which would benefit Nambucca, but the money was not on-lent to Luscombe Mining and was used by Austwide for miscellaneous expenses of its own.

128 The final explanation given by the defendant for this transaction (as opposed to an earlier explanation, noted below, which he gave when examined by the Commission) is as follows. The defendant said he provided an extensive range of

services to Luscombe Mining in respect of a peat bog and manufacturing process, followed by the refinancing of a domestic property and equipment lease. Mr Luscombe acknowledged under cross-examination that he received some services, although he did not admit to all of the services that the defendant claimed to have provided. Apparently the defendant seeks to draw the inference that Austwide was entitled to recover fees from Luscombe Mining by deduction from the amount that would otherwise have been provided. A problem with this explanation is that there is no evidence of Luscombe Mining agreeing to pay fees to Austwide or the defendant for this work, if it was performed, out of the loan moneys which were to be provided by Austwide. Additionally, there is no evidence other than from the defendant concerning the extent and value of the work.

129 The defendant also gave evidence that he stipulated to Mr Kearns that Nambucca's opportunity to be financier to the peat bog project was subject to payment to Austwide by Nambucca of its fees accrued to date. The payment of $35,000 was, according to the defendant, a payment of fees. The defendant's case is that Nambucca could be expected, in due course, to have recovered the outlay on settlement of its loan to Luscombe Mining, but the defendant left Nambucca in January 1995 before the peat bog financing had been finalised. There are also problems with this evidence. It was not advanced during the defendant's evidence in chief, and Mr Kearns was not called to give evidence. It is inconsistent with the account of the transaction given by the defendant in his examination by the Commission.

130 There is no documentary evidence to support either of the defendant's contentions. For example, there is no letter of confirmation or authorisation from Mr Kearns, nor any invoice by Austwide to Luscombe Mining, or any agreement between Austwide and Luscombe Mining. Moreover, the defendant's evidence is contrary to the weight of evidence as a whole, including his answers in cross-examination. The evidence to which I have referred establishes that the defendant proposed a loan to Luscombe Mining of $35,000, and the payment of that amount was documented as such a loan. In cross-examination the defendant at first did not deny telling Mr Hall that he proposed to use the $35,000 to on-lend to Luscombe Mining, although subsequently he attempted to deny that conversation.

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131 There is some evidence that Austwide may have become entitled to fees for which it had not been paid, during the period from September 1994 to January 1995. I shall return to that evidence later. But there is no credible evidence that Austwide had become entitled to be paid $35,000 on 21 December 1994.

132 I therefore reject the defendant's evidence that the money was paid or retained by Austwide on account of fees owing by Nambucca or Luscombe Mining.

133 During his examination by the Commission on 14 March 1996 the defendant gave evidence that Nambucca, on the authority of Mr Kearns, lent Luscombe Mining $35,000. He said that Luscombe Mining was a client of Austwide. He said that it repaid the loan in late January or early February 1995, and the payment was credited to Nambucca's fee account, to the knowledge of Mr Kearns who 'had documents for it'. But this account, in addition to being inconsistent with the defendant's evidence at the hearing, is flatly inconsistent with the documentary evidence which shows that the $35,000 was received by Austwide and was not passed on by it to Luscombe Mining. Moreover, the documents to which the defendant referred have not been produced.

134 My conclusion is that the plaintiff has made out its case with respect to the Luscombe payment. The defendant obtained that payment by representing that it would be on-lent to Luscombe Mining. Either he had no intention of doing so from the start, or he decided shortly after receiving the money that he would put it to use in payment of Austwide's expenses. Either way, his diversion of the money away from Luscombe Mining and for the benefit of Austwide, his own company, can only be regarded as a failure to act honestly in the exercise of his duties as an officer of Nambucca, whatever precisely the word 'honestly' may mean. Moreover, his conduct amounted to making improper use of his position as an officer of Nambucca, in discussions with Mr Hall who reported to him, to gain an advantage for himself and for Austwide and to cause detriment to Nambucca. I am therefore satisfied that the defendant contravened ss 232 (2) and 232 (6).

135 I am not satisfied that the defendant's conduct amounted to a contravention of s 596(b). Although the defendant participated in the process of payment of $35,000 to Austwide, this was not a case, in my view, where it could be said that the defendant himself made or caused to be made a transfer of those funds.

The Penok, Seriwood, McIntyre, Harris and Hood payments 01/1184

136 The plaintiff alleges that the defendant caused Nambucca and Lawnkin to make various payments to Seriwood, one of the defendant's companies; and to make payments to other parties to satisfy the indebtedness of the defendant and Austwide. The plaintiff alleges that these payments were made in circumstances where there was no legal obligation on Nambucca and Lawnkin to make them, and no financial advantage for the companies in doing so.

The Penok payment

137 Mr Perry Jenkinson was a director of Penok Holdings Pty Ltd. In about July 1994 he was approached by a colleague, Mr Wilson, to assist him in recovering a fee of $25,000 that had been paid to the defendant at Austwide Capital to raise finance. On 9 November 1994 the defendant arranged for this debt to be paid, by cheque drawn on the account of one of his companies, Seriwood. However, be cheque was dishonoured. On 11 November 1994 the defendant arranged for the debt to be paid again by a Seriwood cheque. Again, the cheque was dishonoured.

138 The debt was eventually paid by a cheque dated 2 December 1994, payable to Penok and drawn on the account of Lawnkin. The cheque was met on presentation. The documentary evidence adduced by the plaintiff shows that on the same day the defendant sent a facsimile to Mr Phillip Hall directing him to draw a cheque for $25,000 in favour of Penok Holdings Pty Ltd, 'A/C 012-361-228675266'. The facsimile instructed Mr Hall to put on the cheque butt the words 'Havendock loan account'.

The Seriwood payment

139 A cheque was drawn by Lawnkin dated 5 December 1994 in favour of Seriwood for $47,500. The documentary evidence indicates that the cheque was drawn in response to a facsimile from the defendant to Phillip and Leslie Hall of the same day. The direction in the facsimile was:

> 'Please transfer $50,000 to Seriwood Pty Ltd out of Lawnkin Pty Ltd. Put on the butt A/C Havendock.'

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140 Later on 5 December 1994, this cheque together with $2500 in cash was deposited into Seriwood's bank account. The defendant gave evidence that Seriwood was paid $50,000 on Austwide's account.

The McIntyre payment

141 Ms Vicki McIntyre gave evidence that she lent $10,000 by cheque in favour of Austwide, after the defendant told her he was 'involved in some pubs', and getting a 20% return on his investment every six weeks, and invited her to invest as well. When she did not receive the promised return of $2000 every six weeks, she issued a letter of demand for $16,000 in November 1994. On 6 December 1994 the defendant arranged for $16,000 to be paid by a cheque from Seriwood, but the cheque was later cancelled.

142 Ms McIntyre was paid $16,000 by cheque dated 13 December 1994, drawn on Nambucca's account. The documentary evidence indicates that the cheque was drawn after the defendant gave a handwritten instruction to Ms Shirley Duncan at Nambucca on 12 December 1994, to pay Ms McIntyre $16,000 on 'Havendock Loan'. The cheque was deposited into Ms McIntyre's bank account on 13 December 1994. The defendant gave evidence at the hearing that Ms McIntyre was a creditor of Austwide.

143 Later in December 1984, Ms McIntyre sued the defendant personally to recover additional interest in the sum of $4000. The proceedings were eventually settled on the basis that the defendant would pay her $3000.

The Harris payment

144 In the December 1994 a cheque in favour of Mr I. Harris for $4000 was drawn on Nambucca's account. The documentary evidence indicates that this was in response to a handwritten direction by the defendant to Ms Shirley Duncan at Nambucca on the same day. The direction told her to deposit a credit union cheque on that day 'A/C Havendock Loan'. The cheque was deposited into Mr Harris' bank account later on the same day. The defendant gave evidence that Mr Harris was a creditor of Austwide.

The Hoods payment

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145 Mr Ian Broad, a director of Hoods Sailmakers (Aust) Pty Ltd, gave evidence that the defendant, through a company called Gloform Pty Ltd, owned a yacht called 'Freightrain'. The defendant made sails for the yacht and assisted with crew management. In February 1994 Mr Broad agreed with the defendant that the fees payable to Hoods for boat and crew management for a 12 month period would be $10,000. During the 12 months commencing February 1994, Mr Broad spoke to the defendant approximately every fortnight and often raised the question of payment of the fees.

146 On 22 December 1994 a cheque was drawn on Nambucca's account made payable to Hoods for $10,000. The documentary evidence of this transaction is less clear than for the other payments, but the evidence includes a handwritten memorandum by the defendant to 'Shirley' instructing her to 'fax deposit slips Hood and Fitzgerald'. This is an indication that the cheque was prepared by Ms Duncan on the instructions of the defendant. Given the evidence in respect of the other payments, I am prepared to make the inference that this was so. The cheque was deposited into Hoods' bank account later on 22 December 1994. The defendant gave evidence that Hoods was a creditor of Austwide.

