ASIC

Australian Securities & Investments Commission

REPORT 1

Report of investigation: Spedley Securities Ltd

December 1998

REPORT OF THE
SPECIAL INVESTIGATION INTO SPEDLEY SECURITIES LIMITED

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

DECEMBER 1998

Preface

This document comprises the report provided to the Minister by the Australian Securities & Investments Commission (ASIC), pursuant to subsection 18(1) of the Australian Securities Commission Act 1989 (ASC Law). This report incorporates references to materials and records obtained during the investigation.

Pursuant to subsection 18(4) of the ASC Law, it is open to the Minister to cause the whole or part of the report to be printed and published.

In the exercise of the discretion provided by subsection 18(4), the Minister has decided that the report, excluding the materials and records obtained during the investigation, be printed and published.

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SPECIAL INVESTIGATION INTO SPEDLEY SECURITIES LIMITED

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

DECEMBER 1998

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INTRODUCTION

The Australian Securities and Investments Commission (ASIC), and the Corporate Affairs Commission before it, conducted one of its largest ever investigations, into the collapse of Spedley Securities[1], Spedley Holdings, GPI Leisure, Greater Pacific Investments and other companies. To give some idea of the scale of the investigation, the investigation team took over 6,500 pages of transcript during formal examinations, obtained hundreds of exhibits during the examinations and many other boxes of records using ASIC's evidence gathering powers [2]. The team also conducted informal interviews and took statements from many other people to gather the complex financial and accounting evidence needed to assess the causes of collapse of the companies being investigated and to bring charges against some of the people involved.

The results of those efforts - a number of successful prosecutions, banning orders and some civil action to appoint receivers - speak for themselves and have been reported on in the press.

In part, this report has been written to provide a concise summary of the causes of the collapse and ASIC's actions following the collapse. But that is not the only purpose of preparing the report. While the events investigated occurred between 1985 and April 1989, the findings of the investigation provide some salutary lessons for corporate governance in this decade and beyond.

1.1 HOW THE INVESTIGATION COMMENCED

The National Companies and Securities Commission's (NCSC) investigation into the Rothwells collapse revealed that Spedley Securities and its associated companies had contributed funds to the rescue attempts in 1987 and 1988, and therefore had a significant exposure to Rothwells. It also emerged that a number of complex dealings existed between companies in the Rothwells group and the Spedley group. This caused some concern within the NCSC about the financial viability of the Spedley group.

By a prescribed direction dated 20 September 1989 and amended on 20 November 1989 and 1 March 1990, the then New South Wales Minister for Business and Consumer Affairs, the Honourable GB Peacocke directed the NCSC pursuant to Section 291 of the Companies (NSW) Code to arrange an investigation into the affairs of Spedley Securities, Spedley Holdings, GPI Leisure and Greater Pacific.

On 24 November 1989, the NCSC appointed the Corporate Affairs Commission of New South Wales pursuant to sub-section 292(4) of the Code as Inspector to carry out the investigation. The Corporate Affairs Commission delegated its powers and functions as Inspector to Mr GT Miller QC on 27 November 1989 and 21 March 1990.

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[1] The Glossary in Appendix 3 contains a description of the abbreviations used for people and companies contained in this Report.

[2] References to ASIC include references to the ASC and the CAC, where appropriate, and references to the ASC include references to ASIC, where appropriate.

After the Australian Securities Commission (ASC) was established on 1 January 1991, it assumed responsibility for the conduct of the investigation. The investigation was deemed to be an investigation to which section 14 of the ASC Law applied. As all prosecutions and other action have been completed (with a prosecution which concluded in December 1997), the investigation has been concluded. The ASC became the Australian Securities and Investments Commission on 1 July 1998. Consequently, ASIC now presents its final report of the investigation prepared pursuant to sub-section 305(2) of the Companies (NSW) Code and section 17 of the ASC Law to the Treasurer. (In the "Overview and Corporate Governance Lessons" and "Conclusions" sections of the report, the name "ASIC" is used, as this is the organisation now releasing the report. However, for convenience, in the main body of the report "ASIC" is referred to as "the ASC", since this was the name under which all investigations and prosecutions were conducted.)

1.2 THE TERMS OF THE INVESTIGATIONS

In broad terms, ASIC investigated the affairs of Spedley Securities, Spedley Holdings, GPI Leisure and Greater Pacific, and those other companies listed in Part 1 of Annexure 1. It also investigated the affairs of the companies listed in Part 2 of Annexure 1 in so far as they related to the affairs of the companies listed in Part 1. To assist in understanding the relationships between the principal companies, Annexure 2 is a series of diagrams showing the interlocking shareholdings and a list of directors of the principal companies.

1.3 WHAT THE INVESTIGATION ACHIEVED

The terms of the Ministerial directions were very broad, presenting a significant challenge for the CAC and ASIC to plan and target the investigation to secure the best possible results in the most efficient manner. That the principal players in the collapse of the companies investigated - Yuill, Craven and Corner - all received significant jail terms indicates that this was achieved.

This report describes a number of transactions for which briefs of evidence were sent to the Director of Public Prosecutions (DPP). Those briefs provide a representative sample of all the possible transactions which could have been investigated, covering:

- directors abusing their positions, to gain personal benefits;
- directors failing to act in the best interests of the company;
- transactions just before and just after balance date, which significantly altered Spedley Securities' reported financial position;
- improper loans being made to directors;
- making false statements to auditors or independent experts; and
- insider trading.

The investigation team considered a number of other, often similar, transactions in the course of selecting the transactions to focus on during the investigation. The transactions which were pursued or prosecuted were selected for a number of strategic or practical reasons, including:

- the desire to take action against the principal players in the collapse of the companies;
- the desire to investigate fully and lay charges on a range of transactions and possible offences;
- the advice of the DPP and counsel on the prospects of success for particular types of charges and the evidence required to have a high prospect of success;
- availability of evidence (particularly where records or witnesses were located overseas);
- the need to contain the investigation to a reasonable time frame; and
- the effect of competing priorities for the CAC and ASIC, on the available resources.

In addition, the DPP, in consultation with ASIC, decided not to prosecute all of the charges laid against Yuill, after he had been convicted and sentenced on some charges described in this report. There appeared to be little benefit in conducting further trials at public expense, given the length of jail sentence he was required to serve. If he had been convicted on any further charges, any sentence may have been directed to be served concurrently with his existing sentences, so there would have been no public benefit in prosecuting every charge that was laid against Yuill.

1.4 THE CAUSES OF THE COLLAPSE

It could be tempting to blame the stock market crash of October 1987 for the collapse of the Spedley Group of companies - just another casualty. While the crash may have been an influencing factor, it merely brought forward the inevitable for the Spedley Group.

ASIC considers that the following general causes can be identified as significantly contributing to the collapse of Spedley Securities and its associated companies:

- the lack of internal controls, which, for example, allowed futures losses of $35 million to remain undisclosed for some years;
- the dominance of Yuill, the result of which was that Spedley Securities made many loans which were not approved by the Board, to companies or individuals which were not creditworthy or on terms which were not beneficial to Spedley Securities. This included non-recourse loans totalling $50 million to purchase shares in companies which collapsed;
- the absence of an arms length, commercial approach to a number of deals. For example, loans were made at interest rates less than the cost of funds, so trading losses were continually being sustained. Non-performing loans were not pursued and interest was allowed to be capitalised. As a result, there were loans to Greater Pacific totalling $170 million and an exposure to Rothwells and companies associated with Connell of $58.3 million;

In addition to these broad, general reasons, the following specific reasons for the collapse can be identified. Some of these specific reasons flow from the general reasons identified above.

- the other directors of Spedley Securities did not give sufficient attention to the company's affairs, after they were put on notice that Yuill was making unauthorised loans and that the company

was regularly sustaining losses but somehow making substantial profits in the last month of the financial year. The latter should have been a warning to the directors that the company's activities required close attention;

- Spedley Securities did not hold any stable investments or have adequate security for loans which would survive events such as the stock market crash. The value of Spedley Securities' share portfolio decreased by $15.3 million after October 1987 and the value of Greater Pacific's portfolio decreased by $23.1 million;

- Yuill managed a large number of companies, so he was able to transfer assets and liabilities between those companies, to present balance sheets in a favourable light;

- Yuill treated the companies' funds as his own, obtaining money from Spedley Securities for his own private purposes and making loans to Bondoro totalling approximately $10 million to purchase and renovate a property used by his family;

- the accounts of Spedley Securities were “window dressed” by transactions before and after its balance date. This meant that its true financial position was hidden, so for some time it avoided scrutiny by regulators, investors and the financial community; and

- the auditors did not pursue issues which were identified as problematic and accepted explanations from officers of Spedley Securities without seeking independent confirmation or carrying out additional procedures when they encountered suspicious transactions.

GPI Leisure collapsed because of its large exposure to the Spedley companies, including its $100 million investment in Spedley Holdings and a guarantee for $100 million given to Spedley Securities for some of the debts due to Spedley Securities. The collapse of Spedley Holdings and Spedley Securities inevitably led to the collapse of GPI Leisure.

1.5 THE RESULTS

The following is a summary of the charges which were brought as a result of the investigation.

- Yuill was charged in relation to the Triton Brief on 12 December 1990 (see Chapter 7). He was found guilty in November 1993 of one charge under section 229(1)(b) and 6 charges under section 229(4) of the Companies Code and was sentenced in March 1994 to 8 years imprisonment with a minimum term of 6 years. On 30 June 1994, the conviction was quashed by the Court of Criminal Appeal and a new trial ordered. The DPP subsequently decided not to pursue the new trial, after having regard to the potential sentence under those charges and the term of imprisonment to which Yuill had already been sentenced on other charges, see below;

- Yuill was charged in respect of the Nodrogan Brief on 29 June 1992 (see Chapter 5) following an investigation which concluded in May 1991. He was committed on 24 March 1993 to stand trial and found guilty of one charge under section 229(4) of the Code on 12 September 1994. He received a sentence of 3 years 9 months imprisonment with a minimum period of 2 years 10 months;

- Yuill was charged in respect of the Chelsea property Brief on 29 June 1992 (see Chapter 6). He pleaded guilty in December 1995 to one charge under section 229(1) and one charge under section 230(1) of the Code and received a sentence of 2 years 6 months imprisonment with a minimum term of 1 year 2 months cumulative to the sentence in the Nodrogan matter;

- Yuill was charged in respect of the Accounts Brief on 23 July 1993 (see Chapter 1) and committed to stand trial on 5 charges under section 229(4) of the Code. As with the Triton charges the DPP decided not to pursue these charges.

- James Craven was charged in respect of the Bisley Rights Brief (see Chapter 9) on 15 March 1993. After being committed to stand trial in January 1994, he pleaded guilty to one charge under section 229(1) of the Code in June 1995. He received a sentence of 9 months imprisonment with a minimum term of 6 months and 23 days.

- John Corner was charged in relation to the Bisley and Kirkland-Whittaker Briefs on 15 February 1993 and was committed in October 1993 to stand trial (see Chapters 8 and 10). He pleaded guilty at trial, in January 1997. He received a sentence of 18 months periodic detention and a fine of $23,000, in April 1997. The DPP appealed against the leniency of the sentence, and on 19 December 1997, the Court of Criminal Appeal imposed a sentence of 6 months imprisonment.

In addition to those prosecutions, one former director has been disqualified from managing a corporation (refer to Chapter 16) and one futures trader has been banned from acting as a representative of a futures broker or futures adviser (refer to Chapter 12). While the conduct of the auditors of Spedley Securities does not escape criticism (see Chapter 17), one has since retired from practice and the other has left Australia to practice overseas. Consequently, and given the criminal proceedings already entered into against a number of directors, and the potential time and expense of further litigation, ASIC believed that there was no significant additional benefit to the Australian public in taking action against the auditors. ASIC has decided not to take action against the audit partners through the Companies Auditors and Liquidators Disciplinary Board.

BACKGROUND TO THE COMPANIES

This section contains a brief description of some of the principal companies involved in the groups of companies investigated. Annexure 2 consists of diagrams showing the relationships between the companies and a list of the directors of the companies. Annexure 3 is a more complete description of people and companies involved in the operation and collapse of these companies, and the abbreviations used for them in this report.

Spedley Holdings Limited

Incorporated in 1977, as a holding company for Spedley Securities and the subsidiaries of Spedley Securities. The other subsidiaries included First Federation Discount Company Limited, a licensed dealer in the official money market, and Securities Deposits Limited, a dealer in the unofficial money market.

The major shareholders of Spedley Holdings were ANI, Greater Pacific and GPI Leisure. Its balance date was 31 October.

The directors during the period investigated were Brian Yuill, Kenneth Hawkins, David Gray, Kenneth Hughesden, Neil Jones, and John Maher. Mr Hughesden was based in London.

Mr JB Harkness was appointed liquidator on 25 May 1989, by the NSW Supreme Court. Many of the other Spedley companies were wound up at the same time.

References to “the Spedley Group” are to the group consisting of Spedley Holdings, Spedley Securities, First Federation, Security Deposits, Aldershot, Spedley Holdings (UK) Ltd and its subsidiaries Asset Pride Ltd, Kirkland-Whittaker Group Limited, Kirkland-Whittaker (Channel Island) Ltd and Kirkland-Whittaker (London) Limited.

Spedley Securities Limited

Incorporated in 1977, the company engaged in merchant banking activities and earned fees for providing advisory services and negotiating finance. Spedley Securities’ directors were the same as the directors of Spedley Holdings.

Spedley Securities held a dealer’s licence under the Securities Industry Act, 1975. The licence was subject to conditions which included a liquid funds requirement. "Liquid funds" was the excess of tangible assets over total liabilities. The condition required the excess to exceed at all times the greater of $50,000 or 5% of the total liabilities. In calculating the amount of its tangible assets, Spedley Securities was required to exclude fixed assets, securities having no ready market, assets not expected to be realised within 12 months in the ordinary course of business, doubtful debts and unsecured loans and advances made to associated entities.

As the holder of a dealer's licence and the "public face" of the group, Spedley Securities also prepared accounts which were audited. Its balance date was also 31 October.

Mr JB Harkness was appointed liquidator on 25 May 1989, by the NSW Supreme Court.

Greater Pacific Investments Pty Limited

An investment company, holding 30% of Spedley Holdings, 30% of GPI Leisure and 20% of Bisley Investment. 39.9% of the shares in Greater Pacific were owned by BR Yuill Holdings until 1988, when it was privatised, following a takeover offer by Pluteus (No 180), a company also owned by Yuill.

Its balance date was 30 June.

The directors of Greater Pacific were Brian Yuill, James Craven, James Corner, James Beatty, Sir Paul Bowman, and Ross Levings.

Mr A Hodgson was appointed liquidator by the Supreme Court of Victoria on 24 July 1989.

GPI Leisure Corporation Limited

An investment company, incorporated in 1986, to invest in the leisure, entertainment and tourist industries. One of its investments was a 49% holding of the Austotel Trust, which owned over 200 hotels. GPI Leisure was in a healthy financial state, until it borrowed $100 million in May 1988, to invest in Spedley Holdings. Its balance date was 30 June.

GPI Leisure deposited surplus funds with Spedley Securities.

The directors of GPI Leisure were Brian Yuill, James Craven, James Corner, James Beatty, Sir Paul Bowman, David Gray, Robin Stornmonth-Darling and Brent Potts.

Mr J O'Brien was appointed liquidator by the NSW Supreme Court on 15 November 1991.

Bisley Investment Corporation Limited

From 1979, Bisley Investment became involved in finance, investment and property development. Its subsidiaries included Bisley Asset Management and Bisley Commodities Brokers, then a member of the Sydney Futures Exchange. The directors were John Corner (Managing Director), Ronald Gray, Brent Potts, Theodore William West, Brian Yuill and Brian McGowen. Mr J O'Brien was appointed as liquidator in April 1990.

WHAT IS CORPORATE GOVERNANCE?

Corporate governance describes the principles and practices adopted by a company, to ensure sound management of the company, within the letter and spirit of the law. It affects and defines the relationships between the Board, management and auditors and includes obligations of the Board and management to manage the company so as to protect and enhance shareholder wealth as well as meet the company's obligations to all parties with which it interacts. There continues to be considerable discussion and debate about the necessary and/or desirable elements of good corporate governance. Without canvassing the full spectrum of elements it is generally suggested that a reasonable system of corporate governance would at a minimum cover matters such as:

- The mix of executive, non-executive directors and independent directors and the role of a non-executive chairman;
- Procedures for appointment and retirement of directors (criteria for appointment, analysis of the skills needed on the Board);
- An audit committee to oversee the introduction and operation of compliance systems and accounting and financial controls;
- The composition, function and procedures of other board committees (eg remuneration committee and nomination committee);
- Allocation of responsibility between the Board, its committees and management and reporting requirements;
- Directors' access to senior management and internal and external auditors;
- Management's access to non-executive directors (through an audit committee or otherwise); and
- The company's approach to identifying and managing risks inherent in the business.

For a company to be well managed, an effective system of corporate governance needs to be present and functioning properly. The investigation into Spedley Securities reveals a system which did not work effectively, because of the absence or ineffectiveness of the required elements. The following lessons indicate some of the deficiencies in Spedley Securities' corporate governance practices.

LESSON 1: THE DOMINANT DIRECTOR

If any one director has undue control over a listed company's assets and affairs, there is a dramatically increased risk of:

A. the company being a party to non-commercial transactions which favour that director's interests

B. the company not making full and fair disclosure of its financial position

C. the company's funds being misused or stolen.

It was a feature of a number of the corporate collapses of the late 1980s that there was one principal director who was synonymous with the group of companies and basically ran the group. This centralised control makes it extremely difficult for any of the usual safeguards on abuse of power, such as non-executive directors or the auditor, to be effective in ensuring high standards of corporate governance. A key feature of sound corporate governance arrangements (see previous page) is the proper allocation of responsibility between the Board and management. In the absence of this division of responsibilities, risk increases dramatically, due to the lack of oversight and the absence of proper approval and disclosure of transactions which have the potential for director conflict.

A. Risk of the company being a party to non-commercial transactions which favour one director's interests

In the case of the Spedley group of companies and the Bisley group, Yuill and Corner exercised a considerable degree of personal control over the policies and actions of those companies, influencing the transactions that they entered and the terms of those transactions. It almost goes without saying that these transactions did not always provide long term benefits to those companies.

Many of the transactions that were entered by Spedley Securities or GPI Leisure at Yuill's instigation were not in the company's best interests. In some cases, this was because of the financial position of the borrower (eg Greater Pacific or Rothwells). In other cases, it was because of the terms on which transactions were entered.

1. 1988 ACCOUNTS OF SPEDLEY SECURITIES [1]

Yuill arranged for GPI Leisure to lend money to Greater Pacific, so that Greater Pacific could repay much of its debt to Spedley Securities. This removed a possibly doubtful debt, from Spedley Securities' balance sheet, making it easier to meet its licence conditions.

Yuill also arranged for Spedley Securities to indirectly lend money to Pluteus (No 152), so that Pluteus (No 152) could buy Spedley Securities' share portfolio, at substantially more than its market value. This avoided the need for a write down in Spedley Securities' share portfolio.

[1] See Chapter 1 for more detail

GPI Leisure provided a guarantee of Spedley Securities' receivables, up to $100 million. The Board of GPI Leisure was not asked to approve giving the guarantee. Without the guarantee, the auditor would not have signed the accounts, because of deficiencies in the evidence provided to him of collectability of loans made by Spedley Securities.

2. GPI LEISURE INVESTMENT IN SPEDLEY HOLDINGS [2]

Yuill arranged for GPI Leisure to borrow $100 million, to invest in Spedley Holdings, in early 1988. This investment substantially changed the risk profile of GPI Leisure and its gearing ratios. It is difficult to see how this transaction could have been in GPI Leisure's best interests.

3. BISLEY RIGHTS OFFER UNDERWRITING [3]

Greater Pacific sub-underwrote a rights issue by Bisley Investment, at a time when it was evident that few shareholders would take up their rights. The Board was not asked to approve Greater Pacific being a sub-underwriter.

Spedley Securities then effectively financed Greater Pacific's obligations, by making loans to sub-sub-underwriters arranged by Craven. The terms of the loans were extremely attractive to the sub-sub-underwriters, but offered little, if any, benefit to Spedley Securities.

4. LOANS BETWEEN THE BISLEY GROUP AND OTHER COMPANIES [4]

Corner arranged a number of payments between Bisley Asset, Spedley Securities and some of Bisley Investment's creditors. The purpose of the payments was to allow repayment of some loans which the auditor had queried - including loans to a company of which Corner was a director and shareholder.

5. KIRKLAND-WHITTAKER INVOICES [5]

To improve the apparent results of Kirkland-Whittaker in 1987 and 1988, Yuill instructed one of the company's officers to send false invoices to companies in Australia, including Triton and Greater Pacific. Corner paid the invoice, using some funds obtained from Spedley Securities and some of Triton's own funds.

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[2] See Chapter 2 for more detail
[3] See Chapter 9 for more detail
[4] See Chapter 10 for more detail
[5] See Chapter 8 for more detail

B. Risk that the company does not make full and fair disclosure of its financial position

The preceding section gives some examples of transactions in which the dominant director - Yuill or Corner- used their positions to harm a company of which they were a director or to cause the company to enter a transaction on less than favourable terms.

The dominant director can also use his or her power to create a false picture of the company to its shareholders, regulators and the entities the company deals with. Yuill managed to keep the companies operating for some time by implementing transactions around Spedley Securities' balance date, to ensure it met its licence conditions and to make Spedley Securities appear financially healthy, when it was not. There are also examples of access to information being controlled, so that shareholders, creditors and others were not aware of significant events affecting the value of the companies involved. Independent directors and auditors need to be astute in seeking and receiving all of the information and verification needed to ensure that public disclosures are sufficient.

1. WINDOW DRESSING THE ACCOUNTS [6]

In both 1987 and 1988, Yuill arranged a number of transactions just around Spedley Securities' balance date, which dramatically altered the content of Spedley Securities' accounts. This "window dressing" also assisted Spedley Securities to retain its dealers licence, by helping it to meet the surplus liquid funds requirement.

Some of the transactions (eg the sale of some shares to ANI) were reversed just after balance date. Other transactions improved the apparent quality of Spedley Securities' assets. For example, unsecured loans made to companies or individuals linked to Yuill and his associates were exchanged for commercial bills. These bills gave the appearance of current assets with greater liquidity. However, as the term of the bills was very short and they carried an extremely small interest rate, the bills would not have been readily marketable. Yuill also arranged for profit transfers within the group, to improve Spedley Securities' reported profits.

2. $35 MILLION FUTURES LOSSES [7]

Spedley Securities lost $35 million from futures trading in the period from 1984 to 1988. These losses were concealed by the senior money market manager until late 1988 and they were not subsequently disclosed in the 1988 financial statements, due to the manipulation of interest income and expenses.

3. KIRKLAND WHITTAKER INVOICES [8]

Kirkland-Whittaker sent invoices to Greater Pacific and others, to improve Kirkland-Whittaker's apparent profits. It is clear that the invoices were entirely false, being for services which did not fall within Kirkland-Whittaker's area of expertise. The effect of the invoices was the same as the

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[6] See Chapter 1 for more detail

[7] See Chapter 1 for more detail. ASIC does not accept that the transactions described absolved Spedley Securities of the need to disclose the losses.

[8] See Chapter 8 for more detail

effect of the balance date transactions for Spedley Securities - much better results were reported and the company appeared to be more financially sound than it really was.

4. DISCLOSURE TO THE AUSTRALIAN STOCK EXCHANGE[9]

When GPI Leisure borrowed $100 million and invested in Spedley Holdings, the company should have made an announcement to the Australian Stock Exchange about the transaction. No announcement was made, so the shareholders and the investment community had no way of knowing about this significant change in GPI Leisure's activities, until GPI Leisure published its Annual Report months later.

5. VAXLON SHARE TRANSACTIONS [10]

Greater Pacific wanted to buy out a 20% shareholder in West Coast. Because Greater Pacific already owned 8% of West Coast, it could not buy another 20%, without making a takeover bid. Yuill subsequently arranged for Vaxlon, a company controlled by Mr Patrick Elliott, to hold some of the shares for Greater Pacific. This created a misleading appearance of control of the West Coast shares.

C. Risk of the company's funds being misused or stolen

Yuill obtained substantial benefits from Spedley Securities, by using the company's funds to purchase assets for his own use or the use of his family. With few apparent controls on his activities at Spedley Securities, it appears to have been quite easy for him to do so. A director in such a dominant position can abuse the trust placed in him, and prudence requires that extra precautions be taken in such cases.

1. CHELSEA PROPERTY [11]

Yuill purchased a property in Chelsea, London for £1.2 million, using funds lent to an intermediary by Spedley Securities, to complete the purchase. The other directors of Spedley Securities were not told the purpose of the loan.

2. LOAN TO TRITON FOR YUILL'S SUNDRY DEBTORS ACCOUNT [12]

Yuill had run up a "Sundry debtors" account with Spedley Securities of $2.88 million during 1988. Most of the funds had been used for share purchases, a car and expenses associated with Yuill's takeover bid for Greater Pacific. It was his usual practice to ensure the account was repaid by the end of the financial year. In 1988, he achieved this by having Spedley Securities lend funds to Triton, which were then on-lent to Nodrogan, to repay Yuill's debt to Spedley Securities.

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[9] See Chapters 2 and 3 for more detail
[10] See Chapter 11 for more detail
[11] See Chapter 6 for more detail
[12] See Chapter 7 for more detail

3. $17 MILLION LOAN TO NODROGAN [13]

BR Yuill Holdings needed $16.5 million to take up rights under a rights issue by Greater Pacific in July 1986. It obtained the money through the following series of transactions:

- Spedley Securities lent $8.5 million to each of Beverage Holdings and Oakhill;
- those two companies lent $8.5 million each to Nodrogan;
- Nodrogan lent $16.5 million to BR Yuill Holdings.

4. BONDORO [14]

Greater Pacific lent approximately $9.6 million to Bondoro, to purchase, renovate and operate a horse breeding and spelling property near Mudgee. While the shareholders and officers of Bondoro were at all times the original shelf company staff, it is clear that the property was bought for and only used by Yuill and his family.

[13] See Chapter 5 for more detail
[14] See Para 15.2 for more detail

LESSON 2. THE ROLE OF THE NON-EXECUTIVE DIRECTORS

Non-executive directors must be active in carrying out their duty of ensuring that directors and management are accountable for the management of the company. They must follow up matters which come to their attention and require explanation.

While the companies investigated had one or more executive directors - who spent a substantial part of their time managing the affairs of Spedley Securities, GPI Leisure or Greater Pacific, there were also a number of non-executive directors. One important responsibility of non-executive directors is to provide a review of, and a check on, the actions of management and executive directors, by making them accountable to the Board. They also bring additional expertise to the overall management of the company, whether it is technical expertise in the company's operations, legal or financial expertise.

ASIC recognises that it may be difficult for a non-executive director to assert or achieve influence, particularly where there is a dominant director who controls the other directors' access to information or to officers of the company. However, the non-executive director owes duties to the company. If those duties cannot be fulfilled, the director is on dangerous ground if he or she stays on the Board.

The non-executive directors of Spedley Securities, GPI Leisure and Greater Pacific were given varying amounts of information about transactions and about events affecting the companies' viability. However, there were numerous circumstances that should have put the non-executive directors on notice about the need for further enquiry. On occasion the non-executive directors themselves allowed the perpetration or concealment of transactions to facilitate the continued trading of the company. The non-executive directors did not operate as a check on the actions of the executive directors and management.

1. UNAUTHORISED LOANS [1]

Hawkins, Maher and Gray were all aware that Spedley Securities was making loans that had not been approved by the Board. While Gray and Maher both told Yuill that the practice was to stop, there does not appear to have been any follow up of the matter or any attempt to ensure internal controls were implemented to bring any such loans to the Board's attention.

2. END OF YEAR TRANSACTIONS [2]

The directors of Spedley Securities received management accounts each month. The startling differences between the September accounts and the end of year accounts should have put the directors on notice that there were transactions requiring further investigation. Further, in some cases, Maher and Hawkins, at least, knew of the transactions occurring around Spedley Securities' balance date.

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[1] See Para 16.2.1 for more detail
[2] See Para 16.2.2 for more detail

However, none of the directors questioned how the dramatic turnaround in Spedley Securities' results came about, or considered whether, because of the transactions which they knew about, the accounts presented a true and fair view of the company's financial position.

3. FUTURES LOSSES[3]

When the $35 million of futures losses were discovered, Yuill and some of the non-executive directors arranged to increase income and decrease expenditure for the 1987-88 financial year, by a total of $35 million, so there would be no net effect on Spedley Securities' financial results.

4. GUARANTEES FOR SPEDLEY SECURITIES[4]

GPI Leisure gave two guarantees in early 1989, one for Spedley Securities' receivables of up to $100 million and one to secure payment of the minority shareholders' "allocation" of the futures losses. ASIC considers that those guarantees were required before the auditor would sign his report.

Beatty and Craven signed one or both of those guarantees for GPI Leisure. Beatty claimed that there were substantial benefits for GPI Leisure in giving those guarantees. ASIC is dubious about whether there were any real benefits to GPI Leisure.

[3] See Chapter 1 for more detail
[4] See Para 16.3.1 for more detail

LESSON 3. SENIOR EXECUTIVES MUST BE VIGILANT

Senior managers have an independent responsibility to report concerns as to improper behaviour by directors or other managers of listed public companies. Well-managed companies will have independent directors, audit committees and the like to whom such concerns can be taken.

Neither Spedley nor Greater Pacific had an audit committee of the Board. Indeed, it was probably not usual practice for such companies to have audit committees at that time. One of the very useful purposes an audit committee can perform is to provide an obvious avenue for those who become concerned about the propriety or legality of actions being undertaken by management, to have those matters looked into by those in a position to take appropriate action.

The absence of such an obvious avenue does not provide an complete excuse, however, a dominant director is not solely responsible for all of the transactions into which a company enters. He or she is assisted by senior managers and other staff who carry out the dominant director's orders. If those staff members question their orders or refuse to take steps which they consider to be wrong, it would be much more difficult for the dominant director to act in a way that undermines the company's interests.

ASIC recognises that it can be very difficult for staff to take such a stand. One possible outcome may be dismissal, particularly if the non-executive directors are not made aware of the circumstances of someone's dismissal. This remains a difficult issue. In moving away from the problems that occurred in the 1980s, companies need to consider and develop ways in which people who have concerns can voice them without fear of retribution. Options may include access to independent directors or audit committees comprised of independent directors.

1. CONVERSION OF LOANS TO BILLS [1]

In 1987 and 1988, Yuill required that a number of outstanding loans be converted to short term commercial bills just before Spedley Securities' balance date. The transactions were reversed soon after balance date. On both occasions, Dawkins had arranged the transactions and their reversal, with the assistance of other staff from Spedley Securities.

2. SALE AND RE-PURCHASE OF BONDS [2]

In 1987, Dawkins, on Yuill's instructions, arranged the sale of Commonwealth Bonds to ANI at an inflated price before Spedley Securities' balance date. The bonds had lost value due to a significant change in interest rates. This sale avoided the need to write down the value of the bonds in the books of Spedley Securities. Any decrease in value would have been recorded as a loss (if the bonds were treated as a current asset) or recorded in the notes to the accounts (if the bonds were treated as a non-current asset).

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[1] See Para 1.8 and 1.15 for more detail
[2] See Para 1.5 for more detail

3. SALE OF PART OF GREATER PACIFIC'S SHARE PORTFOLIO [3]

While Levings was a director of Greater Pacific, he largely operated as an employee acting under Yuill's directions. On Yuill's instructions, Levings sold part of Greater Pacific's share portfolio in January 1988. This was done following an enquiry from the Australian Stock Exchange to all listed companies, requiring disclosure of the cost and market values of each company's portfolio of listed securities. One result of the sale was that Greater Pacific did not have to report a very large fall in value, because the shares had been sold at a price considerably above market value Levings arranged for the transaction to be reversed before he resigned from Spedley Securities in November 1988.

[3] See Chapter 13 for more detail

LESSON 4. EFFECTIVE INTERNAL CONTROLS ARE ESSENTIAL

Internal control comprises the systems, methods and procedures adopted by management to assist in achieving efficient conduct of its business, adherence to management policy, safeguarding of assets and the prevention and detection of fraud and error. Internal control procedures commonly include checking the arithmetical accuracy of the records, preparation of reconciliations, using control accounts and trial balances, approval and control of documents, conducting cash, security and inventory counts, limiting direct physical access to assets and records and comparison of results with budget.

Due to the nature of the business of merchant banking and the time constraints on settlements within the operation of the money market, Levings, the company secretary, believed that the accounting system used at Spedley Securities could not provide the level of internal control which existed in most other companies[4]. For example, cheques were drawn and deposits made without completed documentation. Documentation as to security, interest and repayments due on loans was inadequate.

This inadequate level of internal control helped Yuill in treating the companies' funds as his own and in arranging transactions that were not always for the good of the company. This was because there were no effective systematic checks and balances on his conduct or the payments that he ordered.

Some other results of the lack of effective internal control were:

1. futures losses of $35 million were concealed by Dawkins for some years, before he admitted to the directors that he had been falsifying documents to conceal the losses[5];
2. loans were granted without Board approval;
3. loans were made at interest rates less than the cost of funds;
4. loans were unsecured or were provided on a non-recourse basis (ie the only avenue for recovery was the shares for which the loan had been advanced);
5. interest was capitalised on non-performing loans, with little attempt to collect interest due; and
6. dealers could trade without any limits and without defined reporting requirements.

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[4] Levings, section 295 examination, 1 February 1990, page 376; section 7 examination, 27 September 1989, pages 11-12, letter from Levings to ASIC dated 17 May 1996

[5] See Para 1.17 for more detail

LESSON 5. THE AUDITOR MUST MAINTAIN AN INDEPENDENT OUTLOOK AND FULFIL ALL RESPONSIBILITIES

Auditors of public listed companies must carry out their responsibilities to users of audited accounts, including shareholders, creditors and regulators, by drawing public attention to significant or material matters which have aroused their suspicion and about which they have had no satisfactory explanation. Sometimes qualified audit reports are appropriate. At other times, it is appropriate for auditors to report to the independent directors or to audit committees. While auditors cannot be expected to be insurers against fraud, they should be expected to respond to and deal with matters which would put any reasonable auditor on inquiry.

As we have seen, Yuill orchestrated a number of transactions around Spedley Securities' balance date, which changed the balance sheet and profit and loss statement, as at 31 October. Despite these transactions - and in some instances, their reversal after balance date - Spedley Securities received an audit report opining that the accounts were properly drawn up, to give a true and fair view of Spedley Securities' financial position.

While a qualified audit report or non-compliance with its licence conditions would not have led to automatic revocation of Spedley Securities' licence, a qualified audit report would have led to a close examination of Spedley Securities' financial position and consideration of its suitability to continue dealing in securities.

There are two broad reasons which explain how Spedley Securities managed to obtain an unqualified audit report. First, Yuill obtained false evidence which masked the true position of Spedley Securities. Second and more importantly, ASIC believes that there were deficiencies in the audit conducted in 1987 and 1988.

1. CONDUCT BY THE COMPANIES

An example of the first type of conduct occurred in the 1988 audit. Launders had required confirmation of debts owed by Bond Corp Holdings to Spedley Securities. Accordingly Yuill arranged for a letter to be provided by Bond Corp Holdings, an apparently unrelated company, to confirm that amounts were owing to Spedley Securities. However, at around the same time, on 31 January 1989, Yuill provided an indemnity to Bond Corp Holdings[1]. This indemnity entirely negated the effect of the confirmation from Bond Corp Holdings.

The Bisley group also provides an example of non-disclosure or inadequate disclosure to its auditors [2]. When Corner arranged the repayment of some loans which had been queried by the auditor, he did not advise the auditor that Bisley Asset's funds had been used to make those repayments. Had the auditor been aware of this matter, it is likely that he would have issued a qualified audit report, unless additional disclosures were made in the accounts.

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[1] See Para 1.18 for more detail
[2] See Chapter 10 for more detail

2. DEFICIENCIES IN THE AUDITS [3]

From at least 1986 Launders was aware of transactions entered into by Spedley Securities near its balance date, to cause a short term change in the assets it held. He said that he did not believe that these transactions were necessarily designed to improve the appearance of the accounts.

Since the auditor was on notice that there could be such transactions, ASIC considers that the auditor's conduct on this occasion did not meet the standards required of a competent auditor.

Some of the matters which warranted qualifying the accounts or further investigation were:

- The reversal of the sale of shares from Spedley Securities to ANI. This should have been disclosed as a material post balance date event.

- Relying on a put and call agreement dated 30 November 1987 to justify not disclosing the fall in value of those shares, even though Launders suspected that the agreement had not come into existence until March 1988. He should have been put on notice that the option may not be exercised by Spedley Securities.

- The conversion of a large amount of unsecured loans to commercial bills (and their subsequent reversal) which avoided the need to determine whether some of those loans were doubtful or should have been classified as non-current assets. This transaction made it easier for Spedley Securities to meet the conditions of its dealers licence.

- The non-disclosure of the amount of the $100 million guarantee given by GPI Leisure for Spedley Securities' receivables, its terms and the identity of the guarantor, given that the auditor relied on the guarantee to form the opinion that the accounts gave the required true and fair view.

- Failing to detect the futures losses which were incurred from 1984 to 1988. The auditors did not obtain original evidence from ICCH, but accepted photocopies, which had been altered. The additional tests performed by audit staff did not detect the losses. If original evidence had been obtained, it is highly likely that the losses would have been discovered before Dawkins confessed.

- No separate disclosure of the futures losses.

In the case of Spedley Securities, it is evident that the external auditor placed substantial reliance on management's explanations and information provided by officers of the company, rather than seeking independent audit evidence. This may have been more appropriate if the auditors were not already aware of certain balance date transactions. For the reasons given below, in general, and in Chapter 17 in particular, ASIC does not consider that the auditor of Spedley Securities met the legal and professional standards required.

On a broader front, the auditing community faces a dilemma. On the one hand, there is pressure to submit competitive quotes for audit work and then to work within those quotes, to earn a profit for

[3] See Chapter 17 for more detail

the audit firm. This may lead, in some cases, to a greater degree of reliance on management to provide information and relevant documents, with less use of external verification. There is economic pressure to retain companies as clients; in turn, management and directors may seek to achieve an unqualified audit report.

On the other hand, auditors are meant to be independent. They provide most value to shareholders (and creditors and regulators) if they question management and directors and test answers against independently obtained evidence. They must report on the accounts without fear or favour. This, of course, can cost more time and money than an audit which involves a high level of reliance on and acceptance of management's explanations. The value which auditors can add for shareholders may not be well understood, particularly among small retail investors. Shareholders may need to be made more aware that the cost of an audit should be assessed in terms of the risk which is thereby avoided and the value that such assurance can give.

In recent years, the accounting profession has sought to better define and understand the expectation gap between auditors and the public. In 1997, a joint working party report also identified areas for improvement in the relationship structure between auditor, auditee and client. Suggestions were put forward designed to enhance the independence and role of the auditor. If such redefinition, renewal and reform does not proceed, informed understanding of the purpose and role of auditors may not improve.

These comments are not to suggest that ASIC believes it is a widespread practice that auditors do not meet the professional and legal standards required of them. However, the case of Spedley Securities and the subsequent recognition of the need for higher standards by the accounting profession emphasise the importance of maintenance of standards.

CONCLUSIONS

ASIC has referred all matters which it considered disclosed criminal action warranting consideration of charges to the Director of Public Prosecutions. There were a number of other matters which came to ASIC's attention during the investigation which, if investigated fully, could have led to further charges being laid. For a mix of reasons - including the availability of evidence, advice from the DPP and counsel, the need to contain the investigation to a manageable size in terms of time and resources and competing priorities for ASIC, those avenues of enquiry were not pursued.

The Director of Public Prosecutions was responsible for the conduct of the trials of the charges which were laid, although ASIC continued to provide assistance to the Director of Public Prosecutions to support those prosecutions. Briefs of evidence were provided to the Director of Public Prosecutions for advice from 1990 and trials were conducted over a period of time from 1993 to 1997.

ASIC has taken all civil action which it considered appropriate, completing its civil litigation in 1991, and has assisted the liquidators of the companies investigated with the litigation commenced by them.

A copy of Chapters 1 and 17 of this Report will be placed on Launders' file with ASIC, as they contain information which would be pertinent to any future application by him for registration as an auditor.

The investigation has provided ASIC with some significant lessons in corporate governance. Publication of this report will share those lessons with the wider community. It has also tested ASIC’s ability to conduct a large scale investigation, which lasted many years, and the dedication of its staff. The results of the investigation, principally that the three main players have all served periods of imprisonment, speak for themselves.

DETAILED REPORT OF MATTERS INVESTIGATED

CHAPTER 1 - THE ACCOUNTS

1.1 ACCOUNTING OBLIGATIONS

The obligations on directors and auditors in relation to a company's accounts during the period investigated were set out in Part VI of the Companies (New South Wales) Code, the Companies (New South Wales) Regulations and in accounting standards made by the Accounting Standards Review Board.

Section 267 of the Code required the company to "keep such accounting records as correctly record and explain the transactions of the company and the financial position of the company" and to keep its accounting records in such a manner as would enable the preparation from time to time of true and fair accounts and enable the accounts of the company to be conveniently and properly audited in accordance with the Code.

Section 269(1) and (2) required the directors of a company each financial year to make out or cause to be made out a profit and loss account to give a true and fair view of the company's profit or loss for that year and a balance sheet to give a true and fair view of the state of affairs of the company as at the end of that financial year.

Section 269(8) required directors to ensure that the accounts complied with prescribed requirements and, where accounts prepared in accordance with those requirements would not give a true and fair view of the matters required to be dealt with, the directors were required to add such additional information as would give a true and fair view of those matters. Regulation 57 stated that the prescribed requirements for the purposes of section 269(8) are set out in Schedule 7. Schedule 7 was a detailed list of disclosure requirements for the accounts. Section 269(8A) placed an obligation on directors to ensure that the accounts were made out in accordance with applicable approved accounting standards. However section 269(8B) established the overriding obligation to ensure that the accounts provided a true and fair view. If the consequence of compliance with any applicable approved accounting standard was that the accounts did not provide a true and fair view, compliance with that accounting standard was not required.

Section 270(1)(d) of the Code required the directors to prepare a report giving particulars of any matter or circumstance which had arisen since the end of the financial year, which had significantly affected or may significantly affect the operations of the company, the results of those operations or the state of affairs of the company in subsequent financial years.

The auditor was required, pursuant to section 285, to report on whether the accounts were properly drawn up, so as to give a true and fair view of the matters required by section 269 to be dealt with and on whether the accounts were drawn up in accordance with the provisions of the Code and applicable approved accounting standards. The auditor was also required to report on any defects or irregularities in the accounts, and to report on any matters omitted from the accounts in consequence of which the accounts did not present a true and fair view.

1.2 ACCOUNTING PROCEDURES WITHIN THE SPEDLEY GROUP OF COMPANIES

During 1986 and 1987, a computer system for deposit and loan portfolios was devised for the Spedley group of companies. The companies also operated a computer system for the general ledger. Identical accounting systems and records were used for all the companies. They were maintained principally by Levings, Pullen and Kwan.

By December 1988, these systems were used to record accounting transactions for Spedley Holdings, Spedley Securities, Security Deposits, First Federation, Aldershot, Spedley Nominees Pty Limited, Greater Pacific, GPI Leisure and other companies in the groups.

The accounting records maintained included loan trading vouchers, deposit trading vouchers, loan ledgers, deposit ledgers and journal vouchers. The companies also produced trial balances and monthly statements for loan accounts [1]. The vouchers were intended to provide evidence of authorisation of each transaction and were part of a system of internal control.

Internal control comprises the systems, methods and procedures adopted by management to assist in achieving efficient conduct of its business, adherence to management policy, safeguarding of assets and the prevention and detection of fraud and error. Internal control procedures commonly include checking the arithmetical accuracy of the records, preparation of reconciliations, using control accounts and trial balances, approval and control of documents, conducting cash, security and inventory counts, limiting direct physical access to assets and records and comparison of results with budget.

Levings said that, due to the nature of the business of merchant banking and the time constraints on settlements within the operation of the money market, the accounting system could not provide the level of internal control which exists in most other companies[2]. Cheques were drawn and deposits made without completed documentation. Documentation as to security, interest and repayments due on loans was inadequate.