Analysis of the payments

147 The payments display a clear pattern. In each case, a debt owed by Austwide, for which the defendant was being pressed for payment, was discharged by the defendant giving directions, in the exercise of his powers as an officer, for payment by Nambucca or Lawnkin. In four of the five cases the defendant arranged for the financial records of the paying company to record the payment as related to something called 'Havendock Loan'.

148 The defendant's explanation of these payments is that Nambucca was indebted to Austwide for fees incurred through the activities of the defendant and Mr Harris pursuant to the management consultancy agreement which, the defendant alleged, had been entered into between Nambucca and Austwide. According to the defendant, the payments were 'third party payments', by which Nambucca reduced its indebtedness to Austwide. The payments made by Lawnkin were, according to the defendant, paid out of Lawnkin's account on the direction of Mr Kearns, and

were paid on account of Nambucca's reduction of its indebtedness to Austwide. There were inter-company arrangements between Nambucca and Lawnkin, which was its wholly-owned subsidiary.

149 I find the defendant's explanation implausible for several reasons. First, there is no credible evidence that Austwide submitted invoices to Nambucca in an amount anywhere near $105,000, the total of the five payments challenged by the plaintiff. Only seven invoices were tendered in evidence at the hearing. Mr Harris gave evidence that payments were sought only by invoices, but he gave confusing evidence as to whether he prepared the invoices.

150 Secondly, evidence as to the likely amount of the fees to which Austwide would be entitled (if it were entitled to fees at all) suggests an amount, for the period from September to December 1994, much lower than the benefit received by Austwide through the third party payments.

151 If one adds to the five payments under discussion the Luscombe payment of $35,000, and some other payments of which evidence was given (to Lords of $25,000, to Mr Chow of $16,000, and for payment of invoices of $10,530.75), the total amount received for the benefit of Austwide was $191,530.75.

152 A document entitled 'Austwide Capital Ltd Progress Report' dated 30 March 1995 contains an estimate of the costs to Austwide of its involvement in the Nambucca group from September 1994 to February 1985. The document, which was prepared by the defendant in March 1995, puts the total costs for that period at $47,722. The total costs for the period from September to December 1994 (December being the time of the five payments) were presumably significantly less.

153 There are four invoices for the month of November 1994, rendered weekly, in a total amount of only $8130.75. It is reasonable to infer that the fees for other months would have been comparable to the fees for that month. The defendant criticised the plaintiff for failing to produce any of the financial accounts of Nambucca which could have assisted the Court in considering payments made to or on account of Austwide. The defendant also submitted that the plaintiff had failed to produce the accounts of Austwide, which could also have assisted the Court. Moreover, said the defendant, the plaintiff had not produced the liquidator's report for Nambucca or any audit report for Nambucca or Austwide. I do not accept the

defendant's submissions. It seems to me unlikely that such additional evidence would have assisted the Court. The fundamental problem is the absence of any primary records in the form of invoices to support the defendant's case. The plaintiff bears the onus of proving its case, but it is nevertheless appropriate for the Court to draw inferences from the evidence as a whole.

154 The defendant gave evidence that during 1994 and 1995 his hourly rate was $100 and he worked full-time for the Nambucca group (although his evidence at one stage was that he started to work full-time only from 3 January 1995). Mr Harris gave evidence that during 1994 and 1995 his hourly rate was $75 and that he worked for the Nambucca group for 20% of his time. The defendant said that Mr Harris worked 'full-time' for the Nambucca group. Even allowing (though the evidence does not require this) for long working weeks and full-time attendance by both the defendant and Mr Harris, the fees earned by them at their hourly rates from 29 September 1994 to the beginning of December 1994 would be substantially less than the benefit received by Austwide through third party payment of its debts.

155 Thirdly, there is a question as to whether Austwide was entitled to make any charge to Nambucca at all. Mr Phillip Hall and Mr Leslie Hall gave evidence denying that Austwide was appointed as a management consultant to Nambucca or the Nambucca group. The defendant and Mr Harris gave evidence that a management agreement had been entered into between Nambucca and Austwide which appointed Austwide as a management consultant to that company.

156 On balance, I prefer the evidence of Phillip and Leslie Hall to the evidence of the defendant and Harris. As I have already said, I regard the defendant and Mr Harris as unsatisfactory witnesses. Mr Phillip Hall, on the other hand, gave very clear and plausible evidence.

157 The original negotiations between the defendant and Mr Kearns were to the effect that the defendant could expect a share of profits from the acquisition of the Nambucca group, perhaps as much as 50%. Although the evidence on this point is not clear, it does suggest that the reward for the defendant would be a share of profits rather than consulting fees. The transaction of 29 September 1994 was conditional upon a number of events including satisfactory completion of due diligence, and board approval by Equitable Insurance, and it was in the defendant's

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interest to work to ensure that those conditions were satisfied. That would explain the high level of activity after 29 September 1994.

158 Moreover, although the defendant gave quite specific evidence about the execution of the management agreement, and its destination, no management agreement or any authorised minute was tendered in evidence to confirm Austwide's consultancy retainer. A minute dated 25 October 1994 (exhibit D-21) purports to be a record of a meeting of directors of Nambucca held on 25 October 1994, between Mr Phillip Hall and Mr Leslie Hall by telephone. Amongst other matters, it records a unanimous resolution to appoint Austwide as management consultant to the group of companies. The plaintiff has adduced unchallenged evidence which establishes that this document is a forgery. Further, the minute (if it were genuine) would be inconsistent with the defendant's evidence that the management agreement was executed on 29 September 1994.

159 The plaintiff submits that even if I were satisfied that a management agreement had been entered into between Nambucca and Austwide, that would not serve to authorise payments by Lawnkin. It is unnecessary for me to deal with this submission, since I accept the plaintiff's anterior submission that there was no management agreement between Austwide and Nambucca. However, if there had been an established management agreement between Austwide and Nambucca, and payments had been made by Nambucca's wholly-owned subsidiary in a manner properly documented by reference to the agreement, the fact that the paying company was not Nambucca would not destroy the defendant's case.

160 Fourthly, the contemporary explanations for the five payments were unsatisfactory, in a manner that strongly implies that they were not intended to be referable to the discharge of consultancy fees. Four of the five payments were recorded as relating to the 'Havendock lone'. This recording complied with the defendant's earlier instruction to staff of the Nambucca group that all cheque butts were to be noted with the appropriate loan account. But the annotation was obviously bogus.

161 Havendock was a company that belonged to the defendant, but it had been deregistered on 19 April 1993. At the time of its deregistration, Havendock had given a guarantee. The defendant wrote to the Commission seeking reinstatement of the company, but the application was refused. The defendant gave evidence to the effect that he had given the company to Mr Kearns, even though it had been

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deregistered, contending that it is not difficult to reinstate a company. He said that he had received instructions from Mr Kearns to have certain payments noted with the words 'Havendock Loan Account', in circumstances where Nambucca's computerised system was with the auditors who had not completed the audit, and Ms Duncan was keeping a Kalamazoo style card system. The defendant speculated that Mr Kearns was using the Havendock loan account as a clearing account in the general ledger to ascertain what expenses he would capitalise and what expenses he would not capitalise.

162 I reject that evidence. One can understand that there might be some holding or suspense account used temporarily before payments could be properly classified: on that point, counsel for the defendant referred me to M J Gordon and G Shillinglaw, *Accounting: a Management Approach* (4th ed, 1969) p 173 ('suspense for clearing account'); J G Siegal and J K Shim, *Barron's Business Guides Dictionary of Accounting Terms* (1987), p 417 ('temporary account'); and *Yorston, Smith & Brown's Accounting Fundamentals* (7th ed, 1977), p 80 ('suspense account'). But why, one might ask, would Havendock be used for that purpose? Havendock would be an entirely appropriate company for Mr Kearns to use, in light of its guarantee and the fact that it was deregistered. Moreover, there is no documentary evidence supporting the alleged transfer. The contention that a deregistered company was transferred to Mr Kearns and used by him is highly implausible. Mr Kearns was not called by the defendant to give evidence, and I therefore make the usual inference that Mr Kearns' evidence would not have assisted the defendant.

163 There was no 'Havendock Loan' at all, and certainly none that would explain the payments which the defendant made referable to it. There was no attempt to relate the payments to any invoices, or even to the concept of third party payment of indebtedness, for consulting fees payable to Austwide.

164 In my opinion, the defendant's attempt to explain the transactions as third party payments discharging debts to Austwide fails completely. The five payments are what they appear, on the face of the incontestable evidence, to be - payments made at the direction of the defendant, not in satisfaction of any prior obligation, but to discharge his personal debts or the debts of Austwide.

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165 In my opinion, by causing those payments to be made, the defendant failed to act honestly in the exercise of his powers as an officer of Nambucca and Lawnkin. He made improper use of his position as such an officer, to gain an advantage for himself and for Austwide to the detriment of Nambucca and Lawnkin. With intent to defraud Nambucca and Lawnkin, the defendant caused transfers of the five sums of money to be made out of property of those two companies. His intent to defraud is to be inferred from the facts that I have set out. Therefore, in my view, he contravened ss 232 (2), 232 (6) and 596 (b) in respect of each of the five payments.