Despite the deficiencies, the accounting records should have been sufficient to record and explain the transactions and financial position of the companies. Shortcomings in the system of recording day to day transactions were not the principal reason for the accounts failing to give a true and fair view in 1987 and 1988.

Accounts, consolidating the group's results, were produced and audited each year for Spedley Holdings. As the holder of a dealer's licence and the "public face" of the group, Spedley Securities also prepared accounts which were audited. The balance date for both companies in 1987 and 1988 was 31 October.

Shortly before the end of each financial year from at least 1984, Spedley Securities entered into transactions that were designed to change the financial picture presented by the annual accounts [3].

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[1] Statement of Ross Arnold Levings dated 28 May 1991, paras 10, 37; Statement of Lily Jones, dated March 1994, paras 1-12.

[2] Levings, section 295 examination, 1 February 1990, page 376; section 7 examination, 27 September 1989, pages 11-12, letter from Levings to ASC dated 17 May 1996

[3] Statement of Peter Campbell Dawkins dated 27 September 1990, paras 4-5

The ASC's investigation focused on those transactions, giving rise to the matters reported in this Chapter and in Chapter 17 (The Auditors).

1.3 SPEDLEY SECURITIES' LICENCE REQUIREMENTS

Spedley Securities' licence as a dealer under the Securities Industry Act, 1975 was subject to conditions which included a liquid funds requirement. "Liquid funds" was the excess of tangible assets over total liabilities. The condition required the excess to exceed at all times the greater of $50,000 or 5% of the total liabilities. In calculating the amount of tangible assets, Spedley Securities was required to exclude fixed assets, securities having no ready market, assets not expected to be realised within 12 months in the ordinary course of business, doubtful debts and unsecured loans and advances made to associated entities.

On the basis of the assets and liabilities disclosed in the accounts, after excluding the amounts referred to above, Spedley Securities' liquid funds exceeded the amount required by $14.073 million as at 31 October 1987 and by $43.965 million as at 31 October, 1988. The ASC believes that Spedley Securities would not have met the liquid funds requirement for its dealers licence had the accounts been properly prepared and had transactions reported in this Chapter, for which there appears no adequate commercial basis, not occurred.

1.4 1987 ACCOUNTS

During October 1987, Dawkins had a discussion with Yuill about the figures for the financial year to date and the annual accounts to be prepared at 31 October 1987. Dawkins made an estimate of the annual figures on a copy of the 1986 published accounts, using the September 1987 management accounts and estimates for October. He then prepared a list of items to discuss with Yuill. Consistent with his practice in previous years, Yuill indicated to Dawkins the size of loan receivables and other assets and the amount of profit which he wanted to disclose for Spedley Securities [4].

The management accounts for September 1987 record that Spedley Securities had incurred a loss of $344,000 during the previous 11 months. Current assets were $415,616,000 and current liabilities were $433,742,000. These figures revealed a deficit in working capital of $18,126,000 and would have alerted management to a problem in meeting the surplus liquid funds licence requirement.

The 31 October 1987 accounts show quite a different picture of the company's financial situation. The operating profit for the year, before income tax, was $4,560,000. Current assets of $383,374,000 exceeded current liabilities of $342,927,000 by $40,447,000.

It is the ASC's view that transactions which occurred in the two weeks before balance date brought about this significant difference. A number of these transactions were investigated.

1.5 SALE AND REPURCHASE OF COMMONWEALTH BONDS

In 1978, Spedley Securities had purchased Commonwealth Bonds with a face value of $5.65 million, an interest rate of 9.1% and a maturity date in October 1996. By October 1987, market

[4] Statement of Peter Campbell Dawkins dated 29 August 1990, paras 6, 7 and 10

interest rates had moved to approximately 14% and on 30 October 1987 the value of those bonds was between $4,257,953 and $4,376,094 [5].

Towards the end of October 1987, Dawkins had a conversation with Yuill in which he asked Yuill what was to be done about the bonds. Yuill replied that they were to be sold to ANI again. Yuill acknowledged that the bonds had been sold annually to ANI [6]. Dawkins then told Maher that the bonds were to be sold to ANI and was referred to employees of ANI [7], who arranged the transactions on behalf of ANI using documentation from the sale and repurchase of those same bonds in 1986 as a guide [8].

On 30 October 1987, Spedley Securities sold the bonds to ANI for $5,672,000.00 and purchased commercial bills with a face value of $5,800,000 from ANI for $5,740,549.92. ANI used the proceeds to purchase the bonds. The maturity date of the bills was 26 November 1987.

On 2 November 1987, Spedley Securities re-purchased the bonds from ANI for $5,672,000.00 and sold the commercial bills to ANI for $5,739,616.09, recouping the funds it had provided to ANI less a profit to ANI of $933.83 [9].

If the bonds had been owned by Spedley Securities at balance date, and recorded as current assets, they would have been carried at the lower of cost and market value. This would have necessitated a loss being recorded in the profit and loss statement. There would also have been a larger holding of bonds disclosed as current assets on the balance sheet. If the bonds were recorded as non-current assets, an investment intended to be held for more than 12 months, they would have been recorded at cost, with a provision for writing them down or a note disclosing their market value.

Yuill stated to the ASC that the bonds were regarded as a long term asset, so the loss in value did not have to be disclosed each year [10]. This statement does not accurately reflect the accounting treatment required at the time. Moreover, if Yuill had believed this to be true, there would have been no need to sell and repurchase the bonds.

The bills which were acquired in exchange for the bonds were brought to account as current assets. As noted at 1.3, it was a condition of Spedley Securities' licence that assets not expected to be realised within 12 months in the ordinary course of business could not be included in the calculation of surplus liquid funds. Had the bonds been retained and recorded as non-current assets, this would have materially reduced the amount by which Spedley Securities' liquid funds exceeded the minimum surplus required by its licence conditions.

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[5] Statement by John Kenneth Hoare dated 29 November 1990, para 5
[6] Statement of Peter Campbell Dawkins dated 29 August 1990, para 12, Yuill - Section 541 examination, 4 May 1990, page 1003
[7] Statement of Peter Campbell Dawkins dated 29 August 1990, para 15
[8] Statement of Charles Gerard Mooney dated 28 June 1991, paras 5-13
[9] Securities trading vouchers numbered 5045, 908447 and 5096 and cheque number 008400, ledger accounts for Commonwealth Government Securities and commercial bills.
[10] Section 541 examination, 4 May 1990, page 1003

Launders has acknowledged that, in a number of years, the bonds were sold to ANI before balance date and bought back by Spedley Securities very soon afterwards [11]. Launders said he did not believe that the shortfall in market value compared with book value needed to be disclosed. This was both because the book value of the bonds was the same as the face value which would be realised on maturity, and because the bonds were long term holdings.

The sale of the bonds on 30 October 1987 at a price above market value, and the subsequent repurchase for the same price had the effect of deferring recognition of the loss arising from the change in interest rates. (The difference between the purchase price and market value represented more than 60% of Spedley Securities' operating profit after tax for 1987.) The deferral of this loss would have decreased profit in later years. Accordingly these transactions should have been reported by the directors pursuant to section 270 of the Code. No such disclosure was made.

The auditor noted a loss of $1,389,900 (arising from the repurchase of the bonds) as a misstatement in the audit materiality sheets. As noted at 17.2.1, in accordance with standard auditing practice, the auditor listed all misstatements of assets, liabilities, expenses and revenue on a materiality sheet and calculated the net amount. In this case, Launders considered that the net amount was not material. Accordingly, the auditor did not request that the company make any adjustments to the accounts.

1.6 SALE OF SHARES TO ANI

The September 1987 management accounts show that Spedley Securities owned shares in listed companies which had a book value of $47.793 million. The stock market crash of 20 October 1987 had a disastrous effect on the value of many shares. Following the crash, the perception in the financial sector was that a large exposure to the stock market was not desirable, as further falls were possible [12].

On 30 October 1987, Spedley Securities agreed to sell certain shares listed in the Agreement for Sale to ANI Corp for their book value, $26,682,004.09. The market value of these shares as at 2 November 1987 was $355,607 more than their book value [13], an immaterial difference. There were also Put and Call Options as part of the transaction. The contract was signed by Yuill for Spedley Securities and Maher for ANI Corp.

The sale was funded by a bill of exchange for $26,743,409.25 with a maturity date of 6 November 1987, drawn by ANI Corp and accepted by Spedley Securities. This is an unusual way for bills to be drawn. It is not clear why the bill was drawn in this way or whether it would have been enforceable. In addition the short term of the bill suggests that the transaction was not intended to have any long term effect.

ANI Corp exercised its right under the Put and Call Option on 5 November, requiring Spedley Securities to repurchase the shares. This occurred on 6 November 1987. The bill was cancelled on

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[11] Section 541 examination, 26 September 1990, at pages 2703-4

[12] Levings - section 295 examination, 1 February 1990, page 370; Craven - section 541 examination, 2 May 1990, pages 828-829.

[13] Audit working papers folio 3107

the same day and the blank share transfer forms provided by Spedley Securities to ANI Corp were returned to Spedley Securities. ANI Corp received a fee of $7,675.64, from Spedley Securities [14].

Yuill acknowledged that he was aware of the transaction and claimed that its purpose was to reduce exposure to the share market. However, he admitted that the reduction could have only a temporary effect, because of the put and call option [15].

Regardless of Yuill's intention, the effect of the transactions was to allow Spedley Securities to have its annual accounts show less exposure to listed shares ($14.485 million compared to $41.085 million). Given the prevailing market sentiment, this would have improved the appearance of Spedley Securities' current accounts. As this effect was material and was reversed shortly after balance date, the ASC considers that it caused the accounts to be misleading.

On the basis of the accounts as they were prepared, ANI Corp's right to put the shares back to Spedley Securities was a condition which existed at balance date and which gave rise to a contingent liability. This right was exercised before the 31 October 1987 accounts were finalised. The existence of the contingent liability and the fact that the right had been exercised should have been disclosed in the 31 October 1987 accounts.

More significantly, the principal effect of the transactions was to "window dress" the accounts by materially altering the composition of current assets shown in the notes. The ASC considers that as a consequence, the accounts did not give the required true and fair view.

1.7 Decline in Value of Shares

As part of the 1987 audit of Spedley Holdings in March 1988, the auditor conducted a review of the Spedley Securities share portfolio as at 31 January 1988. During that review it became apparent that a post balance date review of Spedley Securities' share portfolio conducted on 14 December 1987 prior to signing the audit report had been deficient. The review had failed to include the shares repurchased from ANI Corp on 6 November 1987. It was discovered that the shares held by Spedley Securities and Aldershot on 14 December 1987 had decreased in value by $13,710,161 [16]. (Of this amount, $6,911,760 was attributable to the shares repurchased from ANI Corp)

Launders suggested, possibly to Levings, that the Spedley Securities' accounts may need to be withdrawn and revised to indicate this post-balance date decrease in value of the share portfolio [17]. It would have been appropriate to record this decrease by way of a note.

An Agreement dated 30 November 1987 for a Put and Call Option was then produced. Under the agreement, Spedley Securities could require ANI Corp and Greater Pacific to purchase, at book value, the shares which had suffered the greatest decreases in value, in the proportions 60/40. The option was exercisable until May 1988. An agreement was signed by Gray for Spedley Securities, Beatty for Greater Pacific and Jones for ANI Corp. The Board minutes of Spedley Securities dated

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[14] Spedley Securities journal vouchers J608, J611, J39 and letter from ANI to Spedley Securities dated 6 November 1987

[15] Yuill - section 541 examination, 16 May 1990, page 1004

[16] Spedley Holdings Audit Papers, "Share Calculation 14/3/88 - pre signing"

[17] Launders, section 541 examination, 27 September 1990, pages 2777-2778

30 November 1987 refer to execution of the document. Beatty has suggested that the schedule to the agreement, listing the shares to be purchased and their market value, was tampered with after signature, including additional shares and increasing the recorded value of the shares by deleting the low market value and replacing it with the higher book value.[18]. This submission was made in the course of providing comment on the draft of this Report and well after the investigation had concluded. The ASC has not sought to establish whether there was any other evidence to support that contention. If it were true, then the document shown to Launders may not have been the document signed by the parties.

An auditor's work paper dated 17 March 1988 dealing with a review of Spedley Securities' share portfolio value includes the notation "Put & call **to be** put in place with Holding Coy shareholders" (emphasis added). This suggests that the option agreement although dated 30 November 1987 did not come into existence until on or after 17 March 1988.

In the ASC's view, the Agreement was intended to overcome the need to report the post balance date decline in share values as it gave Spedley Securities the capacity to relieve itself of any potential loss. Consequently, the Spedley Securities' accounts were not withdrawn and no note of the decline was included in Spedley Holdings' accounts [19].

Launders relied on the Agreement to justify not requiring the directors to amend the 1987 accounts or taking other action to prevent reliance on his report, although he believed that the agreement was not prepared or executed until March 1988. It was not shown to him until then, when he raised his concern about the loss in value of the shares [20].

Further, if the directors were aware of the decrease in value of the shares when they signed the directors' report on the accounts on 14 December 1987, this should have been disclosed as an event occurring after balance date.

1.8 CONVERSION OF LOANS TO COMMERCIAL BILLS

In October 1987, Spedley Securities had approximately $90 million outstanding in loans to associates, on which no or few repayments had been received. There were few written loan agreements in existence. Loans of such nature would be shown in a balance sheet as receivables.

Dawkins had a conversation with Yuill in the last days of October, in which they examined a print out of the loans portfolio as at 28 October 1987. Yuill identified and Dawkins marked the loans which Yuill wanted converted to bills. The print out shows that many of these loans were to companies associated with the Bond group or with Connell.

Dawkins arranged for bills totalling $90,400,877.35 to be prepared and signed by debtors in Sydney and Perth. To record these bills in the books of Spedley Securities, the asset "Commercial Bills" was increased by $90,400,877.35, and the assets "Loans Unsecured" and "Short Term Advance"

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[18] Letter from Kemp, Strang & Chippindall to ASC dated 31 May 1996
[19] Launders, section 541 examination, 27 September 1990, page 2779
[20] Launders, section 541 examination, 27 September 1990, page 2778

were decreased by a corresponding amount. When the bills matured on 11 or 14 November, these entries were reversed.[21].

Yuill denied that these transactions improved the appearance of the balance sheet in any way. He claimed that the bills were obtained because "It had been traditionally the way we had done things" [22]. The ASC does not consider this to be a convincing explanation.

The effect of the transactions was that the accounts showed substantially larger holdings of commercial bills of exchange, promissory notes and negotiable certificates of deposit, which were aggregated on the balance sheet as inventories, and a correspondingly reduced amount of receivables.

The conversion of loans receivable to commercial bills seems to have caused the need to assess recoverability of the loans and to arrive at a provision for doubtful amounts to be overlooked. Had the loans been disclosed on the balance sheet at 31 October, 1987, they would have been treated as current receivables for the purpose of calculating Spedley Securities' compliance with its licence conditions. The directors would also, under section 269(7)(a) of the Companies Code, have had to write off all known bad debts and make adequate provision for doubtful debts.

The commercial bills were carried in the accounts at face value less unearned income calculated on the number of days to maturity. Schedules found in the auditor's working papers show approximately $88.6 million of the non-bank commercial bills as having a yield rate of 0% to 0.001%. These were all bills with a maturity date of 14 days or less after the 31 October, 1987 balance date.

The ASC considers that these yield rates would not have been accepted, had the bill transactions been bona fide and at arm's length. Consequently, the unearned income calculation used to arrive at the net amount of bills in the balance sheet did not reflect market rates.

The ASC has not assessed the market discount rates that would have applied had Spedley Securities wanted to realise the bills in the bill market before maturity. The rates would have been determined on the basis of factors including market interest rates and a market assessment of the creditworthiness of the acceptor in each case. Other bills held by Spedley Securities at the time were shown as having a yield of 12.25% to 14%.

More importantly, the uncommercial yield rates indicate that the bill transactions were a sham, intended to "window dress" the balance sheet by providing the appearance of liquidity rather than to generate commercial bills that would be saleable.

The officers of the Standard Chartered Bank who assessed GPI Leisure's application for $100 million to invest in Spedley Holdings (refer to Chapter 2), took comfort from the quantum of commercial bills reported in Spedley Securities' accounts, because they assumed that the bills were

[21] Statement of Peter Campbell Dawkins dated 29 August 1990, paras 17-19
[22] Section 541 examination, 16 May 1990, page 1000

readily saleable in the bill market. Many readers of the accounts would assume this. In reality, the bills would not have been readily saleable at the amounts at which they appeared in the accounts.

There was no note to the accounts disclosing the reversion of the bills to loans receivable when they matured shortly after balance date. Neither was there any disclosure of the losses that would have resulted had the bills been sold in the bill market, or cashed in using a bill discount facility.

1.9 CONVERTIBLE NOTE ISSUE

In October 1987, B & McK prepared a proposal for a new company - Pluteus (No 152) - to be owned by the shareholders of Spedley Holdings. Yuill says that the aim of the exercise was to allow members of staff to obtain equity in the company at some time in the future [23]. The new company's first planned activity was to borrow to acquire convertible notes in Spedley Holdings.

Before 30 October 1987, Spedley Holdings owed Spedley Securities $33.36 million. The following "round robin" of transactions took place on 30 October, on Yuill's instructions (refer to Annexure 4) [24]:

1. Spedley Securities advanced $46,377,641.45 to GPI Leisure in exchange for a 14 day commercial bill with a face value of $46.6 million, with Spedley Securities (curiously) as acceptor and GPI Leisure as drawer;

2. GPI Leisure paid $33.36 million to Spedley Holdings as an unsecured deposit;

3. Spedley Holdings made a $33.36 million loan repayment to Spedley Securities;

4. Spedley Holdings paid $10 million to Spedley Securities, to apply for 10 million $1.00 ordinary shares in Spedley Securities;

5. Spedley Securities paid $10 million to GPI Leisure, as part repayment of a deposit;

6. Spedley Holdings paid $12 million to GPI Leisure;

7. Spedley Holdings paid $5 million to First Federation;

8. First Federation paid $5 million to GPI Leisure;

9. GPI Leisure lent $27 million to Pluteus (No 152) (obtained from steps 5, 6 and 8);

10. Pluteus (No 152) paid $27 million to Spedley Holdings, to subscribe for 3 million convertible notes for $9 each;

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[23] Section 541 examination, 16 May 1990, page 1002

[24] Spedley Holdings Deposit Vouchers No. 10 and 11; Spedley Holdings Cheque Nos 584098, 584099, 584100 and 584101; Aldershot Deposit Voucher No. 12; Aldershot Cheque No. 462603; Spedley Securities Cheque Nos 908423 and 908443; GPI Leisure Cheque No. 042953; Pluteus (No 152) Journal Voucher Jnl 1; Aldershot Journal Voucher J1, Levings - section 541 examination, 4 May 1990, page 952; Craven - section 295 examination, 7 December 1989, page 65

11. GPI Leisure lent $13 million to Aldershot; and

12. Aldershot made a $13 million loan repayment to Spedley Securities.

It is evident that the payments were cash neutral. Their net effect was that Pluteus (No 152) owed GPI Leisure $27 million, Aldershot cleared its debt to Spedley Securities and an intercompany debt between Spedley Holdings and Spedley Securities of $33.36 million was converted to part of a $46.38 million commercial bill receivable from GPI Leisure. In addition, funding for Pluteus (No 152)'s $27 million subscription for convertible notes in Spedley Holdings was provided by companies in amounts which corresponded with amounts received from Spedley Holdings.

The conditions of Spedley Securities' dealer's licence prevented it from including unsecured loans to associates in its surplus liquid funds calculation. A loan to Spedley Holdings, an associate within the definition in section 6 of the Securities Industry Code, could not be included as an asset for that calculation. However, a commercial bill receivable from GPI Leisure would be included, thus improving Spedley Securities' reported liquidity and ability to meet its licence conditions. It also converted a debt of $10 million owed to GPI Leisure into paid up capital held by Spedley Holdings. The decrease in Spedley Securities' liabilities also assisted its reported liquidity.

1.10 FEE INCOME

The October 1987 management accounts show that the income obtained by Spedley Securities from trading in securities for that month was $5,975,000. After bringing to account the $5,975,000, the total income for the year from the "trading in other securities" account was $12,733,595.

$9 million of this income was received from Bond Finance on 30 October. The $9 million comprised three separate payments:

$1.0 million fees for assisting the Austotel Trust with the takeover of some hotels in 1986

$0.5 million sub-underwriting fee from the North Kalgurli/Metals Exploration acquisition of shares

$7.5 million Spedley Securities' share of the profit from the purchase of Paragon shares, for which Spedley Securities had arranged finance.

A further $2 million was received from Oakhill on 31 October 1987 as the balance of Spedley Securities' share of the profit from the Paragon shares financing transaction.

Yuill said that it was usual to bring fee income to account at the end of the year, rather than during the year. This was apparently done, even if the work to which it related was performed during the year [25]. In the case of the Austotel Trust, the transaction to which the fees relate had occurred in the previous financial year.

The profit from the Paragon share transaction was noted by the auditor as a 20% share of notional profits from a $10 million financing deal in the 1985-86 financial year for the purchase of shares in

[25] Section 541 examination, 4 May 1990, page 983

Paragon [26]. Yuill was quite vague about the terms of the transaction [27]. The investigation did not reveal any contemporaneous documents to substantiate the arrangement, although there is a letter from Bond Corp to Spedley Securities dated 3 December 1987 confirming the reason for the payments.

Between 23 October and 3 November, Spedley Securities paid $18,912,672 to companies within the Bond group, purportedly for the purchase of bills with a face value of $19.3 million. In the period between 23 October and 20 November, Spedley Securities received $19 million from Bond Finance for the fees and for bills sold. These transactions had an almost neutral effect. In addition, commercial bills having a face value of $9.5 million were allegedly purchased on 3 November from Bond Corp Holdings for $9,005,770. All bills were issued on 3 November 1987 and showed Spedley Securities as the acceptor and Bond Corp as the drawer.

Yuill was unable to satisfactorily explain what Spedley Securities obtained for the money paid when the bills were drawn up so as to make Spedley Securities primarily liable on them [28].

As part of his audit of these transactions, Launders caused a review of Spedley Securities' payment vouchers to be carried out on 24 November for the purpose of listing all payments to Bond group companies after 31 October 1987. Ten payments totalling $33,963,129 were listed on the resultant audit workpaper, on which Launders noted the words "Workpaper prepared to ensure $9 million received from Bond taken to profit was not repaid in November".

This volume of payments provided an adequate opportunity for Spedley Securities to repay the Bond group of companies after 31 October 1987 for the fees paid. If this were the case, then the fees would have been financed from Spedley Securities' own funds.

The ASC considers that the matters reported in this section, when taken together, constitute reason to suspect that the fees were contrived by Spedley Securities in order to increase its profits, which did in fact occur. However, in view of the scope of other matters which were the focus of the investigation into the Spedley group, further examination of this aspect was not pursued, and the ASC is not in a position to form a conclusion about the various items of fees received.

1.11 TRANSFER OF PROFITS WITHIN THE GROUP

On 29 October 1987, Yuill suggested to McGee that part of Security Deposits' and First Federation's profits for the year be transferred to Spedley Securities. McGee objected to the proposal. The next day two series of transactions which Yuill had directed to be implemented took place[29].

1.11.1 The Transactions

The following transactions occurred on 30 October 1987 [30]:

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[26] Work paper, folio 5008
[27] Section 541 examination, 16 May 1990, pages 991 ff
[28] Yuill, section 541 examination, 16 May 1990, page 991
[29] Statement of Robin Arthur McGee dated 10 September 1990, paras 5-7
[30] Securities sales and purchase dockets dated 30 October 1987

1. First Federation sold four parcels of Australian Government Treasury Notes, with a face value of $200 million, to Security Deposits for $190,518,281.33;

2. Security Deposits sold the Treasury Notes to Spedley Securities for $187,923,542.63; and

3. Spedley Securities sold the Treasury Notes to First Federation for $190,518,281.33.

The market value of the Treasury Notes on 30 October 1987 was between $189,586,460.24 and $190,185,595.75 [31], so the sale and purchase by First Federation were above market value and the sale by Security Deposits was at a price below market value.

The transactions had no net effect on First Federation. However, Spedley Securities obtained a profit of $2,594,738.70 [32] and Security Deposits incurred a loss of the same amount. While no net effect was recorded in the accounts of the group, the accounts of Spedley Securities showed a substantially higher profit than would otherwise have been the case.

Two other transactions were effected on 30 October [33]:

1. First Federation purchased Commonwealth Government Bonds, with a face value of $30,000,000.00, coupon rate of 12% and maturity date in November 1996, from Spedley Securities for a consideration of $31,315,800.00; and

2. First Federation sold those bonds to Spedley Securities for $29,039,100.00.

The market value of those bonds was between $28,334,700 and $29,039,200 on 30 October 1987 [34], so the purchase by First Federation was at a price above market value and the subsequent sale was at the higher end of the market range. Of greater significance is the 7.3% difference between the sale and purchase prices on the one day. There can be no commercial reason for this other than to attempt to transfer a profit of $2,276,700 from First Federation to Spedley Securities. This was the only amount of money that changed hands [35].

However, this benefit to Spedley Securities could not properly be considered as profit. Spedley Securities' profit from the sale of the bonds would also take into account the difference between the sale price and the original purchase price of the bonds (adjusted for any interest accrued at the transaction dates). The audit workpapers indicate that an amount of $2,604,378 had been debited to Spedley Securities "Interest yet to mature" account in connection with the sale and that this amount was overstated by $1.947 million, with a corresponding amount incorrectly added to profits. Launders said the auditors discovered the error and calculated the adjustment [36]. This adjustment was made and reduced Spedley Securities profit on the transaction to $319,882.

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[31] Statement of John Kenneth Hoare dated 21 November 1990, para 7
[32] Trial balance and audit working paper folio 1002
[33] First Federation Security Transaction List dated 30 October 1987, Spedley Securities' bond trading vouchers dated 30 October 1987
[34] Statement of John Kenneth Hoare dated 21 November 1990, para 6
[35] Statement of Peter John McLachlan dated 17 September 1990, para 9
[36] Audit Workpaper 3161; Letter from Corrs Chambers Westgarth to the ASC, page 16

1.11.2 Effect on Accounts

Spedley Securities accounts for the year ended 31 October 1987 show an operating profit of $4,560,000 before tax and $2,135,000 after tax. Spedley Securities was only able to show a profit of that size because of the $2.9 million which was transferred from Security Deposits and First Federation. This amount constitutes 63.4% of the before tax profit, clearly a material part of the profit.

The accounts give no indication that Spedley Securities did not earn the $2.9 million profits in the normal course of business, or that these profits derived from a contrived transaction. Despite the view that it was common practice to transfer profits in groups of companies, the ASC considers that in this case the accounts failed to give a true and fair view of Spedley Securities' profits and losses.

1.12 Effect of the 1987 Transactions

In summary, the transactions or events referred to in paragraphs 1.5 to 1.11 are:

1. *the sale of bonds to ANI, and their subsequent repurchase at a price significantly above their market value;*

2. *the short term sale to and repurchase of shares from ANI at a time when a large exposure to the share market was not perceived positively;*

3. *the conversion of loans on which few repayments were being made to short term commercial bills, which improved the appearance of liquidity notwithstanding that the bills were not readily saleable at face value;*

4. *the convertible note issue, which had the effect of improving the appearance of Spedley Securities' accounts and improving its apparent liquidity, although there was no effective net movement of funds; and*

5. *the generation of a large part of Spedley Securities' profit by transfers of profits from other companies in the Spedley group.*

The above transactions or events and the reversal of the effect of some of them shortly after balance date indicate that the balance sheet and profit and loss statement for the financial year ended 31 October 1987 did not give a true and fair view of the state of affairs of Spedley Securities and its results for the year.

1.13 1988 Accounts

The September 1988 management accounts for Spedley Securities, which were sent to all directors and considered at the 3 November 1988 board meeting showed a net loss for the previous 11 months of $2.8 million. The balance sheet showed current assets of $753,670,000 and current liabilities of $756,439,000.

Some awareness of Spedley Securities' difficult financial situation is also demonstrated by Levings being told of difficulties collecting interest from a number of debtors [37] and by Maher's questioning of Yuill about Spedley's exposure to Rothwells [38].

Launders wrote to Spedley Securities on 7 October 1988, questioning the status of some outstanding debts, on which little or no interest had been paid. Launders requested that detailed evidence be obtained of the borrowers' ability to repay the debts. The letter also queried the low or nil interest rates on some loans, the value of Spedley Securities' share portfolio, and the propriety of loans to Greater Pacific and GPI Leisure because of Yuill's interest in these companies. Yuill was aware that Launders would be considering these matters in some detail during the audit.

Spedley Securities did not respond in writing to this letter. Launders said that his letter did not necessarily require a written response, and that the information sought was provided by officers of the company during the course of the audit. Transactions were implemented by Spedley Securities which avoided some of the problems raised by Launders (refer to paras 1.14 to 1.18).

1.14 ROUND ROBIN OF PAYMENTS

Spedley Securities had unsecured loans receivable totalling $493,062,000 and bills receivable totalling $135,903,000 at 30 September 1988 [39]. $170.3 million of the unsecured loans were to Greater Pacific. Spedley Securities held approximately $113.8 million on deposit from GPI Leisure and $26 million on deposit from Spedley Holdings, from a total of $367,923,000 on unsecured deposit [40]. The transactions considered in this section dramatically altered this situation.

Four related transactions, involving a "round robin" of payments, occurred between 26 and 31 October 1988 [41] (See Annexure 5). To enable the transactions to take place, Spedley Securities repaid deposits of $113,747,344 and made a loan of $136,863,656 to GPI Leisure (a total of $250.611 million). Spedley Securities also purchased a commercial bill with a face value of $25 million from BT Insurance for $25 million. BT Insurance then lent $25 million to GPI Leisure, which gave GPI Leisure a total of $275.611 million. The following transactions then took place.

1.14.1 Transaction 1 - Substitution of GPI Leisure for Greater Pacific

GPI Leisure lent Greater Pacific $134.8 million. Greater Pacific borrowed a further $8.95 million from First Federation and then repaid Spedley Securities $143.75 million (refer to Annexure 5.1). Yuill gave instructions to have the transactions implemented.

Yuill claimed that, before 30 October, he discussed the substitution of GPI Leisure for Greater Pacific with Beatty, as a way of avoiding the obligation to disclose a loan to a company in which a director had an interest. Beatty denies that claim [42].

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[37] Memorandum from Pullen to Levings dated 24 October 1987
[38] Section 541 examination, 30 April 1990, pages 707 ff; section 541 examination, 28 May 1990, pages 1188 ff
[39] September 1988 Management accounts
[40] Loan and Deposit statements
[41] Cheques, deposit trading vouchers and loan trading vouchers evidence the transactions
[42] Yuill - section 541 examination, 4 May 1990, pages 1006-1007

Craven knew of the substitution of GPI Leisure for Greater Pacific, because Yuill had instructed him to implement the transactions. Beatty said that he was not aware of the October 1988 transactions until after Christmas 1988, when Maher told him about the loans to GPI Leisure and that he then objected to the transaction.[43].

The effect of this transaction was to substitute GPI Leisure, a company with a substantial interest in the Austotel Trust, for Greater Pacific as Spedley Securities' largest debtor. Although Greater Pacific still owed Spedley Securities $1.96 million as at 31 October 1988, the substitution improved the apparent quality of Spedley Securities' receivables. It also removed GPI Leisure as a creditor of Spedley Securities, by returning GPI Leisure's deposits.

Schedule 7, para 17(3) and (4) of the Companies Regulations required disclosure in the accounts of debts to corporations in which a director has a beneficial interest. Because of BR Yuill Holdings' shareholding in Greater Pacific, the loan to that company had to be disclosed. The amount required to be disclosed had gone from $170.3 million to $1.96 million by 31 October, 1988.

The terms of Spedley Securities' dealer's licence may also have provided a motive for the transaction. If Greater Pacific was an associate of Spedley Securities, which is arguable, its debt would be excluded from the surplus liquid funds calculation. Alternatively, it could have been excluded as a doubtful debt, as Greater Pacific was one of the companies mentioned in Launders' letter of 7 October 1988. It could have been difficult to justify the size of the loan to Greater Pacific given its poor repayment history.

Yuill was charged under section 229(4) of the Code, with making improper use of his position as an officer of GPI Leisure to gain an advantage for Spedley Securities by procuring the payment of $134.8 million to Greater Pacific. On 29 April 1993, he was committed for trial.

When he is released from prison on other charges referred to in this report, Yuill will have served a total of four years and seven and a half months in relation to charges brought by the ASC [44]. Having regard to this total period of imprisonment, and to the likely range of sentences if conviction were to have resulted on any of these charges, the DPP decided not to proceed with the trial of Yuill for these charges.

1.14.2 Transaction 2 - Repayment by and sale of shares to Pluteus (No 152)

After Transaction 1, GPI Leisure still had $140.811 million of the money received from Spedley Securities and BT Insurance. This amount was reduced by $85.308 million, comprising three payments to Pluteus (No 152) (Refer to Annexure 5.2).

Repayment of Debt

After the October 1987 convertible note issue (see para 1.9), Pluteus (No 152) owed GPI Leisure $27 million. This debt, with accumulated interest, was assigned to Spedley Securities before 30

[43] Craven - section 541 examination, 2 May 1990, page 84; Beatty - section 19 examination, 4 February 1993, pages 14,15, 26, 30 and 31

[44] This is comprised of Yuill's sentences in relation to the Nodrogan and Chelsea Property matters and the time served in 1993/94 for the Triton charges.

June 1988, GPI Leisure's balance date [45]. With interest, Pluteus (No 152) owed Spedley Securities $30.75 million by October 1988. This was repaid on 27 October 1988, as part of a payment from Pluteus (No 152) to Spedley Securities. Yuill instructed Levings to arrange the repayment [46].

As Pluteus (No 152) had no substance, the removal of it as a debtor reduced the required provision for doubtful debts and so improved the reported profits. This transaction also improved Spedley Securities' appearance of liquidity and assisted it to meet the conditions of its dealers licence.

Sale of Shares

Spedley Securities had paid $17.448 million for shares in Rothwells, after the first Rothwells rescue attempt. However, there was some confusion about whether Spedley Securities had paid for the shares on behalf of Greater Pacific or whether Spedley Securities was the beneficial owner of the shares. The shares were registered in the name of a nominee company. In any event, Spedley Securities held an asset which had cost it $17.448 million, being either shares in Rothwells or a debt owed to it by Greater Pacific.

Spedley Securities owned other listed shares with a book value of $37,106,135. Such shares would be shown in a balance sheet at the lower of book value and market value. As at 31 October 1988, the market value of Spedley Securities' total share portfolio was $29.7 million. If the Rothwells shares are excluded, its value was $21.8 million [47].

Arrangements were made to sell the shares as at 31 October, 1988. Yuill was asked about the sale and the value of Spedley Securities' share portfolio [48] :

> "Q. You can recall that these shares were in the books of Spedley Securities at pre-crash values?
>
> A. Privilege. Yes. A number of them would have been.
>
> Q. You knew Mr Yuill, did you not, that if these shares remained on the books of Spedley Securities as at the end of its financial year there would have to be a very substantial provision for the reduction in value of the shares reflecting the fact the stock market had fallen considerably since their purchase? That is so, is it not?
>
> A. Privilege. Yes."

Yuill discussed selling the shares to Pluteus (No 152) with Maher, Gray and Hawkins at the Board meeting on 3 November 1988. The Board then instructed Levings to speak to Launders about whether the sale could be implemented without breaching the Code.

Maher has acknowledged that he knew of the proposed sale by early November 1988 and that Pluteus (No 152) had no independent means of funding the transaction. He has admitted that one purpose of the sale was to avoid disclosing the decrease in value of the shares. He also said that

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[45] Undated note by Pullen headed "Dawkie", ANZ cheque No 456215, from Spedley Securities to Pluteus (No 152)
[46] Statement of Ross Arnold Levings dated 28 May 1991, para 19-22
[47] Share valuation as at 31 October 1988
[48] 16 May 1990, section 541 examination, page 79

another reason for the transaction may have been that Spedley Securities was ceasing to invest in listed securities. Gray also knew that Pluteus (No 152) had no means of funding the transaction and that the purpose of the sale was to avoid disclosing the decrease in value of the shares. He did not know that Spedley Securities would be funding the purchase [49].

Levings said that he told Launders that the Board intended to sell the shares at cost to a company owned in the same proportions as the existing shareholders owned Spedley Holdings and that the aim of the exercise was to remove the shares from the balance sheet so the loss of value did not have to be disclosed. He also told Launders that the purchase would be funded by GPI Leisure. Launders is alleged to have told Levings that, provided the transaction was minuted, the sale was without recourse to Spedley Securities and Spedley Securities did not provide the funds directly, the auditors would accept it.

Launders says that he was only told of the transaction after the sale, that no mention was made of the purpose of the transaction being to remove the shares from the balance sheet to avoid disclosing a loss of value, and that no mention was made of funding by Spedley Securities [50].

Levings said he then told Yuill of Launders' alleged response and Yuill informed the Board. Levings was instructed to effect the transaction, as at 31 October 1988, which was the date on which the round robin payments had been made (refer to Annexure 5.2) [51]. Pluteus (No 152) paid a total of $54.55 million to Spedley Securities for its shares. This amount represented book value rather than market value.

The decision to sell the shares was ratified by a minute dated 31 January 1989. The same minute also ratified the transfer of the Rothwells shares to Greater Pacific, even though Pluteus (No 152) had apparently paid Spedley Securities for those shares.

As Rothwells was placed in provisional liquidation on 3 November 1988 after some public speculation about its fortunes, and because the price was so far above market value, it is arguable that the directors of Pluteus (No 152) must have known that it was not in the company's interests to purchase the Rothwells shares. Alternatively, Pluteus (No 152) paid Spedley Securities $17.448 million for no benefit, if Spedley Securities did not own the Rothwells shares.

A cursory examination of the other shares would have indicated that they were being sold above market value. Pluteus (No 152) did not obtain an appreciable benefit from the transaction, on any view. Neither did GPI Leisure obtain any benefit from the transaction, as it ended up with a debtor of little substance, which owned only a parcel of shares, worth less than the amount of its debt.

The timing of, and lack of a commercial justification for, the transactions suggest that the purpose was to mask the true financial situation of Spedley Securities, by avoiding the need to disclose the large loss of value of its share portfolio, including its shares in Rothwells. The directors were unable to suggest any other purpose.

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[49] Maher - section 541 examination, 3 May 1990, page 909; Gray - section 541 examination, 4 May 1990, pages 941-942.
[50] Letter from Corrs Chambers Westgarth to the ASC dated 30 May 1996
[51] Statement of Ross Arnold Levings dated 28 May 1991, paras 28-36

Yuill was charged under section 229(4) of the Code, as an officer of GPI Leisure, with making improper use of his position to gain an advantage for Spedley Securities and for Greater Pacific by procuring the payments to Pluteus (No 152). On 29 April 1993, he was committed to stand trial. For the reasons referred to in para 1.14.1, the DPP decided not to proceed with the trial of Yuill on these charges.

1.14.3 Transaction 3 - Repayment by Connell companies

A further $26.65 million of the money received by GPI Leisure from Spedley Securities was used to secure repayment to Spedley Securities of debts owing by some companies associated with Connell.

By October 1988, the directors of Spedley Securities, particularly Maher, were asking questions about the company's exposure to Rothwells [52]. Dawkins prepared a summary of Spedley Securities' exposure to the Rothwells group in late October. His recollection is that the exposure was in the vicinity of $60 million [53].

Yuill told Dawkins to arrange for Spedley Securities to pay $26.65 million to GPI Leisure, to be paid to Greater Pacific and for Greater Pacific to make loans to three entities associated with Connell, so that they could repay their loans to Spedley Securities. The transactions took place on 31 October 1988 (refer to Annexure 5.3) [54].

The payments from Greater Pacific and to Spedley Securities were:

Company	**Received from Greater Pacific**	**Paid to Spedley Securities**
Oakhill	$8,135,000.00	$7,326,247.42
Connell & Partners	$11,785,000.00	$11,786,120.14
Beverage Holdings	$6,530,000.00	$6,534,956.43
TOTAL	$26,450,000.00	$25,647,323.99

The effect of the transactions was to reduce Spedley Securities' exposure to the Rothwells group of companies, addressing the concerns of the directors of Spedley Securities about that exposure. The transactions may also have reduced the required provision for doubtful debts, although the quantum of the reduction cannot be determined.

1.14.4 Transaction 4 - Acquisition and Sale of Rothwells Bills

A final payment of $25 million was made by GPI Leisure from the money received from Spedley Securities and BT Insurance.

In early October 1988, Spedley Securities, on Yuill's instructions, had lent $25 million to Rothwells, as part of the second rescue attempt. Following a request by Yuill to Lucas, Rothwells provided five commercial bills with a face value of $25 million, drawn by Rothwells Investments

[52] Section 541 examination, 30 April 1990, pages 707 ff; section 541 examination, 28 May 1990, pages 1188 ff
[53] Statement of Peter Campbell Dawkins, dated 27 September 1990, para 12
[54] Statement of Peter Campbell Dawkins, dated 27 September 1990, paras 13-15

Pty Ltd, accepted by Rothwells and endorsed to Spedley Securities, to replace the unsecured loan [55]. On Yuill's instructions, the bills were then sold by Spedley Securities to Greater Pacific, without recourse to Spedley Securities, for $25 million (refer to Annexure 5.3). This was an unusual basis for the sale of bills [56].

As Rothwells had only just been rescued from collapse, for the second time, in October 1988, there would be few buyers for Rothwells bills. Indeed, Rothwells collapsed finally only a few days later. Greater Pacific had little possibility of gain from the transaction, particularly as the bills had been purchased for their face value. It would have been very difficult for Greater Pacific to avoid a loss as a result of buying the bills.

The effect of this transaction was, again, to reduce Spedley Securities' exposure to the Rothwells group of companies, to the detriment of Greater Pacific, and so reduce the provision required for doubtful debts.

1.15 CONVERSION OF LOANS TO BILLS

In much the same manner as in 1987, Dawkins, on Yuill's instructions, arranged for a number of Spedley Securities' debtors to give commercial bills, to replace their loans [57]. Loans totalling $204,188,674.79 were converted to bills. Some of the loans were to companies or individuals linked with Yuill and his associates, including Bisley Investment, Bisley Commodity, Potts and B & McK Custodians. $130 million of the $136 million lent to GPI Leisure as part of the round robin of payments was converted into bills. The bills matured on 4 November 1988. The transactions were then reversed[58].

This arrangement allowed Spedley Securities' balance sheet to show commercial bills as $271.377 million, rather than $67.188 million and loans as $129.12 million, rather than $407.497 million (taking adjustments for other transactions into account). This presented a better picture of Spedley Securities' liquidity to users of the statements, because the bills would have been assumed to be readily marketable.

1.16 GUARANTEE OF RECEIVABLES

Spedley Securities' accounts showed provisions of $14 million against current receivables of $165.25 million and a non-current provision for "uncertainties" of $1 million.

Launders said that on a number of occasions between 11 January 1989 and 20 January 1989 he reminded Maher, Gray and Craven that he was awaiting information required for the audit assessment of loan collectability. He said the possibility of a guarantee was raised with him by Craven [59] on 20 and 24 January 1989. Launders said he suggested an increase in the amount of the provision to Yuill.

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[55] Statement of Peter Kenneth Lucas dated 24 March 1992, paras 10-16
[56] Statement of Peter Campbell Dawkins dated 27 September 1990, para 29-34
[57] Statement of Peter Campbell Dawkins dated 20 July 1993, para 31
[58] Journal vouchers prepared by Ms Jones, numbered 286-305, 308. , Loan trading vouchers, numbered 3-26
[59] Letter from Corrs Chambers Westgarth to the ASC dated 30 May 1996

Following further discussions with Craven about lack of evidence as to collectability of loans, and further comments by Craven about a guarantee, Launders said he or McGrane then asked Craven on what basis a guarantee could be justified, which Craven explained. Launders said he was then approached by a partner of B & McK [60], with a draft guarantee and that he sought clarification from her of wording in the draft.

On 31 January 1989, GPI Leisure and Spedley Securities signed a guarantee, under which GPI Leisure guaranteed to pay up to $100 million for losses in excess of the $15 million for which provision had been made. It was executed under seal, with Beatty signing the guarantee for GPI Leisure and Yuill signing it for Spedley Securities.