The Schoeller payments

166 As I have mentioned, in October 1995 the defendant negotiated the acquisition of a company called Gould Anderson Ltd, the name of which was then changed to Schoeller Australia Ltd. The defendant was executive chairman, and eventually became a director. He acted as chief executive. According to the business plan of Schoeller, it was to function essentially as a merchant bank.

167 The plaintiff complains that during the period from 5 July 1996 to 21 November 1996 the defendant received regular weekly payments of $1,538.46 gross or $1000 nett from Schoeller, which he used to make maintenance payments to his estranged wife Ms Canty. The plaintiff claims that Schoeller was under no obligation to make those payments and received no benefit from them, and that the payments were not approved by Schoeller's board of directors. Ms Canty was not an employee of Schoeller had no other connection with the company.

168 There is no question that the payments were made. Ms Sandot, who was employed as an accountant/bookkeeper by Schoeller, gave evidence that in about July 1996 the defendant said to her:

> 'Change the entry for Pan Pac Bankers Trust to C Canty and change the rate to $80,000. Give me the envelope containing the cash.'

169 The rate of $80,000 was a figure to be translated into weekly payments of $1000 nett. During the period from July to November 1996, Ms Sandot said she either gave two envelopes to the defendant, one marked 'D Parkes' and one marked 'C Canty', or she left them in his desk drawer. I accept her evidence on these points.

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170 The documentary records show payroll statements for each week during the relevant period, initialled by Ms Sandot and the defendant. Particulars are given. For the week ending 5 July 1996 an entry for Pan Pac Bankers Trust has been crossed out and the name 'C Canty' has been inserted, and a record of a loan to Pan Pac Bankers Trust has been crossed out by hand and replaced by a note of a loan to 'Modular Panel' against which there is the figure $1538.46.

171 When he was examined by the Commission on 8 December 1997, the defendant gave the following explanation for these payments. He said that he had approached Ms Canty suggesting that she make a loan to one of the Pantec companies. According to the defendant, Ms Canty lent $60,000 to one of the Pantec companies. He said he did not know where she obtained the money, but that she had independent means.

172 This explanation of the payments must be rejected. In the first place, it is inconsistent with the defendant's own evidence at the hearing. Moreover, it is inconsistent with evidence given by Ms Canty to the Commission during her examination on 3 July 1998. She denied having lent money to any Pantec company. She said she had never been owed any money by any such company, and that she did not make any loan of $60,000 to anyone in 1995.

173 At the hearing the defendant gave a different explanation. He said that Ms Canty was a beneficiary under a trust called the Onedin Trust. He claimed that the Onedin Trust was owed money by an entity called Pantec. He said that Schoeller had received a written direction on behalf of that entity the directing the payment of $80,000 by weekly payments of $1000 to Ms Canty or the Trust.

174 In my opinion this explanation must also be rejected. It does not clearly explain the transaction in respect of which, according to the defendant, the payments were made. There is no documentation about the Onedin Trust or Ms Canty's beneficial interest or any arrangement concerning the entity said to owe money to the Trust. One would have thought that some documentary evidence could have been obtained. Although the onus of proof is on the Commission, the evidence given by the defendant appears to relate to matters peculiarly within his knowledge, and his failure to support that evidence by documents is, in my view, significant.

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175 Further, it is significant that the payments were made to the defendant rather than to Ms Canty or the trustee of the Onedin Trust. The explanation that he needed the money to pay maintenance to his estranged wife is on its face, much more plausible than the 'explanation' advanced the defendant. Although the payments were related party payments, no attempt was made to obtain the approval of the board or shareholders of Schoeller, even after the defendant became a director. The reference to 'Modular Panel' is confusing because it appears from evidence of the Commission's records that the only Australian company bearing such a name was not incorporated until 28 October 1996.

176 In my opinion, the reliable evidence, from the documents and Ms Sandot, establishes that the defendant received the weekly payments made by Schoeller during the period from July to November 1996, and used them for his personal purposes including payment of maintenance. There was no legal obligation on Schoeller to make the payments and Schoeller received no benefit from them.

177 The defendant has made various detailed criticisms of Ms Sandot's evidence. But his submissions only served to obscure his own position. Notwithstanding the criticisms, my view is that Ms Sandot's evidence should be accepted. The fact that the plaintiff holds Schoeller's records does not require, in my view, that the plaintiff must be found to have failed if a document alleged by the defendant to exist has not been produced.

178 I therefore find that by instructing Ms Sandot to make the payments and receiving them, the defendant failed to act honestly in the exercise of his duties as an officer of Schoeller. I also find that he made improper use, in those ways, of his position as an officer of Schoeller to gain an advantage for himself or for Ms Canty to the detriment of Schoeller. Further, I find that while an officer of the company, he caused those transfers of property of the company, namely money, to be made. In doing so, he had an intent to defraud the company, because he was aware that there was no obligation on the part of the company to make the payments and it would receive no benefit from them, and he did not seek the approval of the directors or shareholders to the payments. Those findings mean that by causing the payments to be made and receiving them, the defendant contravened ss 232 (2), 232 (6) and 596 (b).

Discretionary considerations

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179 My finding of contraventions of s 232 (2) and s 232 (6) means that I am obliged by s 1317EA to make a declaration of contravention. I also have a discretion, having made that declaration, to make an order prohibiting the defendant from managing a corporation under s 1317EA (3) (a). Additionally, having found more than two contraventions of the Corporations Law, I have the power to make an equivalent order under s 230. The only remaining question is, what should be the period of the prohibition?

180 The plaintiff asks for a prohibition of 25 years. It has provided me with some summaries of cases to give me a practical indication of the range of prohibition periods. The examples range from six months to 10 years. But I find those cases of no real assistance, because of the infinite variety of facts and discretionary considerations.

181 After careful consideration, I have decided that I should accede to the plaintiff's submission that a prohibition for 25 years is appropriate. In reaching this conclusion, I take into account the following factors:

- the contraventions that I have found include some very serious contraventions;
- those contraventions have led to loss and damage on the part of companies and investors, contrary to the protective purpose of the relevant provisions of the Corporations Law;
- the defendant's field of activity, management and financial consultancy, is an area where the potential to do damage is especially high, compared, say, with a defendant whose expertise is in making cement;
- the defendant's contraventions have been recurrent, arising in the context of three different sets of companies;
- until the end, the defendant asserted explanations for what he had done which I have found to be implausible, and this suggests me that he has no contrition;
- all of these facts lead me to believe that there is a high propensity that the defendant will engage in similar conduct if only a short period of the prohibition is imposed;
- I am conscious of the fact that a prohibition for 25 years will effectively prevent the defendant from managing a corporation for the rest of his life, but it will not prevent him from earning income as an employee, using his undoubted financial skills under proper supervision.

Conclusions

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182 I shall therefore make declarations of contravention of ss 232 (2) and (6) under s 1317EA (2) (which will need to be carefully drafted), and declarations of contravention of ss 229 (1) and 596 (b). Exercising my powers under ss 1317EA (3) (a) and 230 (1), I shall make an order prohibiting the defendant from managing a corporation for 25 years from the date of my orders. I shall direct the plaintiff to prepare short minutes of orders to reflect these reasons for judgment.

****

I certify that this and the 45 preceding pages are a true copy of the reasons for judgment herein of the Honourable Justice R. P. Austin

10.5.01 Mfraser
Date Associate

01/1185

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SECTION 741 – DECLARATION

Pursuant to paragraph 741(1)(b) of the Corporations Act 2001 ("the Act") the Australian Securities and Investments Commission declares that Chapter 6D of the Act applies in relation to the person named in Schedule A, in the case referred to in Schedule B, as if section 711 of the Act were modified by:

1. inserting "at any time during the last 2 years" after "the nature and value of any benefit anyone has given or agreed to give" in the first sentence of subsection 711(3);
2. inserting a new subsection 711(3A) in the same terms as the unmodified subsection 711(3), except for-
   - replacing "the", where it appears for the second time, with "any material",
   - inserting "material" before "benefit", and
   - inserting "at any time during the last 5 years" after "the nature and value of any benefit anyone has given or agreed to give"; and
3. replacing "and (3)" in subsection 711(4) with ", (3) and (3A)".

Schedule A

UBS Asset Management (Australia) Ltd (ACN 003 146 290)

Schedule B

An offer of interests in the UBS Warburg Cash Management Trust (ARSN 090 430 587) where the prospectus is lodged on or about the date of this instrument.

Dated this 11th day of September 2001

Signed by Carolyn Bruns Carolyn Bruns

As a delegate of the Australian Securities and Investments Commission

Australian Securities & Investments Commission
Corporations Act 2001 — Section 257D(4) — Exemption 01/1186

Pursuant to subsection 257D(4) of the *Corporations Act 2001* ("the Act") the Australian Securities and Investments Commission exempts the company named in Schedule A ("Company") from the operation of section 257D of the Act, to the extent that votes are cast in favour of a resolution to approve the buy-back mentioned in Schedule B by persons who are associates of the person whose shares are to be bought back solely by reason of the circumstances set out in Schedule C.