The auditor's assessment on 30 January 1989 showed that $12.1 million was clearly doubtful and that there was insufficient evidence to determine whether loans totalling $55.9 million were recoverable [61]. Launders relied on the existence of the guarantee to enable him to form the view that no loss would be incurred by Spedley Securities on these loans, irrespective of whether they were collectable.

Schedule 7 of the Companies Regulations at the time required specific disclosure where the valuation of an asset was supported by a guarantee, including the estimated realisable value of the asset without the support of the guarantee, the terms of the guarantee and the identity of the guarantor.

Launders drafted a note which identified the amount of the guarantee and the identity of the guarantor. He says that during a meeting with Beatty later on that date, Beatty said his opinion was that Schedule 7 did not require the details in Launders' draft note. After Launders drew Beatty's attention to the terms of Schedule 7, Launders says that Beatty advised him that Schedule 7 required this information only where, in the directors' opinion, there was a difference between the book value of the loans and their realisable value. Launders also says Beatty advised him that, as the directors took the view that the provision was adequate, Schedule 7 did not require disclosure of the details of the guarantee and that Beatty altered the draft note by deleting references to the identity of the guarantor and the amount of the guarantee. Beatty has denied being asked to provide any advice on the appropriate disclosure requirements.

A note referring to the existence of the guarantee was included in Spedley Securities' accounts. Launders said that it was at his insistence. Beatty says that he told Launders that the guarantee should be noted in the accounts if it was material.

The note to the accounts states:

> "The directors believe that, without reliance on any guarantee, there is no material difference between the estimated realisable value of assets and the net book value of assets

[60] Section 295 examination, 24 July 1990, page 2630; section 7 examination, 24 August 1989, page 36
[61] Untitled work paper dated 30 January 1989

shown in the accounts. An unrelated corporation has given a guarantee in respect of certain receivables." [62]

Maher said that he first heard of the guarantee after he resigned as a director of Spedley Securities on 31 January 1989. Gray stated that he was not consulted about the guarantee or the form of the note to the accounts. He was later told about the guarantee by Yuill or Launders [63].

Beatty said that he discussed the guarantee with Craven, Yuill and Gray. He acknowledged that there was no Board meeting of GPI Leisure to approve execution of the guarantee. He said he thought that giving the guarantee would be in GPI Leisure's interests, as a way of protecting its investment in Spedley Holdings, by ensuring Spedley Securities could maintain its dealers licence [64]. This was the reason given to Launders [65]. He also took comfort from the fact that the directors of Spedley Securities were prepared to sign the accounts, the guarantee was prepared by B & McK, his belief that it was a short term measure only pending completion by Launders of his verification of the receivables, Launders' comfort with the level of provisioning adopted and representations from Spedley Securities' staff that the receivables were recoverable. The other directors of GPI Leisure and Spedley Securities were not examined on this issue.

Any commercial benefit to GPI Leisure from the giving of the guarantee would have been of little value, given the dire financial situation of Spedley Securities, something which should have been known to Yuill and Craven at least. Beatty notes that there is no suggestion that he was aware of the financial situation of Spedley Securities and Spedley Holdings at the time he provided the guarantee. ASIC considers that the main reason for giving the guarantee was to overcome the difficulty in providing Launders with evidence of the collectability of $68 million of Spedley Securities debts.

Launders agreed with the proposition that, "as at 1 February when you signed the accounts for Spedley Securities the only thing which stopped Spedley Securities being in breach of its dealers licence, as far as you were aware, was the fact that that guarantee had been provided." [66]

Users of the accounts were unaware of material particulars of the guarantee and of the significance of the guarantee to the view formed by the auditor as to the truth and fairness of the net amount of the receivables shown in the accounts. The absence of this information materially diminished the usefulness of the accounts as a disclosure document.

In December 1990, charges were laid against Beatty under section 229(1) of the Code, in relation to the signing of the guarantee. The charges were withdrawn in March 1991, after Senior Counsel's advice was received.

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[62] Spedley Securities 1988 accounts, Note 27
[63] Maher - section 19 examination, 20 February 1991, pages 4267-4268; Gray - section 7 examination, 22 March 1990, pages 17-18
[64] Beatty - section 7 examination, 13 September 1989, pages 30, 35, 36; Beatty - section 541 examination, 31 May 1990, page 1427; Craven - section 541 examination, 2 May 1990, page 866
[65] Launders - section 295 examination, 29 May 1990, page 1467
[66] Launders, section 295 examination, 29 May 1990, page 1468

1.17 LOSSES ON FUTURES TRADING

From 1984, Spedley Securities suffered losses on futures trading. By 1988 the losses amounted to $35 million. The losses had not been discovered prior to 1988 because Dawkins had concealed them by falsifying documents. Dawkins admitted doing so, and further said that he told Yuill of the losses in November 1988 and Craven and the other directors in December 1988 and January 1989. However, Yuill says that he was first told of the losses in January 1989, by Craven [67]. Launders required that the losses be recognised in 1988, which increased the company's operating loss by $35 million.

At a meeting in mid January, the directors representing the major shareholders agreed to offset the loss by altering the amounts of interest receivable and interest payable. Launders was also involved in the discussions at this and subsequent meetings, and made some suggestions as to ways in which adjustments could be made to recover the loss from the shareholders.

As a result of those discussions, the amount of interest receivable from Greater Pacific was increased by $10.5 million, so it was paying an interest rate of approximately 26%. The amount of interest payable to ANI was decreased by $13.52 million, so that no interest was payable on loans from ANI. It was also agreed that ANI and the other shareholders would bear liability for management fees totalling $10.98 million, to make up the $35 million [68]. This reduced Spedley Securities' operating loss for the year from $45.6 million to $10.6 million.

The journal entries for these transactions were dated 31 October 1988. There was no disclosure in Spedley Securities' accounts for the year ended 31 October 1988 of the $35 million loss on futures trading which had been brought to account in that year.

Jones and Gray claimed that they were not party to any of the discussions about how to recoup the loss. Hawkins said that he was at the meeting in January, with Yuill, Maher and possibly Gray, at which the proposal was discussed. Maher claimed that his involvement was limited to making arrangements to offset interest and other payments [69].

CL-Alexanders Laing & Cruikshank, a 14.9% shareholder in Spedley Holdings, was never informed of the loss or consulted about taking responsibility for part of the loss. It also paid no fees to Spedley Securities and had no dealings with it which attracted a liability to pay fees. Maher has said that no identifiable services were provided to ANI for the $2,229,910 which it contributed in management fees[70].

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[67] Statement of Peter Campbell Dawkins dated 31 July 1990, paras 21-27; Yuill - section 541 examination, 14 November 1990, page 3152

[68] Maher - section 541 examination, 1 June 1990, pages 1436, 1442; Hawkins - section 541 examination, 3 October 1990, pages 2970-2971; Launders - section 7 examination, 28 August 1989, page 17

[69] Jones - section 541 examination, 1 June 1990, page 1485; Maher - section 541 examination, 1 June 1990, page 1436; Gray - section 7 examination, 22 March 1990, pages 14-16, section 19 examination, 21 February 1991, page 4282; Hawkins - section 541 examination, 3 October 1990, pages 2970-2971.

[70] Statement of Bernard Vibert dated 16 June 1989, paras 10-13; Interview between Maher and the Director of Public Prosecutions

The arrangements on which the adjustments were based were confirmed in letters to the auditor dated 31 January 1989, from ANI and Greater Pacific.

Launders had said that he would not sign the auditor's report on Spedley Securities' accounts as at 31 October 1988, unless he obtained evidence that payment of the minority shareholders' part of the loss would occur [71]. GPI Leisure then wrote two letters to Spedley Securities on 31 January 1989. One letter gave an irrevocable undertaking to procure fees totalling $8.7 million from Glenarm, Nodrogan and CL-Alexanders Laing & Cruikshank. The other letter, as well as providing an undertaking, guaranteed payment of the fees owing by Glenarm and CL-Alexanders Laing & Cruikshank, the shareholders independent of Yuill.

Both letters were signed by Craven and Beatty, for GPI Leisure, although Beatty has no recollection of signing the second letter. Beatty said that he relied on advice from Yuill when he signed the letter, to the effect that Yuill had agreed with the minority shareholders that Greater Pacific would fund their portion of the futures losses in consideration of the minority shareholders transferring their shareholding to GPI Leisure, but that this could not be effected before balance date [72].

While these letters provided the assurances which Launders wanted, he knew that the entries to which they related were simply designed to recoup or make good the futures trading losses by the shareholders of Spedley Holdings [73]. Launders said the result of the transactions was that there was no net effect on Spedley Securities' profit or loss, so his view, supported by other members of his firm, was that the loss on futures trading was not required to be disclosed.

As with the $100 million guarantee, GPI Leisure could get no real benefit from giving the undertakings. Neither the undertakings, nor the other transactions, had any commercial justification. They were simply engineered as part of the scheme to negate the effect of the loss of $35 million.

Dawkins pleaded guilty to charges under sections 229(1)(b) and 229(4) of the Code, on 15 October 1990, for his role in hiding the futures trading losses. He was sentenced to two years' penal servitude, by periodic detention. Dawkins also admitted to the ASC that he had taken approximately $150,000 from Spedley Securities. The ASC referred that matter to the police. After receiving Senior Counsel's advice, the ASC decided not to pursue any other charges in relation to these transactions.

> *The $35 million loss and the variations to interest income and expense and management fees should have been disclosed as extraordinary or abnormal items, in accordance with Schedule 7 to the Companies Regulations and accounting standard AAS1. The ASC believes that the accounts failed to give a true and fair view of Spedley Securities' profit or loss for the year and that the directors should not have signed the directors' statement in the accounts. Further, the auditor should have qualified or refused to sign the audit report.*

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[71] Craven, section 295 examination, 31 May 1990, pages 1572-1573
[72] Letter from Kemp Strang & Chippindall to ASC dated 31 May 1996
[73] Launders - section 541 examination, 2 October 1990, page 2876

1.18 FEE INCOME

Fees received totalling $20,033,000 were included in the accounts of Spedley Securities for the year ended 31 October 1988. This amount included fees of $10.9 million created to mask the futures trading loss (refer to para 1.17).

Other fee income included $7.5 million paid by Bond Corp in October 1988 in connection with a financing deal for a property in Rome. Bisley Investment intended to purchase shares in a company which owned the land from Bond Corp Holdings. Kitool was established to complete the deal. It borrowed a total of $52 million from Equiticorp Australia Limited, Aldershot, Greater Pacific and Bisley Investment. The loans were due to mature on 15 July 1988. Prior to that date, Spedley Securities had arranged an alternative short term funding proposal for $41 million[74].

These activities earned a fee of $7.5 million for Spedley Securities. Yuill told Levings in October 1988 to record the fee [75]. It was later confirmed by Bond Corp Holdings, in a letter to P & M dated 31 January 1989. Yuill had sent a letter on the same day, by facsimile, to Bond Corp Holdings in the following terms:

> "Please accept this letter as an acknowledgment of our understanding that your confirmation was provided in order to expedite the completion of our audited accounts for the year ended October 31, 1988.
>
> "We confirm that Spedley Securities Limited will hold Bond Corporation Holdings Limited irrevocably harmless in respect of this confirmation and denies any recourse that Spedley Securities Limited may have."

The letter from Spedley Securities to Bond Corp Holdings and the size of the fee suggest that the fee was suspect. Like the fee for the Paragon shares transaction (refer to para 1.10), the fee for the Rome land deal was sufficiently large that it is questionable whether there was adequate commercial basis for the fee or whether it was designed solely to improve Spedley Securities' reported profit. This matter was referred to the Bond investigation.

1.19 EFFECT OF 1988 TRANSACTIONS

In summary, the transactions referred to in paragraph 1.14 to 1.18 are:

1. *the round robin of payments totalling $275.6 million, in which Spedley Securities was the source of most of the funds which were eventually paid to it. The effect of these transactions was to clear or substantially reduce debts owed by companies in which a director had an interest, which were of no substance or which were in financial difficulty and to dispose of Spedley Securities' over-valued share portfolio;*

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[74] Letter from Grant Samuel & Associates to National Companies & Securities Commission dated 12 May 1989; Yuill - section 541 examination, 4 May 1990, page 998

[75] Yuill - section 541 examination, 4 May 1990, pages 997-999

2. *loans totalling $204 million, mainly to companies linked with Yuill, were converted to short-term bills of exchange, which improved the appearance of Spedley Securities' liquidity and the apparent quality of its assets;*

3. *the $100 million guarantee given by GPI Leisure of Spedley Securities' receivables was relied on by the auditor in accepting a provision for doubtful debts of only $15 million but the identity of the guarantor and the amount of the guarantee were not disclosed in the accounts because directors claimed they had not relied on the guarantee;*

4. *neither the losses on futures trading totalling $35 million nor the variations to interest income and expense and the management fees which were contrived to offset the losses were adequately disclosed; and*

5. *additional fee income of $7.5 million was brought to account to improve the reported profits of Spedley Securities. The ASC believes the fees were not earned by Spedley Securities.*

The transactions or events numbered 2 to 5 indicate that the balance sheet and profit and loss statement for the financial year ended 31 October 1988 did not give a true and fair view of the state of affairs of Spedley Securities or its profit or loss for the year.

1.20 CONCLUSIONS

It is the ASC's view that the accounts for Spedley Securities in 1987 and 1988 involved departures from the accounting requirements of the Code and from Approved Accounting Standards.

Both years' accounts failed to reflect material events which occurred merely days after balance date including the reversal of transactions which had occurred shortly before balance date. Those events were contemplated by at least Yuill, at balance date. Despite this, he signed a statement each year that the accounts gave a true and fair view of the state of affairs of the company at the end of the financial year.

The ASC believes that transactions were entered into in 1987 and 1988 for the sole purpose of varying the assets, liabilities, income and expenditure shown in Spedley Securities' accounts and that the disclosure in those accounts was inadequate. As a consequence, neither year's financial statements gave the required true and fair view of the company's financial position and results.

The ASC also believes that there were transactions designed to ensure that Spedley Securities could comply with the terms of its dealer's licence. That Spedley Securities could continue to trade under its licence is attributable, at least in part, to those transactions.

After receipt of advice from Senior Counsel, it was decided that no charges could be laid against the directors or the auditor other than the charges referred to above.

CHAPTER 2 - SUBSCRIPTION BY GPI LEISURE FOR PREFERENCE SHARES IN SPEDLEY HOLDINGS AND LOAN FROM STANDARD CHARTERED BANK

2.1 ANI FINANCIAL SUPPORT FOR SPEDLEY SECURITIES

After the October 1987 share market crash, ANI provided financial support to Spedley Securities to allow it to meet the demands of its depositors and bankers. ANI's loans to Spedley Securities reached a peak of approximately $140 million during the first quarter of 1988.

The ANI representatives on the board of Spedley Securities were concerned about reducing ANI's exposure to Spedley Securities. To discourage reliance on ANI and encourage Spedley Securities to find an alternative source of finance, the interest rate charged to Spedley Securities was approximately 2% above market rates [1]. Maher was pressing Yuill for reduction of the debt by 31 May, either by obtaining alternative finance or by realising assets such as shares or receivables [2]. This did not happen.

Maher acknowledged being aware from the end of 1987 that Yuill was obtaining funds for Spedley Securities and anticipated that the funds would be used to reduce ANI's exposure to Spedley Securities. Gray had no recollection that repayment from borrowed funds was intended. However, he saw ANI's repayment as the logical result of any borrowing by the Spedley group of companies [3].

2.2 APPLICATION TO STANDARD CHARTERED

At the end of 1987, Craven, on instructions from Yuill, arranged for GPI Leisure to apply for a loan of, initially $50 million, and finally $100 million, from Standard Chartered in Hong Kong. As GPI Leisure had assets of $108.9 million and debts of only $7.3 million [4], it could be presented as a more acceptable applicant for credit than Spedley Securities.

Standard Chartered approved a loan of $50 million "to fund the acquisition of a controlling stake in an Australian, UK or US based company" [5]. The ASC notes that this amount would not have provided sufficient funds to discharge Spedley Securities' obligations to ANI.

Yuill arranged for the officers of Standard Chartered who had prepared the credit application to come to Australia in February 1988 to view the operations of the Austotel Trust and Spedley

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[1] Statement of Peter McLachlan dated 7 March 1991, para 15(b); Jones - section 541 examination, 30 May 1990, page 1328
[2] Diary Note of Maher dated 21 March 1988; Maher - Section 19 examination, 20 February 1991, page 4216
[3] Maher - section 19 examination, 20 February 1991, pages 4217-4218; Gray - section 19 examination, 21 February 1991, page 4297
[4] 1987 Annual Report of GPI Leisure
[5] Letter from Standard Chartered to GPI Leisure dated 29 January 1988

Holdings. During the meeting in Sydney, Yuill discussed with them the possibility of GPI Leisure investing $100 million in preference shares issued by Spedley Holdings [6].

On 11 March 1988, Craven sent Standard Chartered a copy of the directors' report, financial statements and consolidated accounts of Spedley Holdings and its subsidiaries, including Spedley Securities, for the year ended 31 October 1987. These accounts were furnished to Standard Chartered to support the application by GPI Leisure for the $100 million advance.

The matters reported on in Chapter 1 demonstrate how those accounts did not give a true and fair view of the affairs of Spedley Securities. Craven claimed that, when he sent the accounts to Standard Chartered, he did not doubt that they gave a true and fair view of the company. He also said that he took comfort from the acceptance of the accounts by Maher and Gray, as they were both experienced accountants, and by the independent auditor [7].

Craven went to Hong Kong at the end of March, to assist with the assessment of Spedley Holdings' accounts. Craven said that he was instructed by Yuill to telephone him whenever he, Craven, needed help providing answers to any questions from Moore and Donaldson of Standard Chartered [8]. Craven claims that, while he was in Hong Kong, he spoke to Yuill on five or six occasions for such help. He claims that the answers he gave Donaldson, on Yuill's instructions, were at best, evasive, and at worst, untruthful. Those answers concerned the following issues [9]:

- limited exposure of Spedley Securities and GPI Leisure to the stock market;
- a $100 million convertible note issue by GPI Leisure to increase its capital (see Chapter 4);
- external financing of Pluteus (No 152)'s purchase of convertible notes in Spedley Holdings;
- extent of loans from ANI to Spedley Securities and ANI's attitude to the Spedley group of companies;
- extent of trade and other debtors;
- Spedley Securities' lending policies regarding lending against property or listed securities; and
- hedging arrangements with Rothwells for a put option for Paragon shares, allegedly entered into by Greater Pacific.

Yuill denies that he gave instructions to Craven [10].

In preparing the Application for Limits, Standard Chartered relied on the information provided by Craven and the 1987 accounts for Spedley Holdings, including the following representations [11]:

- the $27 million convertible note capital was financed from external sources;
- the value of Spedley Securities' investment in shares in listed companies;

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[6] Craven - section 19 examination, 1 April 1993, page 5923
[7] Section 541 examination, 2 December 1991, page 4668;
[8] Craven - section 19 examination, 1 April 1993, page 5931
[9] Craven - section 541 examination, 2 December 1991, pages 4664-4665
[10] Submissions of BR Yuill to ASC dated 7 June 1996
[11] Application for Limits dated 21 March 1988; Unsigned statement of William Moore, paras 19-21

- commercial bills, promissory notes and negotiable certificates of deposit worth $240 million; and
- Commonwealth Government Bonds and Securities valued at $49 million.

The Standard Chartered officers say that, if they had known of the true situation regarding the above matters, the integrity of the applicant would have been questioned, resulting probably in rejection of the loan application [12].

Standard Chartered approved the $100 million facility on 8 April 1988. One of its terms was that GPI Leisure would warrant that Spedley Holdings would use the new capital to expand the businesses of Spedley Securities and First Federation [13]. This suggests that the real reason for the advance, to reduce Spedley Securities' debts to ANI, had not been disclosed to Standard Chartered.

2.3 STOCK EXCHANGE LISTING RULES

Listing Rule 3A required a company whose shares are listed on the Stock Exchange to notify the Exchange of any information which is necessary to avoid a false market in the company's securities or which is likely to materially affect the price of its shares.

In May 1988, Listing Rule 3J(3) required a company to inform the Exchange of any acquisition or disposal by the company of assets representing more than 5% of the value of its total assets, where the vendor or purchaser was associated with the company. A meeting of shareholders had to be called to approve such an acquisition or disposal. The shareholders had to be provided with copies of independent experts' reports or valuations which established that the transaction was fair to the unassociated shareholders.

GPI Leisure had instructed Pliner to act for it on the loan facility and investment in preference shares in Spedley Holdings. There is conflicting evidence about whether Pliner or Beatty advised Yuill about whether the Listing Rules applied to the loan from Standard Chartered and GPI Leisure's investment in Spedley Holdings. Yuill denies that Beatty gave him such advice [14].

After Standard Chartered's solicitor raised a concern about Listing Rule 3J, Pliner proposed structuring the transaction in a different way, so that the shares were initially only partly paid, and so the first tranche would be less then 5% of GPI Leisure's issued capital. Pliner considered that this would avoid the operation of Listing Rule 3J. Beatty has also referred to advice from Pliner that Listing Rule 3J did not apply.

The Stock Exchange's response to this arrangement is reported on in Chapter 3.

Pliner brought Listing Rule 3A to the attention of Yuill, Beatty and Craven, after the transaction was completed (9 May 1988). Craven said that Beatty decided that the company should not make

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[12] Unsigned statement of David Grant, paras 13, 16-20; Unsigned statement of William Charles Langdon Brown, paras 13, 16-20; Unsigned statement of William Moore, paras 20, 32-35

[13] Letter from Standard Chartered to GPI Leisure dated 8 April 1988, page 3

[14] Craven - section 295 examination, 8 December 1989, page 137, Beatty - section 19 examination, 29 July 1993, pages 69-70, submissions of BR Yuill to ASC dated 7 June 1996

an announcement, although Beatty said that he was of the view that Listing Rule 3A applied. Yuill denies that Pliner advised him of the requirements of Listing Rule 3A [15].

Beatty denied having any involvement in the decision not to issue an announcement. He said that he left responsibility for the announcement with Yuill (as the executive officers of the company had responsibility for making, and made, such announcements). Beatty also said that Yuill told him it was inadvertence on Yuill's part that led to no announcement being made. Beatty's opinion subsequently, given during an examination, was that an announcement had not been made because "Yuill did not want it to be made" [16].

Pliner's version is that he told Beatty and Bowman that an announcement should be made under Listing Rule 3A, particularly as Listing Rule 3J was not activated. He could not recall Beatty's response to this advice. He also did not know whose decision it was not to release the announcement which had been drafted.

Beatty and Pliner attended a meeting of the National Listing Committee on 30 November 1988. Pliner said that Beatty told the Committee that an announcement had been drafted and given to Yuill to make the announcement and that it was Yuill's inadvertence that led to the announcement not being made. The omission was not discovered until June, so they decided to make the required disclosure in GPI Leisure's Annual Report. Beatty recalls telling the Listing Committee that he and Yuill were out of the country at different times after late April 1988 until the end of June [17]. Immigration records show that Yuill was in Australia between 8 May and 2 June 1988 and Beatty was in Australia between 29 April and 7 June 1988 [18]. Beatty does not recall discovering the omission until August or September 1988 when the accounts were being prepared and he was drafting a Chairman's Report.

2.4 IMPLEMENTATION OF THE TRANSACTION

On 6 May 1988, GPI Leisure acquired 11,111,111 non participating cumulative redeemable preference shares of $1 each at a premium of $8 each issued by Spedley Holdings. Craven and Bowman, as directors of GPI Leisure, authorised the investment and the $100 million loan from Standard Chartered. At least two directors, Potts and Stornmonth-Darling, were not told of the proposal [19]. There was also a meeting of the Board and an Extraordinary General Meeting of Spedley Holdings on 6 May 1988, to amend the company's articles, to provide for the class of shares being offered to GPI Leisure.

GPI Leisure paid Spedley Holdings $0.10 per share on 6 May 1988 (a total of $1,111,111.10). Spedley Holdings then deposited $1,050,000 with Spedley Securities.

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[15] Craven - section 295 examination, 8 December 1989, page 137, submissions from BR Yuill to ASC dated 7 June 1996

[16] Beatty - section 19 examination, 29 July 1993, pages 80, 85

[17] Pliner - section 19 examination, 29 October 1991, pages 53-55, section 19 examination 15 July 1991, pages 25 and 27, Beatty - section 19 examination, 29 July 1993, pages 82-84

[18] Report provided to the Commission taken from immigration cards

[19] Potts - section 19 examination, 25 January 1993, page 29

On 7 May 1988, GPI Leisure entered into a Credit Agreement with Standard Chartered. Clause 14, sub clause (n) of the Credit Agreement states that:

> "The Borrower covenants with the Lender that, so long as the Facilities are available for use by the Borrower or any Obligations remain undischarged the Borrower shall:...
>
> > (n) procure that (Spedley) Holdings will apply the proceeds of the subscription of the Shares to expand the business of Spedley Securities Limited and First Federation Discount Co Ltd."

The loan was fully drawn down on 9 May 1988. On the same day, GPI Leisure paid Spedley Holdings $98,888,887.90 being the balance owing on the preference shares, after a call by Spedley Holdings [20]. On 10 May 1988, Spedley Holdings advanced $98,888,887.90 to Spedley Securities[21].

It is not possible to determine whether the reduction of the debt to ANI is directly attributable to the funds paid to Spedley Securities by Spedley Holdings, because of the intermingling of deposits by Spedley Securities. However, in the period 17 May 1988 to 30 June 1988, Spedley Securities paid ANI at least $66 million [22]. This reduced Spedley Securities' debt to ANI to approximately $75 million. It stayed at that level until November 1988.

However, assuming that the funds paid by Spedley Securities to ANI are attributable to the Standard Chartered loan, clause 14(n) was breached immediately. The repayment of loans did not in any way expand the business of either Spedley Securities or First Federation. To the contrary, extinguishing external debt may have the effect of contracting a company's business.

2.5 CONCLUSIONS

A report was submitted to the Director of Public Prosecutions in January 1992 on the adequacy of the evidence available and the further evidence required to support the laying of criminal charges against Yuill, Craven, and any other person for suspected offences against sections 229(1) and (4) of the Code. The Director of Public Prosecutions provided advice to the ASC and recommended that no prosecution action be taken.

> *The ASC believes that Standard Chartered approved the loan to GPI Leisure after relying on Spedley Holdings' accounts which were not true and fair. and because of the false and*

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[20] Minutes of Board of directors of GPI Leisure dated 9 May 1988

[21] GPI Leisure deposit voucher Do96; GPI Leisure Cheque Nos 064727 and 064731; Spedley Holdings Deposit Vouchers No 11 and 12; Spedley Holdings Cheque Nos 584126 and 584123; Spedley Securities Deposit Vouchers Nos 1724 and 1751

[22] Spedley Securities Cheque Nos. 944629, 922170, 924914, 924924, 924910 and 924937. One cheque with an unknown number, was paid to ANI account No 7-01553 on 24 June 1988

misleading information provided to Standard Chartered by Craven on the instructions of Yuill.

The ASC also believes that the directors of GPI Leisure who were aware of the transaction, including Yuill, may have failed to exercise sufficient care and diligence in not ensuring or checking that the required announcement to the Stock Exchange was actually made.

CHAPTER 3 - THE INDEPENDENT REPORT TO SHAREHOLDERS ON GPI LEISURE'S INVESTMENT IN SPEDLEY SECURITIES

3.1 NEGOTIATIONS WITH THE EXCHANGE

The May 1988 acquisition by GPI Leisure of preference shares in Spedley Holdings is described in Chapter 2. Payment for the shares was in two tranches to avoid the operation of Listing Rule 3J(3), which would otherwise have required a shareholders' meeting to approve the transaction.

The GPI Leisure 1988 Annual Report was lodged with the Australian Stock Exchange (Brisbane) Ltd ("the Exchange") on 1 November 1988, in accordance with the Australian Stock Exchange Listing Rules. The Chairman's Report referred to the acquisition, providing the first public release of information about it.

On 14 November 1988, the Exchange wrote to GPI Leisure, requesting that GPI Leisure provide information pursuant to Listing Rule 3A(4) and consider the applicability of Listing Rule 3J(3).

GPI Leisure submitted to the Exchange that Listing Rule 3J(3) had no application, because of the structure of the transaction. The Exchange and subsequently the National Listing Committee rejected this argument. On 5 December 1988, GPI Leisure was notified that it was required to hold an Extraordinary General Meeting by 7 February 1989 to ratify the transaction. Before the meeting, GPI Leisure had to obtain and distribute an independent expert's report about the transaction [1].

The date was extended a number of times, at GPI Leisure's request. The final deadline was imposed on 9 March, when GPI Leisure was given until 20 March 1989 to finalise the documents to be sent to shareholders and until 7 April to hold the meeting [2].

3.2 COMMISSIONING THE EXPERT

Despite being aware of their obligations from at least December 1988, the Board of GPI Leisure took no steps to commission the expert's report until 28 February 1989. The delay severely limited the time available to the expert to prepare the report. This in turn increased the expert's necessary reliance on the directors of GPI Leisure for full information.

On 28 February 1989, Young of Baron Partners asked Mr Robert Westphal and a staff member of Arthur Young to attend a meeting to obtain instructions in relation to a 3J(3) report for GPI Leisure. They attended a meeting that day with Young and Beatty. Beatty's role was to provide an overview of the transaction and the legal aspects of it.

A number of documents, including terms of the preference share issue, loan documentation, board minutes, GPI Leisure's Annual Report, the Spedley companies' accounts, draft consolidated

[1] Letter from Australian Stock Exchange (Brisbane) Ltd to B & McK dated 5 December 1988
[2] Letter from Australian Stock Exchange (Brisbane) Ltd to B & McK dated 9 March 1989

accounts from P & M for Spedley Holdings and copies of announcements to shareholders, were provided in the following days [3].

As requested at the 28 February meeting, a draft report was prepared within three days and was sent to the company on 3 March.

3.3 MARCH 6 MEETING WITH ARTHUR YOUNG

On 6 March, 1989, Westphal and a member of his staff attended a meeting at the offices of GPI Leisure with Yuill and Young. Launders and Craven also joined the meeting for some period of time. Launders has said that he only attended the meeting to advise on progress of the Spedley Holdings audit and to answer questions directed to him. The meeting was convened because Westphal wanted to ensure he was aware of any issues relating to Spedley Holdings which might impact on the security of GPI Leisure's investment.

They discussed the exposure to Rothwells, Spedley Securities' provision for doubtful debts, consideration by the board of GPI Leisure in May 1988 of likely interest rate movements, progress of the audit of Spedley Holdings and maintenance of ANI's 45% shareholding if GPI Leisure converted its preference shares into ordinary shares. Yuill intimated that something about ANI's investment may change in the near future, although he could not then say what it was [4].

During the discussion of the Rothwells losses, Westphal specifically asked about the provision made for doubtful debts. He says he was assured by Yuill and Launders that the $15 million provision was adequate. Launders has denied giving such an assurance. Launders said at the meeting that the $15 million provision had been allocated to particular bad and doubtful debts [5]. Launders omitted to mention that he was only satisfied with that provision, because GPI Leisure had given a guarantee of up to $100 million for bad debts in excess of $15 million. He now says that the guarantee could have been discovered from the note to the annual accounts [6].

Westphal has subsequently said that he did not see any reference to the guarantee in the accounts [7]. Whilst there was a note in Spedley Holdings' and Spedley Securities' accounts about the guarantee (see para 1.16), it did not state that GPI Leisure had given the guarantee.

Westphal said that he sought an assurance from Launders that there would be no material or unusual circumstances revealed by the audit which would impact on the report. He says Launders indicated that the final accounts would not differ substantially from the work sheets already provided to Westphal [8]. Launders denies that such an assurance was sought or given. His recollection is that he was only asked about the provision for doubtful debts, when he expected to sign Spedley Holdings' accounts.

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[3] Statement of Peter James Joseph Blythe dated 7 September 1990, paras 9-30
[4] Statement of Peter James Joseph Blythe dated 7 September 1990, paras 58-87
[5] Launders - section 295 examination, 29 May 1990, page 1442; Statement of Peter James Joseph Blythe dated 7 September 1990, paras 65, 70, letter from Corrs Chambers Westgarth to ASC dated 30 May 1996
[6] Launders - section 295 examination, 29 May 1990, page 1464
[7] Westphal - section 295 examination, 9 May 1990, page 1028
[8] Statement of Robert Gordon Westphal dated 14 September 1990, para 82

As a final matter, Westphal asked whether there were any other matters which he should be aware of, to which Yuill replied that there were not [9]. Westphal later made a note of this question and response on the notes of the meeting. Launders denied that this question was asked while he was at the meeting [10]. It is possible that the question was asked after Launders left the meeting.

3.4 COMPLETION OF THE REPORT AND THE SHAREHOLDERS' MEETING

A draft report had been sent to the Exchange on 6 March, after the meeting with Pliner and Young. In the next few days, the Arthur Young officers amended the report and received further documents from Young. They subsequently received a copy of an announcement about ANI selling its shares in Spedley Holdings to BT Insurance on 16 March and a signed copy of the Spedley Holdings accounts on 17 March.

The report was finalised and signed by Westphal on 17 March 1989. The report concluded that, as at May 1988, the transaction was fair to unassociated shareholders. The report included a reference to two events which became known after May 1988, the increases in interest rates and appointment of a provisional liquidator to Rothwells, and stated that, if these were known in May 1988, the terms of the transaction may well have been different.

On 20 March 1989, the Arthur Young report was forwarded to the Exchange together with notices concerning the Extraordinary General Meeting to be held on 7 April 1989.

Between that date and 7 April 1989, there was some negotiation between GPI Leisure and the Exchange about amending the motion to be put to shareholders, because of a renegotiation of the terms of the shares. Subject to conditions requiring further disclosure, the Exchange allowed the amendments [11].

A copy of a letter from GPI Leisure to the Stock Exchange was given to shareholders who attended the meeting, to satisfy the Exchange's requirement about disclosure of its loans, deposits and investments [12]. That letter showed an exposure of approximately $400 million to the Spedley group of companies.

At the meeting on 7 April 1989, there were approximately 25 million votes for and 15 million votes against the motion, so the transaction was ratified.

3.5 INFORMATION NOT DISCLOSED TO ARTHUR YOUNG

The following matters, all known to Beatty, Yuill, Craven and Launders in February and March 1989, were not disclosed to the officers of Arthur Young:

- the $35 million futures losses incurred by Spedley Securities;

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[9] Statement of Peter James Joseph Blythe dated 7 September 1990, paras 86, 87; Statement of Robert Gordon Westphal dated 14 September 1990, paras 88, 89; Craven - section 295 examination, 31 May 1990, page 1588.
[10] Launders - section 295 examination, 29 May 1990, pages 1472-1473
[11] Statement of Richard William Marsh dated 22 May 1990, paras 23-26; letter from Australian Stock Exchange (Brisbane) Ltd to GPI Leisure, dated 5 April 1989.
[12] Statement of Peter James Joseph Blythe dated 7 September 1990, para 108

- the guarantee by GPI Leisure of the minority shareholders' share of the futures losses; and
- the $100 million guarantee of receivables given by GPI Leisure.

Craven said that both Yuill and Beatty discouraged him from disclosing the $100 million guarantee. Craven said that, after the 6 March meeting, Beatty convinced him that the guarantee was only to have short term effect, so did not need to be disclosed to Arthur Young. It is noted that Beatty was not at the 6 March 1989 meeting with Arthur Young and was out of Australia from 4 to 14 March 1989. He denies that he gave Craven such an instruction. Craven also said that Yuill told him that the guarantee and the futures loss would become irrelevant after the proposed restructure of the group, so he should not volunteer any information which could lead to their disclosure [13].

Launders assumed that Arthur Young were aware of the guarantees and futures losses from their other enquiries and discussions with GPI Leisure directors. He did not see that he had any responsibility for providing information to Arthur Young, other than in response to direct questions [14]. He was also present for only part of the 6 March meeting, so did not know what other information had been provided to Westphal during that meeting, or what other checks, enquiries or analysis Westphal had made.

Beatty claims to have been told by Yuill that Spedley Securities would be making available to Arthur Young all of its accounts, including the auditor's working papers and that Yuill, Craven and Launders would meet with Arthur Young to review the accounts in detail. He said that he expected the futures losses and guarantees to be disclosed by the executive directors and auditor of Spedley Securities [15].

These three facts had not become known in May 1988, so could not, by themselves, have affected the conclusion drawn about whether the transaction was fair, based on information known in May 1988. However, disclosure of any of these facts would have put Westphal on notice that, as at May 1988, there were deeper problems to investigate. As the futures losses had occurred over a number of years, some doubt would be cast on the historical trading results of Spedley Securities and the performance of Spedley Holdings.

The failure to detect the losses would also have raised questions about the internal controls and operating procedures of the companies in the Spedley Group. The increased provision for Spedley Securities' receivables should have caused some concern about the value of GPI Leisure's investment.

The raising of a $14 million provision for doubtful debts in the year ended 31 October 1988 may not of itself have caused concern about the value of GPI Leisure’s investment, but the auditor’s reliance on the guarantee provided by GPI Leisure would have been of interest to Arthur Young had they become aware of it. Launders’ reliance on the guarantee would have raised concerns about the value of the receivables, and the guarantee itself increased GPI Leisure’s exposure to the Spedley Group.

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[13] Craven - section 295 examination, 31 May 1990, pages 1571, 1587
[14] Launders - section 295 examination, 29 May 1990, pages 1449, 1473
[15] Letter from Kemp Strang & Chippindall to ASC dated 31 May 1996

Westphal's opinion is that, if he had known of the $100 million guarantee and made the enquiries which disclosure of the guarantee would have demanded, he would have concluded that the transaction was not in the interests of the unassociated shareholders [16]. Such a conclusion is supported by expert opinion obtained by the ASC [17].

3.6 CONCLUSIONS

Beatty was charged with offences under sections 229(1) and 564 of the Code and section 176 of the Crimes Act 1900 (NSW) in relation to the making of false statements. Yuill was charged with being knowingly concerned in the alleged breach of section 564 of the Code and as an accessory to the alleged breach of section 176 of the Crimes Act. He was also charged with an offence under section 229(1) of the Code. The charges were withdrawn after the ASC obtained advice from the DPP and counsel.

> *Arthur Young was commissioned to prepare the report in a manner which necessitated reliance on the staff of GPI Leisure and Spedley Holdings to obtain relevant information.*
>
> *Yuill, Craven, Beatty and Launders did not disclose relevant material to Westphal about the relationship between Spedley Holdings and GPI Leisure and about Spedley Holdings' financial position. This may have had a material effect on the conclusions reached in the report. Launders and Beatty have both indicated that they were relying on other parties, such as the executive officers of Spedley Securities, to make such disclosures. Launders was also expecting the expert to make the necessary, independent enquiries to discover the relationship between Spedley Holdings and GPI Leisure.*

[16] Letter from Robert Gordon Westphal to Business and Consumer Affairs dated 28 February 1990
[17] Statement of Goodwin Cullimore Allen Gower dated 4 October 1990, paras 48-52

CHAPTER 4 - $100 MILLION CONVERTIBLE NOTE ISSUE BY GPI LEISURE

4.1 GPI LEISURE CONVERTIBLE NOTE ISSUE

At a Board meeting on 7 April 1988, GPI Leisure resolved to issue convertible notes to existing shareholders, to raise $100 million for further capital for the Austotel Trust. The proposal was announced to the Exchange on the following day. A short issue timetable was adopted, with the issue being open between 5 and 30 May 1988.

The Letter of Offer which was sent to all shareholders, setting out the terms of the issue and its purpose, was issued under Beatty's signature. The Board recommended that shareholders take up their entitlements. The Letter of Offer also contained a Directors' Report, with the signatures of Beatty and Yuill, dated 22 April 1988. One of the statements in the Directors Report was that [1]:

> "since the last unaudited interim accounts there has not been any significant variation to the amount of moneys owing and payable to the Company and the amount of liabilities payable by the Company."

Beatty maintained that, when the Report was finalised, he believed that there had not been any significant variation since the 31 December 1987 accounts. He says that he was aware that negotiations with Standard Chartered were in a formative stage only and that he had not seen a formal offer from Standard Chartered. He said that he had been approached by Craven regarding a solicitor from B & McK to work on the transaction for GPI Leisure. From 13 April 1988, he knew that there was an agreement in principle, with the documentation still to be prepared, although he was not aware of any urgency in connection with preparation of the documentation [2]. The Letter of Offer made no reference to that imminent transaction.

The Directors' Report included an abridged balance sheet from the unaudited interim accounts as at 31 December 1987. The interim accounts showed liabilities of $17,279,000 and assets of $121,353,000. Those accounts, rather than the last audited accounts, were incorporated in the Letter of Offer, as they provided [3]:

> "more useful and current information to shareholders, reflecting the financial effects of events which occurred between 1 July 1987 and 31 December 1987, including the significant decline in the stockmarket"

Craven, Gray and Bowman said that they were not involved in the preparation of the Letter of Offer. Bowman and Gray may have read the letter before it was sent to shareholders. Gray stated that he did not consider the significance of the Standard Chartered loan, in the context of the offer

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[1] Letter of Offer to Shareholders dated 22 April 1988, page 9
[2] Beatty - section 19 examination, 29 July 1993, pages, 68, 69, 88
[3] Letter of Offer to Shareholders dated 22 April 1988, page 9

document, while the offer was open [4]. As Potts was not aware of the borrowing until he read the 1988 Annual Report, he was clearly not in a position to suggest a reference to it in the Letter of Offer [5.] The other directors do not appear to have been questioned about whether they proposed any amendments to it.

The Letter of Offer, although dated 22 April 1988, was not distributed to shareholders until 5 May 1988 [6]. The ASC has not been able to discover who from GPI Leisure ultimately authorised distribution of the Letter of Offer on that date [7].

4.2 INFORMATION OMITTED FROM THE LETTER OF OFFER

It is well established that a failure to provide necessary information can render a document misleading in the same way that providing incorrect information can do so.

The Letter of Offer made no mention of the $100 million borrowing from Standard Chartered which was approved on 8 April and the associated investment in Spedley Holdings. While GPI Leisure was not legally committed to the borrowing and investment on 22 April when the letter and Directors' Report were finalised, there was certainly a firm commitment, at least on Yuill's part, to take up the loan, so that ANI's exposure to Spedley Securities could be reduced.

The loan from Standard Chartered and the investment in Spedley Holdings changed the financial position of GPI Leisure significantly. The company's liabilities increased almost sevenfold. The value of the investment, and so the amount of the increase in GPI Leisure's assets, is open to some debate, given the true value of Spedley Holdings. Beatty believed that Standard Chartered's security for the loan would be limited to the preference shares in Spedley Holdings [8]. Had this been the case, the loan may not have had a substantial adverse effect on GPI Leisure's balance sheet. Beatty only discovered that this was not the case in November 1988.

However, the change in GPI Leisure's risk profile following its investment in Spedley Holdings was more significant for shareholders. GPI Leisure's primary investment, before May 1988, was a $73.5 million investment in the Austotel Trust. After May 1988, its biggest investment was a holding of cumulative redeemable preference shares in an unlisted public company. This represented a substantial shift in GPI Leisure's focus. It is arguable that this information should have been disclosed to shareholders before the convertible note issue closed, as it affected the value or security of their investments in GPI Leisure.

There appears to have been no consideration given to providing shareholders with updated information after the loan was drawn down and the investment made [9]. As no announcement was

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[4] Bowman - section 19 examination, 11 January 1993, pages 38-29; Statement of David Hamilton Gray dated 19 April 1993, para 15 and 19; Craven - section 19 examination, 2 April 1993, page 6020
[5] Potts - section 19 examination, 2 January 1993, pages 29, 34-35
[6] Letter from GPI Leisure to the Australian Stock Exchange (Brisbane) Ltd dated 5 May 1988
[7] Craven - section 19 examination, 2 April 1993, pages 6029-6030; Beatty - section 19 examination, 29 July 1993, pages 55-57
[8] Beatty - section 19 examination, 23 July 1993, page 69
[9] Craven - section 19 examination, 2 April 1993, pages 6047-6048

made to the Exchange (refer to para 2.3), shareholders had no way of discovering the borrowing and investment.