SCHEDULE A

Carrington Cotton Corporation Limited ACN 002 963 340 ("the Company")

SCHEDULE B

An acquisition on or about 12 October 2001 of up to approximately 4,680,900 issued shares in the Company being all of the issued shares in the Company held by members other than Bromley Investments Pty Ltd ABN 46 001 109 628 and the Executors of the Estate of Ross Townsend Marchant.

SCHEDULE C

A settlement agreement dated on or about 24 July 2001 between the Applicants (Alpine Pty Ltd ACN 009 712 592, Giovanni Panizza, Mary Constance Panizza, Helen Antoinette Panizza, Albert John Panizza, Benedict James Panizza, Mark Joseph Panizza and Albem Pty Ltd ACN 009 820 302) and the Respondents (the Company, RMI Pty Ltd ACN 000 616 964, Bromley Investments Pty Ltd ABN 46 001 109 628, the Executors of the Estate of Ross Townsend Marchant and Others) pursuant to which the Company agreed to make a buy-back offer for fully paid ordinary shares in the Company held other than by the members referred to in Schedule B.

Dated 17th day of September 2001

Signed by Diane Mary Binstead
as a delegate of the Australian Securities Commission

Australian Securities and Investments Commission 01/1187

Corporations Law — Subsection 741(1) — Declaration

Pursuant to subsection 741(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission hereby declares that Chapter 6D of the Act applies to each person mentioned in Schedule A in the case described in Schedule B as if the following provisions were modified or varied in the following ways:

1 In paragraph (a) of the definition of **"continuously quoted securities"** in section 9 of the Act as it applies to references in Part 6D.2 of the Act, delete the words "all times in the 12 months before".

2 In paragraph (b) of the definition of **"continuously quoted securities"** in section 9 of the Act as it applies to references in Part 6D.2 of the Act, replace the words "in that 12 months" with the words "in the 12 months before the date of the prospectus".

SCHEDULE A

Cobra Resources Limited (ABN 97 008 045 083) ("Corporation")

SCHEDULE B

A prospectus to be lodged on or about 21 September 2001 in relation to a non-renounceable rights issue of options to subscribe for fully paid shares ("Shares") on a one for four basis at an issue price of 1 cent each, exercisable at a price of 10 cents on or before 30 June 2004.

Dated this 21st day of September 2001

Signed by Salvatore Pillera
as a delegate of the Australian Securities and Investments Commission

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AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SECTION 741 – DECLARATION

Pursuant to paragraph 741(1)(b) of the Corporations Act 2001 ("the Act") the Australian Securities and Investments Commission declares that Chapter 6D of the Act applies in relation to the person named in Schedule A, in the case referred to in Schedule B, as if section 711 of the Act were modified by:

1. inserting "at any time during the last 2 years" after "the nature and value of any benefit anyone has given or agreed to give" in the first sentence of subsection 711(3);
2. inserting a new subsection 711(3A) in the same terms as the unmodified subsection 711(3), except for-
   - replacing "the", where it appears for the second time, with "any material",
   - inserting "material" before "benefit", and
   - inserting "at any time during the last 5 years" after "the nature and value of any benefit anyone has given or agreed to give"; and
3. replacing "and (3)" in subsection 711(4) with ", (3) and (3A)".

Schedule A

National Australia Trustees Limited (ACN 007 350 405)

Schedule B

An offer of interests in the At Call Common Fund A1 (ARSN 093 164 722) where the prospectus is lodged on or about the date of this instrument.

Dated this 25th day of September 2001

Signed by Carolyn Bruns Carolyn Bruns

As a delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission 01/1189
Corporations Act 2001 — Subsections 283GA(1), 601QA(1) and 741(1) — Exemption

Pursuant to subsections 283GA(1) and 741(1) of the Corporations Act 2001 ("**Act**") the Australian Securities and Investments Commission ("**ASIC**") hereby exempts the persons referred to in Schedule A from Parts 2L.1, 2L.2, 2L.3, 2L.4, 2L.5, 6D.2 and 6D.3 of the Act in the case referred to in Schedule B on the conditions set out in Schedule D and for so long as those conditions are met.

And, for the avoidance of doubt, pursuant to subsection 601QA(1) of the Act, ASIC hereby exempts from section 601ED of the Act, in the case of the operation of an employee share scheme which involves a contribution plan and in relation to which the exemptions referred to in the preceding paragraph are applicable, and where the conditions of those exemptions are met.

SCHEDULE A – PERSONS EXEMPTED

Serono S.A., a company incorporated Switzerland, and any person acting for or on their behalf (the "issuer").

SCHEDULE B – CASES EXEMPTED

This exemption applies to an offer made under the Serono Employee Share Purchase Plan (Global Version – Bearer Shares) (" Employee Share Scheme"), which is:

(a) an offer for issue or sale of fully paid shares being shares in the same class as shares which at the time of the offer are quoted on the ASX or an approved foreign exchange and trading in which is not suspended (quoted shares);

(b) an offer for issue or sale of options over fully paid shares in the same class as quoted shares where the option is offered for no more than nominal consideration;

(c) an issue or sale of fully paid shares in the same class as shares which at the time of issue or sale are quoted shares as a consequence of an offer of the kind referred to in paragraphs (a) and (b); and

(d) an offer for issue or sale of units of fully paid shares, or other offer, issue or sale, which is made pursuant to an employee share scheme that involves such offer, issue or sale being made through a trust and which is exempted by ASIC Class Order 00/223 dated 11 March 2000 and where the conditions of that Class Order are met;

which is made pursuant to an employee share scheme which involves a contribution plan, and which meets the further requirements set out in Schedule C, but does not apply to:

(e) an offer or grant of options for other than nominal consideration.

SCHEDULE C – FURTHER REQUIREMENTS

An offer, issue or sale to which this exemption applies must, insofar as it constitutes, includes or may result in the transfer of shares (for example through the exercise of an option), meet the following requirements:

1 The shares the subject of the offer or option are of a body (the issuer) securities of which have been quoted on:

(a) the ASX throughout the 12 month period immediately preceding the offer, without suspension during that period exceeding in total 2 trading days; or

(b) an approved foreign exchange throughout the 36 month period, immediately preceding the offer, without suspension during that period exceeding in total 5 trading days.

2 The offer must be extended only to persons (offerees) who at the time of the offer are full or part-time employees or directors of the issuer or of associated bodies corporate of the issuer.

3 The offer must be in writing (the offer document) and:

(a) the offer document must include or be accompanied by a copy, or a summary, of:

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(i) the rules of the employee share scheme pursuant to which the offer is made; and

(ii) the terms and conditions of the contribution plan;

(b) if the offer document includes or is accompanied by a summary (rather than a copy) of the rules, terms and conditions referred to in paragraph (a), the offer document must include an undertaking that during the period or periods during which the offeree may acquire the shares offered or subject to the option (offer period), the issuer (or, in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office) will, within a reasonable period of the offeree so requesting, provide the offeree without charge with a copy of those rules, terms and conditions;

(c) the offer document must specify in respect of the shares offered the Australian Dollar Equivalent of the Acquisition Price;

(d) the offer document must include an undertaking that, and an explanation of the way in which, the issuer (or in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office) will, during the offer period, within a reasonable period of the offeree so requesting, make available to the offeree the following information:

(i) the Australian Dollar Equivalent of the Market Price; and

(ii) the Australian Dollar Equivalent of the Acquisition Price, at (or as close as possible to) the date of the offeree's request.

(e) the offer document must also state:

(i) the Australian ADI where contributions are held;

(ii) the length of time they may be held; and

(iii) the rate of interest payable (if any) on the contributions held in the account.

4 In the case of an offer of shares for issue or options, the number of shares the subject of the offer or to be received on exercise of an option when aggregated with:

(a) the number of shares in the same class which would be issued were each outstanding offer or option to acquire unissued shares, being an offer or option acquired made pursuant to an employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer, to be accepted (as the case may be); and

(b) the number of shares in the same class issued during the previous 5 years pursuant to the employee share scheme or any other employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer;

but disregarding any offer made or options acquired or shares issued by way of or as a result of:

(c) an offer to a person situated at the time of receipt of the offer outside Australia; or

(d) an offer that was an excluded offer or invitation within the meaning of the Corporations Law as it stood prior to the commencement of Schedule 1 to the Corporate Law Economic Reform Program Act 1999; or

(e) an offer that did not need disclosure to investors because of section 708 of the Act;

must not exceed 5% of the total number of issued shares in that class of the issuer as at the time of the offer.

SCHEDULE D

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1 The person making the offer (the offeror) must provide to ASIC a copy of the offer document (which need not contain details of the offer particular to the offeree such as the identity or entitlement of the offeree) and of each accompanying document not later than 7 days after the provision of that material to the offeree.

2 The offeror must ensure that the issuer (or, in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office), complies with any undertaking required to be made in the offer document by reason of this instrument.

3 Neither the issuer nor any associated body corporate of it offers the offeree any loan or other financial assistance for the purpose of, or in connection with, the acquisition of the shares to which the offer relates.

Interpretation

For the purposes of this instrument:

1. A contribution plan is a plan under which a participating offeree may save money by regular deductions from wages or salary towards paying for shares offered for issue or sale under an employee share scheme where the terms and conditions of the contribution plan include terms and conditions to the effect that:

   (a) all deductions from wages or salary made in connection with participation in the contribution plan must be authorised by the offeree on the same form of application which is used in respect of the offer, or on a form which is included in or accompanies the offer document;

   (b) any contributions made by an offeree as part of the contribution plan must be held by the issuer in trust for the offeree in an account of an Australian ADI which is established and kept by the issuer solely for the purpose of depositing contribution moneys and other money paid by employees for the shares on offer under the employee share scheme;

   (c) the offeree may elect to discontinue their participation in the contribution plan at any time and as soon as practicable after that election is made all money deposited with the Australian ADI in relation to that offeree, including any accumulated interest, must be repaid to that offeree.

2. A body corporate is an associated body corporate of an issuer if:

   (a) the body corporate is a related body corporate of the issuer; or

   (b) (b)the body corporate has voting power in the issuer of not less than 20%; or

   (c) the issuer has voting power in the body corporate of not less than 20%;

   (applying the definition of "voting power" contained in section 610 of the Act).

3. For the purpose of clauses 3(c) and (d) of Schedule C:

   (a) The Acquisition Price is 85% of the average closing price of a Serono S.A. share on the Zurich Stock Exchange during the ten business days preceding the latest Cycle Termination Date, where the Cycle Termination Date is 31st of December in a calendar year or such other date as is determined by the board of directors of Serono S.A;

   (b) The Market Price is the last closing price of a Serono S.A. share on the Zurich Stock Exchange at the time of any request under clause 3d(ii) of Schedule C; and

   (c) The Australian Dollar Equivalent is the Acquisition Price or the Market Price (as the case may be), expressed in Australian Dollars and Cents (rounded to 2 decimal points), calculated by applying the Yearly Average Exchange Rate, where the Yearly Average Exchange Rate is the average of the Australian Dollar: Swiss Franc exchange rate published by Reuters Information Service at 3 pm (Geneva time) on the last business day in each of the preceding 12 months.

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4. An offer under a scheme shall not be regarded as extended to a person other than an employee or director of the issuer or an associated body corporate of the issuer merely because such an employee or director may renounce an offer of shares made to them under the scheme in favour of their nominee.

5. An option shall be taken to have been offered or granted for nominal consideration if and only if the monetary consideration payable upon the issue of the option is not more than the lesser of:

   (a) 1 cent per option; or

   (b) 1% of the exercise price in respect of the option.

6. Securities shall be taken to be quoted on an approved foreign exchange if and only if quoted on:

   (a) the New York Stock Exchange, the American Stock Exchange, the London Stock Exchange, the Tokyo Stock Exchange, the Frankfurt Stock Exchange, the Bourse de Paris, the Toronto Stock Exchange, the Zurich Stock Exchange, the Amsterdam Stock Exchange, the Milan Stock Exchange, the Stock Exchange of Hong Kong Ltd, the Stock Exchange of Singapore Limited, the New Zealand Stock Exchange or the Kuala Lumpur Stock Exchange (Main and Second Boards) provided that unless otherwise expressly stated, where any such exchange has more than one board on which securities are quoted, securities shall only be taken to be quoted on that exchange if quoted on the main board of that exchange; or

   (b) the NASDAQ National Market.

7. The current market price of a share shall be taken as the price published by the principal exchange on which the share is quoted as

the final price for the previous day on which the share was traded on the stock market of that exchange.

Dated: 25 September 2001

Signed by Vinh Huynh
as delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission 01/1190
Corporations Act 2001 — Subsection 741(1)(a) — Exemption

Pursuant to section 741(1)(a) of the Corporations Act 2001 (the **"Act"**) the Australian Securities and Investments Commission (**"ASIC"**) exempts the persons specified in Schedule A in the case referred to in Schedule B on the conditions set out in Schedule C from subsection 707(3) and subsection 707(5) of the Act.

SCHEDULE A

Any person who offers Fisher & Paykel Industries Limited (to be renamed Fisher & Paykel Healthcare Corporation Limited) (**"FPI"**) shares for sale.

SCHEDULE B

Offers of FPI shares for sale occurring within 12 months of Fisher & Paykel Appliances Holdings Limited (**"FPAH"**) selling FPI shares to Deutsche Banc Alex. Brown Inc., Banc of America Securities LLC and U.S. Bancorp Piper Jaffray Inc. as part of the process of an offering of FPI shares as American Depository Shares (**"ADSs"**), in or about November 2001, regulated by the Securities and Exchange Commission of the United States of America and the *Securities Act* 1933, as amended, of the United States of America.

SCHEDULE C

1. No sale referred to in Schedule B occurs prior to the official quotation of FPI shares by the Australian Stock Exchange (**"ASX"**) other than sales pursuant to offers received outside Australia, or pursuant to offers that do not need disclosure under Part 6D.2 pursuant to section 708 of the Act.
2. The following documents are provided to the ASX for the purposes of an application for admission of FPI to the official list of the ASX:

   a) The Fisher & Paykel Healthcare Corporation Limited Information Memorandum for shareholders of Fisher & Paykel Industries Limited dated 13 September 2001 for the purposes of an arrangement in relation to Fisher & Paykel Industries Limited under section 236 of the Companies Act 1993 (NZ): and

   b) The Fisher & Paykel Industries Limited (to be renamed Fisher & Paykel Healthcare Corporation Limited) prospectus filed with the United States Securities and Exchange Commission under the Securities Act 1933 of the United States in relation to the offer of American Depositary Shares representing FPI shares in November 2001.

Interpretation

01/1190

For purposes of this declaration:

FPI shares means ordinary shares in FPI (to be renamed Fisher & Paykel Healthcare Corporation Limited).

Dated 25 September 2001

Signed by Justin Sam
as a delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission
Corporations Act 2001 - Subsection 655A(1) - Declaration 01/1191

Pursuant to subsection 655A(1) of the Corporations Act 2001 ("Act"), the Australian Securities and Investments Commission ("Commission") declares that Chapter 6 of the Law applies in relation to the persons named in Schedule A in the case referred to in Schedule B as if section 615 was modified or varied so that the references to "foreign holders" in section 615 were each a reference to "foreign holders save and except for holders of securities whose addresses, as shown in the register in which details of their holding in that company is recorded, are in New Zealand ".

SCHEDULE A

Holders of ordinary units in the Bunnings Warehouse Property Trust ARSN 088 581 097 ("Trust"), the responsible entity of which is Bunnings Property Management Limited ABN 26 082 856 424 ("Corporation").

SCHEDULE B

A renounceable rights issue offer by the Corporation to holders of ordinary units in the Trust of 1 new ordinary unit for every 8 existing ordinary units in respect of which a prospectus is to be lodged with the Commission on or about 27 September 2001 .

Dated this 25th day of September 2001.

Signed by Salvatore Pillera, a delegate of
the Australian Securities and Investments Commission

Australian Securities and Investments Commission 01/1192
Corporations Act 2001 (Cth) - Subsection 669(1) - Declaration

Pursuant to paragraph 669(1)(b) of the Corporations Act 2001 (Cth) ("**Act**") the Australian Securities and Investments Commission ("**ASIC**") declares that Chapter 6A of the Act applies to the person specified in Schedule A in the case referred to in Schedule B as if section 664AA were modified or varied by:

1. omitting paragraph (b) and substituting it with the following paragraph:

   "(b) the period of 6 months after the 90% holder becomes the 90% holder in relation to that class calculated as if time ceased to run on 26 September 2001 and recommenced on the date on which all possible appeals from any decision of any Tribunal or court regarding a decision of ASIC, pursuant to subsection 669(1), to modify subsection 661A(1) to enable the 90% holder to compulsorily acquire all securities in that class pursuant to Division 1 of Part 6A.1 are finally determined."

Schedule A

Harmony Gold (Australia) Pty Limited ACN 091 439 333 ("**90% Holder**")

Schedule B

The acquisition of NHGN shares by the 90% Holder pursuant to Part 6A.2 of the Act.

Interpretation

"**NHGN shares**" means the ordinary shares in New Hampton Goldfields Limited ACN 009 193 999 ("**Target**") that were not subject to an offer for the ordinary shares in the Target made by the 90% Holder pursuant to a bidder's statement dated 2 February 2001.

Dated this 26th day of September 2001

.....

Signed by Andrew Rich
as a delegate of the Australian Securities and Investments Commission

Australian Securities & Investments Commission 01/1193
Corporations Law Section 825
Order Revoking Licence

TO: GPS Moody Securities Ltd, ACN: 081 849 274 ("the Licensee")
GPO Box 2252
Brisbane QLD 4001

Pursuant to paragraph 825(a) of the Corporations Law, the Australian Securities and Investments Commission hereby revokes Licence Number 179496 held by the Licensee with effect from when this order is served on the Licensee.