The ASC considers that the acquisition should have been disclosed, to help investors make a sound investment decision. However, according to experts retained by the ASC, it could not be said that a shareholder's decision would have been different if that information had been disclosed. In other words, it could not be said that the omission was material [10].

4.3 CONCLUSIONS

A report was submitted to the Director of Public Prosecutions for advice on the adequacy of the evidence available to support charges against those involved in the preparation of the Letter of Offer. Following advice from Senior Counsel, it was decided that no charges could be laid.

> *The ASC believes that the failure to disclose information about GPI Leisure's loan from Standard Chartered and investment in Spedley Holdings may have resulted in a misleading Letter of Offer, although maybe not to a material extent. The incomplete information provided may have affected shareholders' decisions to take up the convertible notes.*
>
> *Although most of the directors of GPI Leisure were aware of the proposed loan and investment, it appears that none of the directors who saw the Letter of Offer considered that these transactions should be disclosed to shareholders.*

[10] Letter from Russell Lander, Research Analyst, to the Commission dated 19 August 1991; Draft statement of Goodwin Cullimore Gower, paras 25-26; Draft Statement of Alan Bagnall, paras 20, 22

CHAPTER 5 - $17 MILLION LOANS TO NODROGAN

5.1 THE LOAN TO NODROGAN

In July 1986, BR Yuill Holdings needed $16,500,000, to take up its rights - and maintain its 30% shareholding - under a rights issue by Greater Pacific [1].

On 22 July 1986, the following payments were made (refer to Annexure 6.1):

- Spedley Securities made payments of $8,500,000 to each of Beverage Holdings' and Oakhill's accounts with Rothwells;
- Rothwells made repayments of deposits of $8,500,000 to each of Beverage Holdings and Oakhill;
- Beverage Holdings and Oakhill both lent $8,500,000 to Nodrogan (a total of $17,000,000);
- Nodrogan made a deposit of $500,000 with Spedley Securities and lent $16,500,000 to BR Yuill Holdings; and
- BR Yuill Holdings paid $16,500,000 to Greater Pacific, to take up its entitlement under the rights issue [2].

The net effect of these payments was that BR Yuill Holdings obtained $16,500,000 which were ultimately funded by Spedley Securities. If the loan had been made directly, it would certainly have breached section 230 of the Code.

Yuill has said that the advance to Oakhill was made pursuant to an oral agreement between him, on behalf of Nodrogan, and Lucas for Beverage and Oakhill or Connell for Oakhill. That agreement included a term that Oakhill could require Nodrogan to repay the loan by giving six months' notice. Connell disclaimed any involvement in arranging the loan. Lucas claimed that Yuill telephoned him to arrange the loans. Lucas said that it was a “back to back” arrangement, meaning that Oakhill and Beverage would not have to repay Spedley Securities, until Nodrogan repaid them [3].

The Oakhill journal voucher records the receipt as "Being funds advanced ex Spedleys - Deposited RWLS DEP #122 - paid to Oakhill - On lent to Nodrogan P/L"[4]. This is consistent with Lucas’ description of the transactions as “back to back” loans. The ASC considers that the advances to

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[1] Entitlement Journal for the share register of Greater Pacific dated 17 June 1986

[2] Spedley Securities' Cheque Nos 833691 and 833678; Rothwells' Cheque Nos 078293 and 078291; Oakhill's Cheque No 357427; Beverage Holdings Cheque No 406097; Nodrogan Cheque No. 835791; Nodrogan Cheque No. 835790; BR Yuill Holdings Cheque No 709234

[3] Affidavit of Brian Yuill dated 26 June 1990, paras 5-6, filed in Nodrogan Pty Limited v. Oakhill Pty Limited; Affidavit of Lawrence Connell dated 29 June 1990, para 5, filed in Nodrogan Pty Limited v. Oakhill Pty Limited; Statement of Peter Lucas dated 24 March 1992, paras 8-9

[4] Oakhill Journal Voucher Jnl No 28

Oakhill and Beverage Holdings were part of a plan to allow Spedley Securities to lend to BR Yuill Holdings, in a manner which would avoid section 230 of the Code.

The other directors of Spedley Securities have stated that they were not informed of an indirect loan to Nodrogan or to any other parties associated with Yuill [5]. The Board minutes of Spedley Securities also do not record approval of the loans to Oakhill or Beverage Holdings.

Oakhill then transferred its debt from Nodrogan to Connell & Partners [6]. However, its obligation to repay Spedley Securities was not transferred.

5.2 VARIATIONS OF THE LOANS

From October 1986 to December 1988, there were a number of payments made between the companies involved in the loans (see Annexure 6). These transactions included:

1. Connell & Partners paying interest to Spedley Securities, for Oakhill and Beverage Holdings in October 1986 [7];

2. Greater Pacific lent $10,000,000 to Rothwells in January 1987, which was then paid to Spedley Securities to reduce the principal outstanding [8];

3. These loans were repaid in May 1987 with funds advanced by Spedley Securities [9];

4. BR Yuill Holdings issued redeemable preference shares to Nodrogan in July 1987, to extinguish its debt;

5. In October 1987, Rothwells paid Spedley Securities $7.5 million, which was divided between the loans owed by Oakhill and Beverage Holdings. This left each company owing $3.5 million to Rothwells and $5 million to Spedley Securities [10].

6. Oakhill's debt was repaid as part of the October 1988 round robin, from a loan from Greater Pacific (refer to para 1.14).

7. Beverage Holdings' debt was assigned to BNZ by Spedley Securities, although Beverage Holdings was never advised of the transfer. Beverage Holdings also claimed to set off the

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[5] Statement of David Gray dated 29 June 1992, para 23; Statement of Kenneth Hawkins dated 10 June 1992, para 18; Statement of Neil Jones dated 26 June 1992, para 23; Unsigned statement of John Maher, para 40.
[6] Oakhill Journal voucher No 14 and Connell & Partners Voucher No 63
[7] Spedley Securities' Deposit Voucher No 070; Depositors' Ledgers - Rothwells' A/C Beverage Holdings and Rothwells A/C Oakhill
[8] Greater Pacific Cheque Nos 451551 and 451552; Spedley Securities Deposit Vouchers Nos 3212 and 3213
[9] Rothwells deposit slip dated 9 January 1987; Beverage Holdings Cheque No. 514082; Dealer Advice Form No. 0037950; Oakhill's Cheque No. 219046
[10] Lucas - section 295 examination, 4 September 1990, pages 3319-3320, Letter from Spedley Securities to Rothwells, dated 28 October 1987

proceeds of accepting Pluteus (No 180)'s takeover offer for shares in Greater Pacific against its debt to Spedley Securities, even though the debt had already been assigned to BNZ [11].

During this time, Nodrogan made no repayments to Oakhill, Connell & Partners or Beverage Holdings. Nodrogan has since been wound up and is unlikely to pay more than 2 cents in the dollar.

5.3 CONCLUSIONS

The investigation into this matter was completed in May 1991 and a report was submitted to the Director of Public Prosecutions for advice. Yuill was charged and committed to stand trial. The trial commenced on 29 August 1994 for one offence under section 229(4) of the Code. On 12 September 1994, Yuill was found guilty. He was sentenced by Justice Dunford to three years and nine months imprisonment, with a minimum of two years and ten months. An appeal was lodged, and was heard on 5 December 1995. Yuill withdrew the appeal on 19 February 1996 before judgment was given.

> *The ASC concluded that Nodrogan borrowed $17 million from Spedley Securities via Rothwells, Oakhill, and Beverage Holdings and that those funds were then lent to BR Yuill Holdings so that it could subscribe to the Greater Pacific rights issue. Yuill arranged the transactions for his own benefit.*

[11] Notice of assignment from Spedley Securities to Beverage Holdings dated 11 November 1988, Affidavit of Peter Kenneth Lucas dated 16 January 1990, para 24

CHAPTER 6 - CHELSEA PROPERTY

6.1 THE PURCHASE

In 1987, Yuill wanted to purchase a property in London, as, in the near future, he intended to live in London for at least six months of the year[1]. On 22 May 1987, he contracted to buy a property at 14 Carlyle Square, Chelsea for £1.2 million. The 10% deposit was provided by Mr West, a friend and associate of Yuill, via West's company, Joynson. Yuill described this as a "spontaneous gesture" on the part of West [2]. West has no recollection of how his firm, Potts West Trumbull, came to pay this money for Yuill [3].

The transaction was completed in the name of Teal Investments Limited, a company incorporated in Jersey. Yuill and his wife, Mrs Elisabeth Yuill, were the beneficial owners of the company. Teal Investments Limited then granted Yuill and Mrs Yuill a licence to occupy the property [4].

6.2 THE LOAN FROM SPEDLEY SECURITIES

West claimed that Yuill approached him in May 1987 and asked to use one of West's accounts to transfer some money to London. Yuill allegedly advised that instructions for dispersal of the funds would be received from his solicitor [5]. West said that this did not seem to be an unusual request, because Yuill had on previous occasions used his accounts to transfer funds to London [6]. Yuill claimed that West offered to take a loan from Spedley Securities and to use the funds to complete the purchase for Yuill. Yuill arranged the loan from Spedley Securities.

Yuill acknowledged that the property was being purchased for his own use. However, he could not provide an explanation for the structure of the financing [7]. He agreed that the effect of using Joynson as an intermediary was that the other directors of Spedley Securities did not have to be made aware of the loan. The other directors were not aware of the loan to Joynson or that Spedley Securities made a loan to assist Yuill to buy a house [8].

Yuill denied that the loan was concealed from the other directors of Spedley Securities. He said that they could have asked Mr West about the loan if they wanted to. It could be said that the other directors of Spedley Securities should not have had to ask a debtor why funds had been borrowed.

The flow of funds to complete the transaction is shown in Annexure 7.

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[1] Affidavit of Yuill, 27 March 1991, para 11, Spedley Securities Ltd (in liq) v. Teal Investments Limited
[2] Affidavit of Yuill, 27 March 1991, para 13, Spedley Securities Ltd (in liq) v. Teal Investments Limited
[3] Examination of West in Spedley Securities Ltd (in liq) v. Cethana Pty Ltd, page 50
[4] Agreement and Declaration of Trust dated 12 June 1987 between Newsquare (Jersey) Trustees Limited, Teal Investments, Yuill, Elisabeth Yuill, Christopher Lloyd, Christopher Lovell and Peter Jackson
[5] Unsigned statement of Theodore William West, paras 8-9
[6] Examination of West in Spedley Securities Ltd (in liq) v. Cethana Pty Ltd, pages 54-55
[7] Yuill - section 541 examination 22 February 1991, pages 3659-3661
[8] Yuill -section 541 examination, 22 February 1991, page 3667, Statement of David Gray, 29 June 1992, paras 19 and 22; Statement of Kenneth Hawkins, 10 June 1992, paras 15-17; Unsigned statement of John Maher, paras 37-39; Statement of Neil Jones dated 26 June 1992, paras 17-19

On 28 May 1987, Spedley Securities drew a cheque for $2,500,000 which was used to purchase a bank cheque in favour of Natwest Australia Bank Limited. Natwest Australia Bank Limited then transferred £1,100,000 by telegraphic transfer to Joynson's account at the National Westminster Bank, in London [9].

£1,060,000 was transferred to the vendor's solicitor, to complete the purchase and £40,000 was transferred to Yuill's solicitor. Part of these funds was paid to the vendor after work was done on the property. The purchase was completed on 29 May 1987, when the property was conveyed to Teal Investments Limited [10].

The debt was transferred to Cethana Pty Limited, West's family company, when Joynson was sold. Cethana Pty Ltd subsequently provided Spedley Securities with a confirmation of debt during the 1987 audit. West also acknowledged Cethana Pty Limited's obligation to pay interest in November 1988, after receiving a request from Spedley Securities [11]. Both of these actions contradict West's assertions, made since the liquidation of Spedley Securities, that neither Cethana Pty Limited nor Joynson owed money to Spedley Securities. West explains his confirmation of the obligation as the result of trusting Yuill and perhaps being careless [12].

6.3 CONCLUSIONS

As a result of the ASC's investigations, Yuill was charged, as an officer of Spedley Securities, with offences under sections 229(1) and 230(5)(a) of the Code. Yuill pleaded guilty to these charges and, on 13 December 1995, was sentenced to two and a half years' imprisonment, with a minimum term of one year and two months.

> *The ASC concluded that Yuill borrowed $2,500,000 from Spedley Securities, using Joynson as an intermediary to purchase a property in Chelsea, for his own benefit or the benefit of his family. The loan and its ultimate purpose were not disclosed to the other members of the Board of Spedley Securities.*

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[9] Spedley Securities Cheque No 264045; Telex from Natwest Australia Bank Limited to National Westminster Bank, London dated 28 May 1987

[10] Statement from National Westminster Bank dated 27 June 1987 for GW Joynson & Co, GW Joynson & Co's Cheque No. 001808; Letter from Wedlake Bell to Payne Hicks Beach dated 18 June 1987 and letter from Distinctive Interiors Limited to Wedlake Bell dated 9 July 1987

[11] Letters from Cethana Pty Limited to Spedley Securities, 23 November 1987 and 15 November 1988

[12] Examination of West in Spedley Securities Ltd (in liq) v. Cethana Pty Ltd, pages 59-60

CHAPTER 7 - $3.5 MILLION LOAN TO TRITON

7.1 EXPENSE PAYMENTS FOR YUILL

Spedley Securities paid personal expenses for some staff members and was reimbursed by them, usually on a monthly basis. Interest was not charged on these accounts. Yuill's practice was to repay his expenses at the end of each financial year [1].

During the financial year ending on 31 October 1988, Yuill obtained payments by Spedley Securities totalling $2,881,336.53, with the bulk of it being for share purchases, legal expenses associated with the takeover of Greater Pacific and a new car [2].

7.2 PAYMENT OF THE SUNDRY DEBTORS' ACCOUNT

On 24 October 1988, Pullen wrote a memorandum to Levings concerning payment of Yuill's sundry debtor's account. Pullen noted her concern that the loans to Yuill may be in breach of section 230 of the Code.

Soon after that date, Yuill approached Corner, suggesting a transaction in which Spedley Securities would lend money to Triton, which Triton would then lend to Nodrogan. Corner did not know why Yuill wanted this transaction effected, but expected that Triton would not have to repay Spedley Securities until it was repaid by Nodrogan and that Triton would receive a fee for its involvement [3].

On 26 October 1988 (refer to Annexure 8) [4]:

- Spedley Securities borrowed $3,500,000 and advanced $3,342,447.12 to Triton, in return for commercial bills with a face value of $3,500,000 and a maturity date of 14 February 1989. There were no Board minutes approving this transaction.
- Triton lent $3,300,000 to Nodrogan, with the loan to be repaid on 14 February 1989; and
- Nodrogan paid Spedley Securities $2,881,336.53 for Yuill's sundry debtors account and $300,000 as a deposit.

Spedley Securities now held $3,500,000 in commercial bills and Yuill's sundry debtors account was cleared before Spedley Securities' balance date.

In February 1989, Sweeney, on behalf of Triton, contacted Craven to arrange for the debt to Spedley Securities to be set off against Nodrogan's debt. Yuill then advised Craven that the debt to

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[1] Statement of Janice Dorothy Pullen dated 24 October 1990, paras 7 and 10
[2] BR Yuill Sundry Debtors' Card; Spedley Securities Cheque Nos. 163974-163976, 924955, 924965, 451380, 308580 and 435947
[3] Corner - section 295 examination, 10 August 1990, pages 2950-2952; Statement of John Stewart Corner, undated, para 8
[4] Commercial Bills numbered AA1914-AA1920; Spedley Securities Deposit Trading Voucher Nos 3317 and 3258; Spedley Securities Cheque No. 167292; Triton Cheque No. 395062; Nodrogan Cheque Nos 120482 and 120483; Letter from Triton to Nodrogan dated 26 October 1988

Triton had been transferred to Greater Pacific.[5]. The transfer had not been mentioned to Triton before then [6].

When the bills matured, the amount owing by Triton was transformed into a loan from Spedley Securities to Triton [7]. Despite the apparent transfer to Greater Pacific, Craven signed a letter on behalf of Nodrogan, agreeing to settle directly with Spedley Securities. This did not happen until 9 August 1989 [8].

Yuill suggested to the ASC that these transactions were entered in the normal course of the parties' business and that they should be looked at individually, rather than as a whole[9]. The ASC does not consider this appropriate, as the transactions were not entered into in isolation.

7.3 CONCLUSIONS

Yuill was charged with offences against sections 229(1) and 229(4) of the Code in relation to procuring payments for himself or his private company by Spedley Securities and in relation to the repayment of his debt to Spedley Securities.

Yuill was convicted on 17 November 1993 of charges laid under both sections. On 11 March 1994, Shadbolt J sentenced Yuill to eight years' imprisonment, with a minimum of six years. In addition, he was fined $5,000 for the breach of section 229(1). Yuill appealed and the Court of Criminal Appeal quashed the convictions on 30 June 1994 [10].

Due to the total period of imprisonment that Yuill will have served for other charges by the time of his release, the DPP decided not to proceed with the retrial of Yuill for these charges.

> *The ASC concluded that Yuill or companies associated with him obtained loans from Spedley Securities, which were on terms not beneficial to Spedley Securities. The ASC also concluded that Yuill arranged for Spedley Securities to lend Triton $3.5 million which then lent $3.3 million to Nodrogan, to allow repayment of Yuill's debt to Spedley Securities.*

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[5] Craven, section 541 examination, 8 June 1990, page 1595
[6] Unsigned statement of Paul William Sweeney, para 17; Statement of John Stewart Corner, undated, para 14, 21
[7] Spedley Securities Loan Trading Voucher Jnl 15
[8] Unsigned statement of Paul William Sweeney, para 11
[9] Yuill -record of voluntary interview dated 22 November 1990, page 34
[10] Regina v. Yuill (1994) 34 NSWLR 179

CHAPTER 8 - KIRKLAND WHITTAKER INVOICES

8.1 £100,000 INVOICES

Kirkland-Whittaker Group's results for the 1986-87 year had been disappointing. Yuill suggested to Robert Dibben, a director of Kirkland-Whittaker Group, that the Group send invoices totalling £200,000 to clients in Australia, to be nominated by Yuill [11].

Dibben then approached both Levings and Yuill to ascertain the names of the recipients to be invoiced and to seek advice on the wording of the invoices. In February 1988, Yuill instructed Dibben, through Levings, that he should send invoices for consulting services for advice on currency movements to Corner at Triton and Lucas at Paragon Resources, each for £100,000 [12].

Dibben varied those instructions, so that a subsidiary, Kirkland-Whittaker (Channel Islands) Limited, invoiced £100,000 to Paragon Resources and £50,000 to Triton and Kirkland-Whittaker Group invoiced the other £50,000 to Triton [13].

Sweeney, Triton's company secretary, did not know that Kirkland-Whittaker Group was linked to Yuill. He asked Corner about the invoices and was told that they were to help Yuill, Spedley Securities would take care of the payment and Triton would earn a fee for its involvement [14]. Corner did not know why Yuill wanted to use Triton in the way that was done, but the request to pay false invoices did not strike him as suspicious [15].

Yuill claimed that he could not recall whether Kirkland-Whittaker had provided services to Triton [16]. However, advice on currency movements was not part of Kirkland-Whittaker's usual business. Corner has also acknowledged that the invoices were entirely false [17].

As well as the invoices, Triton received audit confirmation letters. On Corner's instructions, Sweeney sealed and returned the audit confirmation letters [18].

Despite acknowledging the debt, Triton did not actually pay the invoices for some time. Kirkland-Whittaker staff tried to get the payment in May and July 1988. Dibben then contacted Levings, who got an assurance from Corner that he would ensure the invoices were paid [19].

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[11] Statement of Robert Andrew Farquhar Dibben (undated), para 8
[12] Statement of Ross Arnold Levings dated 14 January 1992, paras 14-15; facsimile from Dibben to Levings dated 7 December 1987 and facsimile from Dibben to Yuill dated 9 January 1988; facsimile from Levings to Dibben dated 8 February 1988
[13] Facsimile from Dibben to Levings dated 8 February 1988
[14] Invoice Nos ACM002 and ACM004; Sweeney - section 295 examination, 6 August 1990, page 2795; Statement of William Paul Sweeney (undated) para 6
[15] Corner - section 295 examination, 10 August 1990, pages 2971-2973
[16] Yuill - section 541 examination, 1 May 1990, page 776
[17] Statement of John Charles Beames (undated), para 6, , Corner - section 295 examination, 10 August 1990, page 2972
[18] Statement of William Paul Sweeney (undated), para 7
[19] Statement of Robert Andrew Farquhar Dibben (undated), pages 17-19; Statement of Ross Arnold Levings, 14 January 1992, para 20

It was only in late October that Corner arranged payment. Triton then discounted a bill, obtaining $191,696.65 from Spedley Securities [20]. Triton made two telegraphic transfers of £50,000 each to Kirkland-Whittaker Group and Kirkland-Whittaker (Channel Islands) Limited at the National Westminster Bank PLC in London [21]. These payments cost Triton Investments $214,342.32, $22,545.67 more than the amount obtained for the bill. This shortfall was met from Triton's own funds.

The consolidated profit and loss of Kirkland-Whittaker Group declared a figure for "Turnover" of £15,434,000. The £50,000 invoiced to Triton was included in this [22]. It seems logical to assume that the turnover figure also included the other £50,000 invoiced to Triton.

8.2 £1,000,000 INVOICE

In late October 1988, Dibben told Yuill that Kirkland-Whittaker (London) Limited, a subsidiary of Kirkland-Whittaker Group, would have difficulty complying with the Bank of England's liquidity requirements, because of its poor results for that year. Yuill told him that, to help the company's results, he would find a client to pay a £1,000,000 fee [23].

Dibben then arranged for an entry to be made in Kirkland-Whittaker (London) Limited's books, to create a debtor listed as "Australian Advice Debtor" and to increase the company's income by £1,000,000 [24]. It is evident from the annual report of Kirkland-Whittaker Group that the only income attributed to advisory services was that £1,000,000 [25]. Again, giving advice on currency services was not part of Kirkland-Whittaker's business.

On 13 March 1989, Yuill told Dibben that the debtor would be Greater Pacific and that the first £1,000,000 lent by Spedley Holdings to Kirkland-Whittaker Group after 31 October 1988 could be treated as payment of the invoice on behalf of Greater Pacific [26]. Yuill provided written confirmation of this, even though it was simply a convenient reconstruction to allocate those payments to the payment of a false invoice.