Dated this 26th day of September 2001.

Signed .....

Leigh-Anne Perillo, a delegate of the Australian Securities and Investments Commission

01/1194

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the entities ("Entity") mentioned in Schedule A relieving the Entity from compliance with the requirements of sub-section 315(3) of the Act, relating to the reporting to members for the financial year ended 30 June 2001, until 15 October 2001, subject to the conditions stated in Schedule B.

Schedule A

Australind Unit Trust	ARSN 094 576 262
Burns Beach Property Trust	ARSN 094 229 464
Jandakot Unit Trust	ARSN 094 576 146
Thompson's Lake Unit Trust	ARSN 094 576 191
Yatala Unit Trust	ARSN 094 231 660
Eaton Unit Trust	
Glenfield Unit Trust	
Warnbro Oceanside Unit Trust	
Yanchep Ocean Front Unit Trust	

Schedule B

A Disclosure Notice is lodged by the Responsible Entity in accordance with section 1001B of the Act by 5.30 pm WST on 1 October 2001 providing details concerning ASIC's approval, the reason for the need for the extension of time and stating the date to which the extension has been granted. The announcement should also state the date that the Entity's Financial Report for the year ended 30 June 2001 will be despatched to members and provide details of where the report can be obtained prior to despatch.

Dated the 26th day of September 2001

Signed by ALLAN AUSBRUCH
as delegate of the Australian Securities and Investments Commission

01/1195

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the registered scheme ("Scheme") mentioned in Schedule A relieving the Scheme from compliance with the requirements of paragraph 319(3)(a) of the Act, relating to the lodging with ASIC of the Scheme's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 15 October 2001, subject to the conditions stated in Schedule B;

Schedule A

Kimseed Eucalypts Esperance 2000 Project ARSN 092 405 797

Schedule B

A Disclosure Notice is lodged by the Responsible Entity in accordance with section 1001B of the Act by 5.30 pm WST on 1 October 2001 providing details concerning ASIC's approval, the reason for the need for the extension of time and stating the date to which the extension has been granted.

Dated the 26th day of September 2001

Signed by ALLAN AUSBRUCH
as delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission
Corporations Act 2001 - Section 741 - Declaration 01 / 1196

Pursuant to section 741(1)(b) of the Corporations Act 2001 (the *"Act"*) the Australian Securities and Investments Commission ("ASIC") declares that Chapter 6D of the Act applies in relation to the person named in Schedule A, in the case referred to in Schedule B, as if section 711 of the Act were modified by:

1. Inserting "at any time during the last 2 years" after "the nature and value of any benefit anyone has given or agreed to give" at the end of the first sentence in subsection 711(3).

2. Inserting a new subsection 711(3A) in the same terms as the unmodified subsection 711(3), except for:

   - replacing "the" where it first occurs with "any material";
   - inserting before "benefit" where it first occurs "material"; and
   - the insertion of "at any time during the last 5 years" after the words "the nature and value of any benefit anyone has given or agreed to give" at the end of the first sentence.

3. Inserting ",(3A)" after "subsections (2)" in subsection 711(4).

SCHEDULE A

J B Were Capital Markets Limited (ACN 004 463 263)

SCHEDULE B

An offer of the following debentures under the prospectus, where the prospectus has been lodged on or about the date of this instrument:

Unsecured deposit notes of J B Were Capital Markets Limited

called J B Were Deposit Notes

Dated this 27th day of September 2001

Signed: .....

Allan Bulman, as a delegate of the

Australian Securities and Investments Commission

Australian Securities and Investments Commission
Corporations Act 2001 - Section 741 - Declaration **01/1197**

Pursuant to section 741(1)(b) of the Corporations Act 2001 (the "*Act*") the Australian Securities and Investments Commission ("ASIC") declares that Chapter 6D of the Act applies in relation to the person named in Schedule A, in the case referred to in Schedule B, as if section 711 of the Act were modified by:

1. Inserting "at any time during the last 2 years" after "the nature and value of any benefit anyone has given or agreed to give" at the end of the first sentence in subsection 711(3).

2. Inserting a new subsection 711(3A) in the same terms as the unmodified subsection 711(3), except for:

   - replacing "the" where it first occurs with "any material";
   - inserting before "benefit" where it first occurs "material"; and
   - the insertion of "at any time during the last 5 years" after the words "the nature and value of any benefit anyone has given or agreed to give" at the end of the first sentence.

3. Inserting ",(3A)" after "subsections (2)" in subsection 711(4).

SCHEDULE A

Were Securities Limited (ACN 005 885 567)

SCHEDULE B

An offer for interests under the prospectus for the following fund, where the prospectus has been lodged on or about the date of this instrument:

Were Securities Cash Trust (ARSN 090 582 282)

Dated this 27th day of September 2001

Signed: Allan Bulman.

Allan Bulman, as a delegate of the

Australian Securities and Investments Commission

Australian Securities and Investments Commission: Corporations Act 2001 - Subsection 655A(1) - Modification 01/1198

Pursuant to subsection 655A(1) of the *Corporations Act 2001* ("the Act") the Australian Securities and Investments Commission ("ASIC") declares that Chapter 6 of the Act applies to the person specified in Schedule A in the case specified in Schedule B from the date of this instrument as if sub-section 612(b) of the Act were modified or varied by removing the words:

"section 619 (offers to be the same); or"

and inserting the words:

"section 619 (offers to be the same) except where a difference arose from the different provisions of Canadian and Australian takeover law that has been remedied in accordance with relief granted by the British Columbia Securities Exchange; or ".

Schedule A

Vanteck (VRB) Technology Corp ("Bidder").

Schedule B

The takeover bid by the Bidder for all of the ordinary shares in Pinnacle VRB Limited in respect of which a bidder's statement was to be lodged with ASIC on 23 July 2001.

Dated this 27th day of September 2001

Signed: .....

Merinda Northrop, as a delegate of the Australian Securities and Investments Commission

01/1199

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the registered scheme ("Scheme") mentioned in Schedule A relieving the Scheme from compliance with the requirements of paragraph 319(3)(a) of the Act, relating to the lodging with ASIC of the Scheme's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 15 October 2001, subject to the conditions stated in Schedule B;

Schedule A

Paragon Commercial Syndicate	ARSN 091 277 397
Warnbro Fair Syndicate	ARSN 088 635 849

Schedule B

A Disclosure Notice is lodged by the Responsible Entity in accordance with section 1001B of the Act by 5.30 pm WST on 2 October 2001 providing details concerning ASIC's approval, the reason for the need for the extension of time and stating the date to which the extension has been granted.

Dated the 28th day of September 2001

Signed by ALLAN AUSBRUCH
as delegate of the Australian Securities and Investments Commission

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01/1200

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the company ("Company") mentioned in Schedule A relieving the Company from compliance with the requirements of paragraph 319(3)(a) of the Act, relating to the lodging with ASIC of the Company's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 15 October 2001, subject to the conditions stated in Schedule B;

Schedule A

Westpoint Management Limited ACN 074 148 431

Schedule B

A Disclosure Notice is lodged in accordance with section 1001B of the Act by 5.30 pm WST on 2 October 2001 providing details concerning ASIC's approval, the reason for the need for the extension of time and stating the date to which the extension has been granted.

Dated the 28th day of September 2001

Signed by ALLAN AUSBRUCH
as delegate of the Australian Securities and Investments Commission

01/1201

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS ACT 2001
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Act 2001 ("Act") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the company ("Company") mentioned in Schedule A relieving the Company from compliance with the requirements of paragraph 319(3)(a) of the Act, relating to the lodging with ASIC of the Company's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 12 October 2001, subject to the conditions stated in Schedule B;

Schedule A

Norfolk Ridge Limited ACN 081 502 650

Schedule B

A Disclosure Notice is lodged in accordance with section 1001B of the Act by 5.30 pm WST on 2 October 2001 providing details concerning ASIC's approval, the reason for the need for the extension of time and stating the date to which the extension has been granted.

Dated the 28th day of September 2001

Signed by ALLAN AUSBRUCH
as delegate of the Australian Securities and Investments Commission

ASIC
Australian Securities & Investments Commission

01/1202

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS LAW
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Law ("Law") the Australian Securities and Investments Commission ("ASIC") HEREBY MAKES AN ORDER in respect of the company ("the Company") mentioned in Schedule A relieving the Company from compliance with the requirements of paragraph 319(3)(a) of the Law, relating to the lodging with ASIC of the Company's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 8 October 2001.

Schedule A

Tuart Resources Limited ACN 057 337 952

Schedule B

A Disclosure Notice is lodged in accordance with section 1001A of the Law by 5.30 pm WST on 2 October 2001 providing details concerning ASIC's approval, the reason for the need for the extensions of time and stating the date to which the extensions have been granted.

Dated the 28th day of September 2001

Signed by JOHN MURDOCH
as delegate of the Australian Securities and Investments Commission

ASIC
Australian Securities & Investments Commission

01/1203

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
CORPORATIONS LAW
SUB-SECTION 340(1)
ORDER

PURSUANT to sub-section 340(1) of the Corporations Law ("Law") the Australian Securities and Investments Commission ("ASIC") **HEREBY MAKES AN ORDER** in respect of the company ("the Company") mentioned in Schedule A relieving the Company from compliance with the requirements of paragraph 319(3)(a) of the Law, relating to the lodging with ASIC of the Company's financial report, directors' report and auditor's report for the financial year ended 30 June 2001, until 15 October 2001.

Schedule A

Working Systems Solutions Limited ACN 091 377 892

Schedule B

A Disclosure Notice is lodged in accordance with section 1001A of the Law by 5.30 pm WST on 2 October 2001 providing details concerning ASIC's approval, the reason for the need for the extensions of time and stating the date to which the extensions have been granted.

Dated the 28th day of September 2001

Signed by JOHN MURDOCH
as delegate of the Australian Securities and Investments Commission

Australian Securities and Investments Commission
Corporations Act 2001 — Subsection 741(1) — Exemption 01/1204

Pursuant to subsection 741(1) of the Corporations Act 2001 (the "Act") the Australian Securities and Investments Commission ("ASIC") exempts the persons referred to Schedule A from Parts 6D.2 and 6D.3 of the Act in the case referred to in Schedule B on the conditions set out in Schedule C and for so long as those conditions are met.

SCHEDULE A

Interwoven Inc., a company incorporated in the United States of America (the "Issuer") or any person acting for or on behalf of those persons (collectively the "Offerors").

SCHEDULE B

This exemption applies to an offer of securities for issue or sale which is:

(a) an offer for issue or sale of fully paid shares being shares in the same class as shares which at the time of the offer are quoted on the Australian Stock Exchange or an approved foreign exchange and trading in which is not suspended (quoted shares); and

(b) an offer for issue or sale of options over fully paid shares in the same class as quoted shares where the option is offered for no more than nominal consideration; and

(c) an issue or sale of fully paid shares in the same class as shares which at the time of issue or sale are quoted shares as a consequence of an offer of the kind referred to in paragraphs (a) or (b);

and which meets the further requirements set out in Schedule C, but does not apply to:

(d) an offer or grant of options for other than nominal consideration.

SCHEDULE C

An offer, issue or sale to which this exemption applies must, insofar as it constitutes, includes or may result in the issue or transfer of shares (for example through the exercise of an option) meet the following requirements:

1. The shares the subject of the offer or option must be of a body (the "Issuer") securities of which have been quoted on an approved foreign exchange throughout the 22 month period immediately preceding the offer without suspension during that period exceeding in total 5 trading days.

2. The offer must be made pursuant to an employee share scheme extended only to persons ("offerees") who at the time of the offer are full or part-time employees or directors of the issuer or of associated bodies corporate of the issuer.

3. The employee share scheme must not involve:

   (a) a contribution plan; or

   (b) any offer, issue or sale being made through a trust.

4. The offer must be in writing (the "offer document") and:

01/1204

(a) the offer document must include or be accompanied by a copy, or a summary, of the rules of the employee share scheme pursuant to which the offer is made;

(b) if the offer document includes or is accompanied by a summary (rather than a copy) of the rules of the employee share scheme, the offer document must include an undertaking that during the period or periods during which the offeree may acquire the shares offered or subject to the option (the "offer period"), the issuer (or, in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office) will, within a reasonable period of the offeree so requesting, provide the offeree without charge with a copy of the rules of the employee share scheme;

(c) the offer document must specify in respect of the shares offered or subject to the option:

(i) the acquisition price in Australian dollars of the shares;

(ii) where the acquisition price of the shares is denominated in a foreign currency, the Australian dollar equivalent of the acquisition price as at the time of the offer; or

(iii) where the acquisition price of the shares is determinable at some future time by reference to a formula, the Australian dollar or Australian dollar equivalent of the acquisition price were that formula applied as at the date of the offer;

(d) the offer document must include an undertaking, and an explanation of the way in which, the issuer (or in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office) will, during the offer period, within a reasonable period of the offeree so requesting, make available to the offeree the following information:

(i) the current market price (or, where that price is denominated in a foreign currency, the Australian dollar equivalent of that price) of shares in the same class as the shares offered or subject to the option; and

(ii) where either paragraph (c)(ii) or (iii) applies, the information referred to in that paragraph as updated to that date; and

(e) if the issuer or any associated body corporate of it offers the offeree any loan or other financial assistance for the purpose of acquiring the shares offered or subject to the option, the offer document must disclose the conditions, obligations and risks associated with such loan or financial assistance.

5. In the case of an offer of shares or options for issue, the number of shares the subject of the offer or to be received on exercise of an option when aggregated with:

(a) the number of shares in the same class which would be issued were each outstanding offer or option to acquire unissued shares, being an offer made or option acquired pursuant to an employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer, to be accepted or exercised (as the case may be); and

(b) the number of shares in the same class issued during the previous 5 years pursuant to the employee share scheme or any other employee share scheme extended only to employees or directors of the issuer and of associated bodies corporate of the issuer:

but disregarding any offer made, or option acquired or share issued by way of or as a result of:

(c) an offer to a person situated at the time of receipt of the offer outside Australia; or

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(d) an offer that was an excluded offer or invitation within the meaning of the Corporations Law as it stood prior to the commencement of Schedule 1 to the Corporate Law Economic Reform Program Act 1999; or

(e) an offer that did not need disclosure to investors because of section 708 of the Act;

must not exceed 5% of the total number of issued shares in that class of the issuer as at the time of the offer.

6. The person making the offer (the "offeror") must provide to ASIC a copy of the offer document (which need not contain details of the offer particular to the offeree such as the identity or entitlement of the offeree) and of each accompanying document not later than 7 days after the provision of that material to the offeree.

7. The offeror must ensure that the issuer (or, in the case of an issuer which does not have a registered office in Australia, an associated body corporate of the issuer which does so have a registered office), complies with any undertaking required to be made in the offer document by reason of this instrument.

Interpretation

For the purposes of this instrument:

1. A contribution plan is a plan under which a participating offeree may save money by regular deductions from wages or salary towards paying for shares offered for issue or sale under an employee share scheme.

2. A body corporate is an associated body corporate of an issuer if:

(a) the body corporate is a related body corporate of the issuer; or

(b) the body corporate has voting power in the issuer of not less than 20%; or

(c) the issuer has voting power in the body corporate of not less than 20%;

(applying the definition of "voting power" contained in section 610 of the Act).

3. The Australian dollar equivalent of a price shall be calculated by reference to the relevant exchange rate published by the Wall Street Journal, on the previous business day.

4. An employee share scheme shall not be regarded as extended to a person other than an employee or director of the issuer or an associated body corporate of the issuer merely because such an employee or director may renounce an offer of shares made to them under the scheme in favour of their nominee.

5. An option or stock purchase right shall be taken to have been offered or granted for nominal consideration if and only if the monetary consideration payable upon the issue of the option is not more than the lesser of:

(a) 1 cent per option; or

(b) 1% of the exercise price in respect of the option.

6. Securities shall be taken to be quoted on an approved foreign exchange if and only if quoted on:

(a) the NASDAQ National Market.

01/1204

7. The current market price of a share shall be taken as the price published by the principal exchange on which the share is quoted as the final price for the previous day on which the share was traded on the stock market of that exchange.

Dated the 28th day of September 2001

K. Martyr

Signed by Ken Martyr
as delegate of the Australian Securities and Investments Commission

PINNACLE VRB LIMITED 01/1205

APPLICATION BY RONAY INVESTMENTS PTY LTD AND MR DAVID PETHARD

INTERIM ORDER

Ronay Investments Pty Ltd (**Ronay**) and Mr David Pethard have made an application to the Corporations and Securities Panel (the **Panel**) for a declaration of unacceptable circumstances under section 657A of the Corporations Act. The circumstances (the **Relevant Circumstances**) that the application seeks to have declared to be unacceptable circumstances relate to acceptances, or purported acceptances, of the takeover bid (the **Bid**) made by Vanteck (VRB) Technology Corp (**Vanteck**) for Pinnacle VRB Limited (**Pinnacle**) which were initiated on behalf of Ronay by Credit Suisse First Boston Australia Equities Private Limited on or about Monday 24 September 2001 (the **Ronay Acceptances**).

Pursuant to section 657E of the Corporations Act, the Panel orders that:

1. Vanteck and the parties referred to in the schedule to this order (the **CSFB Clients**) do not exercise any voting rights or other rights attached to the fully paid ordinary shares in Pinnacle referred to in the schedule to this order (the **Relevant Securities**);

2. Vanteck does not dispose of, transfer or charge any of the Relevant Securities or any interest in any of the Relevant Securities;

3. Pinnacle does not register any transfer or transmission of the Relevant Securities;

4. Neither Vanteck nor ASX Perpetual Registrars Limited takes any action to complete any transfer of the Relevant Securities to Vanteck;

5. The securities clearing house (as defined in the Corporations Act) does not take any action to complete, reverse or withdraw any transfer of the Relevant Securities to Vanteck or any other person (including, without limitation, by taking any of the action referred to in Rule 16.6.2 of the SCH Business Rules);

6. Vanteck does not take any further steps to issue, or to complete the issue of, any ordinary shares in Vanteck (**Vanteck Shares**) as consideration for the Relevant Securities under the Bid;

7. The CSFB Clients do not dispose of, transfer or charge any of the Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid or any interest in any of those Vanteck Shares;

8. The CSFB Clients do not exercise any voting rights or other rights attached to any Vanteck Shares that may have been issued as consideration for the Relevant Securities under the Bid;

9. Any exercise of the voting or other rights attached to the Relevant Securities or to any Vanteck Shares issued as consideration for the Relevant Securities under the Bid be disregarded; and

10. Vanteck and each of Vanteck's directors and officers does not make any public statement that acceptances of the Bid have been, or may have been, received in respect of any of the Relevant Securities without stating that an application has been made to the Panel by Ronay and Mr David Pethard seeking a withdrawal of the Ronay Acceptances,

in each case, without the prior consent of the Panel, for a period of 2 months from the date of this order.

01/1205

If, before the end of the period of 2 months specified above, proceedings for a declaration under section 657A in relation to the Relevant Circumstances (and all related proceedings for an order under section 657D) are determined, this order will cease to have effect.

Dated: 28 September 2001

Signed:

(sgd Alison Lansley)

ALISON LANSLEY

SCHEDULE

SHAREHOLDER	NUMBER OF RELEVANT SECURITIES
Mrs Donna Margaret Luxton 62 Peel Street Redland Bay Qld 4165	11,000
Mr Edward Albert French & Mrs Lynne Shirley French PO Box 39 (Roys Road) Palmwoods Qld 4555	4,376
Mr Philip Ang 1122 Malvern Road Malvern Vic 3144	29,167
Mr Gavin Bust 6 Atheldene Drive Glen Waverley Vic 3150	1
Eastcoast Air & Electric Pty Ltd (Eastcoast Super Fund A/c) C/- S Pollard & M Bonnici PO Box 2020 Taren Point NSW 2229	30,000
Lazar Mayer Pty Ltd C/- H Jolson Room 1711 Owen Dixon Chambers West 205 William Street Melbourne Vic 3000	12,000
Mr Warren Sherry Neill 15 Vincent Court Campbelltown SA 5074	620

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Mrs Mary Murray 22 Katrina Avenue Mona Vale NSW 2103	3,445
Mitpan Investments Pty Ltd 5 Paddys Lane Park Orchards Vic 3114	795,696
Ronay Investments Pty Ltd Unit 22 33 Queens Road Melbourne Vic 3004	682,441
Mr Benito Randazzo & Mrs Mary Fandazzo 56 Summerhill Road Reservoir Vic 3073	180
Mr Brian John Bugeja & Mrs Judyanny Elizabeth Bugeja 7 Thornton Close Hallam Vic 3803	10,000
Amecoy Pty Ltd 24 Packenham Street Mount Lawley WA 6050	90,000
Ms Jan Berg 24 Packenham Street Mount Lawley WA 6050	35,000
Mr Kurt Smyth & Mrs Beverley Smyth (Eighth Amacorp Pty Ltd SSF T A/C) 13 Market Street Essendon Vic 3040	5,000
Foxwell Investments Pty Ltd 7 Riverside Drive Kew East Vic 3102	5,000
Mr Ken Sturrock & Mrs Helen Sturrock (K&H Sturrock Superannuation A/C) C/- Cavendish Superannuation PO Box 7803 Cloisters Square WA 6850	36,750

01/1206

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Corporations Act 2001

ORDER

The **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ("ASIC")** hereby makes an order relieving the company referred to in Schedule A, ("the Company") and its directors and auditor, in relation to the financial year referred to in Schedule B ("the Relevant Financial Year");

(a) **pursuant to subsection 340(1) of the Corporations Act 2001 ("the Act")**, from the requirements of subsection 319(3) of the Act in so far as that subsection requires the Company to lodge its Financial Report for the Relevant Financial Year with ASIC not later than 3 months after the end of a financial year, provided that such Financial Report shall not be lodged later than the date referred to in Schedule C.

SCHEDULE A
The Swish Group Limited ACN 085 545 973

SCHEDULE B
Financial year ended 30 June 2001

SCHEDULE C
12 October 2001

Dated this 2nd day of October 2001.

.....
Signed by Robert G. Mackay
as **Delegate** of the **Australian Securities and Investments Commission**

Corporations Act 2001
Subsection 164(3)

Notice is hereby given that the ASIC will alter the registration details of the following companies
1 month after the publication of this notice, unless an order by a court or Administration Appeals Tribunal prevents it from doing so.

AUSTRALIAN HEALTH CONSORTIUM PTY LTD ACN 098 085 208 will change to a public company limited by shares. The new name will be AUSTRALIAN HEALTH CONSORTIUM LTD ACN 098 085 208.

ORAL HEALTH CARE LIMITED
ACN 095 315 861 will change to a proprietary company limited by shares. The new name will be
ORAL HEALTH CARE PTY LTD
ACN 095 315 861.

ONESTEEL TRADING LIMITED
ACN 007 519 646 will change to a proprietary company limited by shares. The new name will be ONESTEEL TRADING PTY LIMITED
ACN 007 519 646.

OZECOM MANAGEMENT LIMITED
ACN 094 482 863 will change to a proprietary company limited by shares. The new name will be OZECOM MANAGEMENT PTY LIMITED
ACN 094 482 863.

CORPORATIONS ACT 2001
SECTION 601AH(1)

Notice is hereby given that the registration of
the companies mentioned below will be reinstated.

Dated this third day of October 2001

Margaret Boothman :

DELEGATE OF THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Name of Company	ACN
ALOSONG PTY. LIMITED	076 113 310
ANTON & SONS CONSTRUCTIONS PTY LTD	003 158 790
APEX FINANCE & INSURANCE PTY LTD	063 787 379
AQUATIC RENTALS PTY. LIMITED	083 626 457
ASLAQ PTY. LTD.	068 405 587
AUSTRALIAN NATIONAL RAILWAYS SUPERANNUATION PTY LTD	066 848 100
B. C. PTY. LIMITED	055 816 478
BROOKDALE PTY LTD	009 274 908
CATS PRODUCTIONS AUSTRALIA PTY LTD	002 808 237
CLEAN & DELIVER SERVICE NO 16 PTY LTD	001 651 234
CVWM SUPERANNUATION PTY LTD	067 612 435
FIBRES BAYSWATER LIMITED	004 305 702
G & P TURNER SUPERANNUATION PTY. LTD.	068 710 181
GLOWJIB PTY. LIMITED	050 039 800
HAMISH MELDRUM PTY. LIMITED	072 917 616
HOME PRIDE CONSTRUCTIONS PTY. LIMITED	000 531 073
JENDREW COMPUTERS PTY. LTD.	063 780 441
JOHN OLIVER DUNLOP RUSSELL PTY LTD	068 236 153
JOHNSTON AND MCMILLAN PROPRIETARY LIMITED	004 143 444
JOLOCK NOMINEES PTY LTD	006 997 191
KABLE DEVELOPMENTS PTY. LTD.	010 281 179
KELAT HOLDINGS PTY LTD	002 868 662
LAVENTO INVESTMENTS PTY LIMITED	072 944 677

Name of Company	ACN
LEVI STRAUSS (AUSTRALIA) STAFF SUPERANNUATION PLAN PTY LTD	065 551 260
MACLAW NO. 306 PTY. LTD.	056 216 472
MANDALAY NOMINEES PTY. LTD.	004 997 666
MANUFACTURING EDUCATION AND CONSULTING SERVICES PTY. LIMITED	062 282 759
MARENBROOKE HOLDINGS PTY LTD	065 421 301
MARSHFIELD PROPRIETARY LIMITED	006 289 078
MT. EVELYN CHRISTIAN RETIREMENT VILLAGE PTY. LTD.	007 158 750
O'REILLY TRANSPORT PTY LTD	066 060 295
PASSBUCK PTY. LTD.	060 036 008
PKK ENTERPRISES PTY LIMITED	084 671 143
RBW INTERNATIONAL ECONOMIC DEVELOPMENT PTY. LTD.	073 040 945
RICHTAX PTY. LTD.	010 978 033
R NORMAN & SONS PTY LTD	000 953 926
S & K FREIGHTERS PTY LIMITED	064 071 147
SODA PRODUCTIONS PTY LTD	085 130 463
SOLID STATE SOLUTIONS PTY. LTD.	075 694 236
SPRINGTIME DRIVE PTY. LTD.	080 272 537
TAOUK ELECTRICALS PTY LTD	078 839 399
T BRAY GEOLOGICAL PTY. LTD.	078 666 734
TOLTOOK PTY LIMITED	003 553 606
TTENNEB PTY. LTD.	004 318 192
UNI STEEL CONSTRUCTION PTY LTD	078 091 737
VAMAPO PTY LTD	003 393 075
ZEE PTY. LTD.	060 560 296