Dibben then prepared an invoice for £1,000,000 dated 31 October 1988 addressed to "Greater Pacific Investments Pty Limited" (underlining added) [27]. As the privatisation of Greater Pacific was not completed until 1989 [28], this would support the conclusion that the invoice was not prepared in October 1988.

Dibben sent a letter from Kirkland-Whittaker (London) Limited to Greater Pacific dated 13 March 1989 seeking confirmation that the invoice was due and payable as at 31 October 1988 and that the debt was paid by Spedley Holdings. Yuill signed this for Greater Pacific.

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[20] Commercial Bill No. AA2148; Spedley Securities' Cheque No. 521055
[21] Bank of New Zealand Bank Debit Vouchers dated 3 November 1988, numbered 01294 and 01298; Bank of New Zealand Telegraphic Transfer application forms
[22] Statement of Robert Andrew Farquhar Dibben (undated), para 15
[23] Statement of Robert Andrew Farquhar Dibben (undated), para 8
[24] Statement of Robert Andrew Farquhar Dibben (undated), para 9
[25] Annual Report of Kirkland Whittaker Group Limited, page 13
[26] Statement of Robert Andrew Farquhar Dibben (undated), para 15
[27] Invoice No. GEN/10/1
[28] Certificate of registration of a company for Greater Pacific Investment Pty Limited

8.3 CONCLUSIONS

Corner was charged, as an officer of Triton, with two offences against section 229(4) of the Code, alleging an improper use of his position, to gain an advantage for Kirkland-Whittaker (Channel Islands) Limited and Kirkland-Whittaker Group.

On 28 October 1993, Corner was committed to stand trial on those charges. He pleaded guilty to the charges (as well as the charges in relation to the Bisley matter referred to in Chapter 10) on 15 January 1997 and was sentenced on 11 April 1997 to 18 months' periodic detention and fined $23,000. Following an appeal by the DPP against the leniency of the sentence, the Court of Criminal Appeal imposed a sentence of 6 months imprisonment.

After consultation with the Director of Public Prosecutions, it was decided that no charges would be laid against Yuill because of the existence of other charges pending against Yuill and the need for further evidence to be obtained from overseas.

> *The ASC concluded that Corner caused Triton to pay companies in the Kirkland-Whittaker group $214,342.32 with funds substantially provided by Spedley Securities. The payments were for false invoices issued by the Kirkland-Whittaker companies. The ASC believes that those invoices were issued on the instructions of Yuill.*
>
> *There is evidence to suggest that Yuill acted improperly as a director of Spedley Holdings, by arranging for loans totalling £1,000,000 to be treated as the payment of a false invoice. The ASC also believes that Yuill arranged for Greater Pacific to incur a liability to Kirkland-Whittaker (London) Limited of £1,000,000 for services which were not provided to it. This may have amounted to a breach of his statutory duties to the company.*

CHAPTER 9 - THE BISLEY RIGHTS ISSUE

9.1 THE RIGHTS ISSUE

After the stock market crash, Bisley Investment required recapitalisation of about $37 million to survive beyond the short term. The options available to Bisley Investment were liquidation, injecting capital and a takeover. While borrowing further money was possible, it was not a realistic option in the commercial climate at that time [1].

On 27 November 1987, the Board of Bisley Investment resolved to make a rights issue to existing shareholders, of up to 93,679,804 shares at $0.40 each, with a free option attached. Bisley Investment's shares had been trading at around $0.25 per share, before the rights issue [2].

BNZ Securities Australia Ltd ("BNZ Securities") signed an underwriting agreement with Bisley Investment on 27 November 1987, the day the rights issue was announced.

Greater Pacific executed a sub-underwriting agreement on 27 November 1987. There is no record of the Board of Greater Pacific resolving to execute the agreement [3]. However, Yuill said that he probably committed Greater Pacific to act as sub-underwriter, even though he was aware that many shareholders of Bisley Investment may not have taken up the offer, with the result that Greater Pacific could have been required to take up a large number of the shares. He claimed it would have been a good investment for Greater Pacific, because the recent loss of $55.4 million for the six months to 31 December 1987 was simply an extraordinary event [4].

Agreements were also prepared nominating Potts, West and Triton as sub-sub-underwriters. The execution of those agreements was simply to ensure that they subscribed for their full entitlement in the issue [5]. These agreements ensured a minimum acceptance of approximately 42%.

On 9 February 1988, Spedley Securities lent Greater Pacific $7,510,000. Greater Pacific used the funds to subscribe for its entitlement [6].

The offer closed on 9 February 1988. There was a shortfall in subscription of 54,974,944 shares (approximately 58%), which indicates that there was very little interest in the offer outside the four largest shareholders.

Following requests for share applications and payment of the shortfall, Spedley Securities paid $21,989,977.60 to BNZ Securities, on Craven's instructions, for Greater Pacific to pay for Greater

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[1] Beatty - section 295 examination, 25 June 1990, page 2124
[2] Register of Sales for 2 November 1987 to 29 January 1988
[3] Statement of Paul Humphrey Armytage Bowman dated 25 November 1991, para 8
[4] Yuill - section 541 examinations dated 1 May 1990, pages 780-781 and 21 June 1990, pages 2178-2179
[5] Corner - section 295 examination, 22 June 1990, page 2010
[6] Spedley Securities Loan Trading Voucher; GPI Leisure Deposit Voucher D207; GPI Leisure Cheque Nos. 809313 and 809314

Pacific's sub-underwriting obligations. The sum was allocated to Spedley Securities' suspense account [7], where it stayed until June 1988.

9.2 LOAN TO GPI LEISURE FROM BNZ

Towards the middle of February 1988, Craven, on behalf of GPI Leisure, approached BNZ and requested a temporary facility of $15 million to allow it to subscribe to the shortfall in the rights issue [8]. BNZ agreed to make the facility available, at an interest rate of 14.25%, which later escalated to 14.75%.

The money received was placed with Spedley Securities until 16 May 1988, at an interest rate of 13%. These funds effectively financed Greater Pacific's underwriting obligations.

Spedley Securities paid GPI Leisure only $100,000 interest - an interest rate of 2.9%. GPI Leisure paid BNZ approximately $491,000 interest in that period [9]. Given the interest rate paid or to be paid by Spedley Securities, GPI Leisure was always going to lose money on this deal. There was apparently no consultation with the Board of GPI Leisure.

9.3 THE SUB-SUB-UNDERWRITERS

When the full extent of Greater Pacific's underwriting obligations were known, Yuill instructed Craven to find "friendly" companies to take up the shares from the shortfall. This would avoid Greater Pacific appearing to invest substantially in Bisley Investment [10]. Given the trading price of the shares, this would not have been a favourable outcome for Greater Pacific.

Craven found three companies to take up the shares, B & McK Custodians, as trustee for Staverson, Enan (later replaced by Fanteray Pty Limited) and Kizcloud. Each took up just under 10% of Bisley Investment's shares. Because of the size of each of those holdings, none of those entities was required to disclose a substantial shareholding under the relevant requirements in the Code.

Craven offered beneficial terms to these companies to take up the shares. He claimed that the terms were set by Yuill [11]. Greater Pacific would pay an underwriting fee of approximately $124,000 to each participant. Spedley Securities would lend the purchase price for one year at market rates. The principal and accrued interest could be repaid at any time during that year by transferring the shares to Spedley Securities, regardless of the then value of the shares.

On 5 May 1988, Greater Pacific sent application forms on behalf of these three companies to Bisley Investment.

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[7] Spedley Securities Cheque Voucher for Cheque No 004735

[8] BNZ internal memorandum dated 16 February 1988; Statement of Michael Francis Culkin dated 26 October 1990, para 20

[9] BNZ Bank Cheque No. 069502; Invoices from BNZ dated 16 March, 31 March and 2 May 1988; GPI Leisure Cheque Voucher for Cheque No. 042990; Spedley Securities' Cheque Deposit voucher Receipts Nos. 936 and 927; Spedley Securities Cheque No. 944605

[10] Craven - section 295 examination, 22 June 1990, pages 2056-2057; section 541 examination, 27 April 1990, pages 628-630

[11] Craven - section 295 examination, 22 June 1990, pages 2087; section 541 examination, 27 April 1990, pages 629-630

At some time in May or June 1988, each of these companies executed a sub-sub-underwriting agreement with Greater Pacific, a loan facility with Spedley Securities and a share purchase facility with Spedley Securities. The documents were prepared at that time, by B & McK [12]. The sub-sub-underwriting agreements bore the typed date "27 November 1987" and the other documents "February 1988". Pliner accepts that, from the way the documents are drafted, one could assume that they were entered at the same time as the sub-underwriting agreement. However, he cannot recall his instructions and cannot recall being instructed to ensure that the documents did not indicate that they were prepared well after November 1987 [13].

To create the appearance that the documents were executed at an earlier time, the word processing dates were concealed with liquid paper. While he had no idea who had actually done this, it did not seem to surprise Pliner that this had been done. He said that he did not recall ever doing this himself [14]. It has been suggested that there are a number of administrative or cosmetic reasons for removing dates on documents and that Pliner's comments should only be taken as accepting those purposes, not removal of dates for any deceitful purpose [15].

While there is no evidence that the dates were concealed by someone at B & McK, it seems more likely than not, as the documents containing the original liquid paper were produced by B & McK from their own files. B & McK disputes that anyone from that firm concealed the dates.

It has since been claimed that the documents were prepared in this way because they were merely giving effect to an agreement which was entered into in November 1987, but not documented until 1988. It was an accident of drafting or a lack of care that resulted in the recitals referring to the transaction prospectively, rather than retrospectively [16]. If that were the case, it is curious that these three sub-sub-underwriting agreements were not prepared at the same time as B & McK prepared the other sub-sub-underwriting agreements.

There is evidence that these sub-sub-underwriters were not approached until after the rights offer had closed [17]. For this reason, and due to the matters in the previous paragraph, the ASC does not believe that the sub-sub-underwriting agreements were documentation prepared in 1988 to formalise agreements made in November 1987. It is reasonable to conclude that the formation of the agreements and the preparation of the documents were contemporaneous, both occurring in 1988, and that the documents were intended to create the impression that Enan, Staverson and Kizcloud were legitimate sub-sub-underwriters.

On Yuill's instructions to Levings on 17 June 1988, $21,957,244.80 of the payment to BNZ was transferred from Spedley Securities' suspense account to create debts of $7,319,081.60 to each of B & McK Custodians, Enan and Kizcloud. The loans were created as secured loans, with interest payable monthly [18]. The $32,732.80 difference between the total of these three loans and the total

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[12] Statement of Ralph Benjamin Pliner dated 4 October 1990, paras 10-17
[13] Pliner - section 541 examination, 19 June 1990, page 2042
[14] Pliner - section 541 examination, 19 June 1990, pages 2044, 2046
[15] Letter from Phillips Fox to ASC dated 17 May 1996
[16] Letter from Phillips Fox to ASC dated 17 May 1996
[17] Carling - section 295 examination, 22 June 1990, pages 1971, 1990
[18] Statement of Ross Arnold Levings dated 26 November 1990, para 12; Spedley Securities Journal

paid to BNZ by Spedley Securities in February 1988 was a payment for Corner and Agricultural & Financial for late subscription to the rights issue [19].

In January 1989, Enan exercised its rights under the Share Purchase Facility and forwarded the share scrip to Spedley Securities [20]. Other than that, the records of Spedley Securities show that, until its liquidation, no payments were received from Enan, B & McK Custodians or Kizcloud, in respect of either principal or interest owing on these loans.

9.4 CONCLUSIONS

On 15 February 1993, Craven was charged with offences under section 229 of the Code. It was alleged that, as an officer of Spedley Securities, he abused his position by procuring payment of $21 million to Bisley Investment and by putting sub-sub-underwriting agreements in place, to conceal Spedley Securities' exposure to Bisley Investment. On 31 January 1994, he was committed to stand trial. On 6 June 1995, Craven pleaded guilty and was sentenced to a minimum term of imprisonment of 6 months and 23 days, with an additional term of 2 months and 7 days.

> *The ASC concluded that 75% of the rights issue by Bisley Investment had been funded by Spedley Securities and GPI Leisure, on terms which were not favourable to those companies. The ASC believes that the loans to Kizcloud, Enan and B & McK Custodians were not in the best interests of Spedley Securities, because of the terms of those loans.*
>
> *The ASC concluded that documents were backdated to give an appearance of being created at the time the sub-underwriting agreement was created.*
>
> *The ASC believes that Craven caused GPI Leisure to borrow from BNZ and lend to Spedley Securities on terms which were not favourable to GPI Leisure.*

Voucher Jnl No 167

[19] Letter from Greater Pacific to Bisley Investment dated 5 May 1988.

[20] Letters from Enan Holdings to Spedley Securities dated 16, 29 and 30 January and 22 March 1989

CHAPTER 10 - LOANS BETWEEN THE BISLEY GROUP, SPEDLEY SECURITIES, AGRICULTURAL & FINANCIAL, LAFOUZIA, SKATEWAY AND WOODASH

10.1 LOANS FROM THE BISLEY GROUP

Annexure 9 is a diagram showing a number of loans made by Bisley Asset and the repayment of those loans.

10.1.1 Lafouzia

In May 1987, Corner approached Mr Con Galtos and asked if he (Corner) could purchase shares in Triton, through Lafouzia. Corner would arrange payment for the shares. The Board of Lafouzia agreed to the proposal. However, there was no documentation formalising the relationship between Lafouzia and Corner [21]. Corner claimed that he wanted to purchase the shares in Lafouzia's name, so that Lafouzia could have the benefit of the shares if their value increased and so share in the growth of Triton [22].

On 3 June and 3 July 1987, Bisley Asset paid McNall & Hordern a total of $342,654.64 to purchase Triton shares in the name of Lafouzia [23]. Galtos signed a blank share transfer form for Lafouzia which Bisley Asset held as security for the loan.

10.1.2 Skateway

Bisley Investment and Skateway entered a joint venture in 1984, which was disbanded at the end of 1985. By June 1987, Skateway's debt to Bisley Investment from the joint venture was $1,384,103.90, including accrued interest. The debt was later transferred from Bisley Investment to Bisley Asset [24].

10.1.3 Agricultural & Financial

Between June 1987 and February 1988, Bisley Asset lent Agricultural & Financial a total of $856,125, to fund futures trading losses, make payments to Corner for personal expenses and provide working capital for Agricultural & Financial [25]. Prior to 17 October 1988, no repayments of principal or interest were made.

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[21] Statement of Con Galtos dated 30 August 1990, paras 8-10; handwritten note by Galtos dated 14 May 1987, minute of a Board meeting of Lafouzia dated 18 May 1987

[22] Corner - section 295 examination, 10 August 1990, page 2897

[23] Bisley Asset Cheques Nos 128709 and 128764

[24] Bisley Journal Voucher dated 1 January 1988

[25] Bisley Group vouchers Nos 10729 dated 17 July 1987, 10736 dated 20 July 1987, 10757 dated 24 July 1987, 10811 dated 5 August 1987, 11059 dated 21 September 1987 and 11954 dated 29 February 1988; Statement of Peter John Hurley, paras 8-14.

10.1.4 Woodash

On 4 May 1987, Spedley Securities lent $1 million to Bisley Investment, which Bisley Asset on-lent to Woodash to purchase 500,000 shares in Greater Pacific [26]. These shares, together with 400,000 bonus shares issued by Greater Pacific, were the security for the loan. Corner said that Bisley Asset would not have advanced the funds to Woodash, unless Spedley Securities had, in turn, advanced money to Bisley Investment [27].

As no repayments of principal or interest had been made as at 17 October 1988, there was by that date outstanding interest on the loan of approximately $222,000.

10.2 THE AUDITORS' QUESTIONS

During the 1987 audit of Bisley Investment, the auditors, EN Austin & Farrar, raised a concern with Corner that a number of loans had been made by companies in the Bisley group which may have been in breach of section 230 of the Code. Corner sought legal advice from B & McK. Pliner sent a draft letter dated 22 September 1987 to Mr. John Walsh, at Bisley Investment. The advice was that, as Bisley Investment's and Bisley Asset's lending business was becoming dormant, they could no longer rely on the exception contained in section 230(3)(f) (loans made in the ordinary course of business) to continue to make loans to directors or director related companies. After discussions with Walsh, Quentin Digby of B & McK provided a second draft advice on 7 October 1987 to the effect that loans made in the ordinary course of business did not infringe section 230 of the Code. That draft refers to instructions that lending was a part of the Bisley companies' business [28]. It appears from these two letters that the instructions given to B & McK as to the continuity of the Bisley companies' lending business had changed. The auditors accepted the advice in the 7 October letter.

The auditors raised the same concern with Corner and other managers of Bisley Investment during the 1988 audit, particularly where the value of security had fallen or no repayments had been made. The loans to Lafouzia, Skateway, Agricultural & Financial and Woodash were specifically noted.

Corner then obtained further advice from Pliner. That advice was only on the general issue of loans to directors, not on the particular loans queried by the auditors. Pliner's advice was that the loans did not breach section 230 of the Code, if they were made in the ordinary course of business and on commercial terms, as on the basis of his instructions, it was considered that the Bisley Group's ordinary course of business included lending money [29].

While the auditors agreed with this advice, they did not agree with Corner's assessment that the loans were on commercial terms. Mr Richard Watkins, the audit partner, had intimated that he would qualify the accounts, if the loans were not dealt with appropriately. Corner obviously wanted to avoid this [30].

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[26] Natwest Australia Bank statement of account for Woodash Holdings from 10 April to 4 May 1987
[27] Corner - section 295 examination, 10 August 1990, page 2909
[28] Draft letter from B & McK to Bisley Investment dated 7 October 1987
[29] Letter from B & McK to Bisley Investment dated 1 September 1988
[30] Corner - section 295 examination, 10 August 1990, page 2927

On 7 September 1988, Bisley Investment sent a letter to the auditor, saying that the four debtors had been given seven days in which to repay the loans. Evidence was provided to the auditors that payment of $1.1 million of Skateway's debt was to be repaid soon, so this amount did not have to be repaid within the seven days.

10.3 REPAYMENT OF THE DEBTS

Between 17 and 19 October 1988 [31]:

- Bisley Investment repaid a loan of $1,000,000 to Spedley Securities and Bisley Asset deposited $2,222,000 with Spedley Securities;
- Lafouzia received $406,000 from Spedley Securities and repaid Bisley Investment;
- Skateway received $613,000 from Spedley Securities and, at Corner's request, repaid Bisley Asset $613,167.06 (interest of $329,063.16 and principal of $284,103.90);
- Agricultural & Financial received $2,200,000 from Spedley Securities;
- Agricultural & Finance repaid Bisley Asset $977,628.17 (interest of $121,503.17 and principal of $856,125); and
- Woodash received $1,222,273.96 from Agricultural & Financial and paid the same amount to Bisley Asset (interest of $222,273.96 and principal of $1,000,000).

In summary, Spedley Securities received $3,222,000 and paid out $3,219,000 and companies in the Bisley group paid out $3,222,000 and received $3,219,118.09. It is evident that the transactions were to all practical effect cash neutral.

Corner knew that Spedley Securities was providing the funds to Agricultural & Financial and, indirectly, to Woodash to repay Bisley Asset. Corner intended that Spedley Securities would make loans to allow repayment of the loans queried by the auditors, on a temporary basis. However, he did not tell the auditors that companies in the Bisley group were providing the funds for repayment of those loans [32]. If he had done so, Watkins would not have signed the accounts without disclosure of the source of the repayment [33].

10.4 CONCLUSIONS

Corner was charged, as an officer of Bisley Asset, with one offence against section 229(4) of the Code, alleging improper use of his position to gain an advantage. He was also charged under section 564 of the Code, with providing false or misleading information to the auditor, by omitting

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[31] Bank Statements for Lafouzia with the Bank of Queensland Ltd; Bank Statement for Skateway with the ANZ Bank dated 18 October 1988; ANZ Cheque No 897366; Natwest Australia Bank Cheque from Woodash Holdings, cheque No 100216, Spedley Securities Cheque No 734782 and 734799; Statement of Con Galtos dated 30 August 1990, par 16, Spedley Securities Loan Trading Voucher Receipt No 3239, Spedley Securities Deposit Trading Vouchers Nos 3240 and 3259.

[32] Corner - section 295 examination, 10 August 1990, pages 2918, 2931, 2936

[33] Watkins - section 295 examination, 8 August 1990, page 2867

to inform the auditor that companies in the Bisley group had provided the funds for the repayments made to it.

In October 1993, Corner was committed to stand trial on these charges. He pleaded guilty to the charges (as well as the charges in relation to the Kirkland-Whittaker matter, referred to in Chapter 8) on 15 January 1997 and was sentenced on 11 April 1997 to 18 months' periodic detention and fined $23 000. The DPP appealed against the leniency of the sentence, and on appeal, the Court of Criminal Appeal imposed a sentence of 6 months imprisonment.

> *The ASC concluded that loans, which had been queried by the auditor of Bisley Investment, were repaid by funds lent by Bisley Asset or Bisley Investment to Spedley Securities and on lent to the debtors. The ASC concluded that the motive for doing so was to prevent the auditors from issuing a qualified audit report.*

CHAPTER 11 - LOANS TO VAXLON AND PURCHASE OF SHARES

11.1 SHAREHOLDINGS IN WEST COAST

Greater Pacific and West Coast each owned 50% of the Brockman project, a rare earth deposit. Greater Pacific also owned approximately 8% of the shares in West Coast.

The largest shareholder in West Coast was Botena Investments Limited with approximately 20%. Despite this, it had no nominee on the Board until April 1988 when Mr Jonathan Hartley was appointed.

Hartley wrote to Corner, the Chairman of West Coast, on 30 May 1988, severely criticising the management of the company and stating that he could not support the company incurring any further debts, because of its precarious financial position.

Hartley's letter was briefly discussed at a Board meeting on 1 June 1988. The meeting was adjourned after twenty minutes and Craven, Corner and Hartley met outside the meeting room. Corner has no recollection of taking part in the discussion about the sale of Botena Investments Limited's shares [1]. The result of the discussion was that Hartley resigned and Botena Investments Limited agreed to sell its shares in West Coast for $0.16 per share, to a purchaser to be nominated by Craven. Corner announced both the disposal of shares and Hartley's resignation when the meeting resumed.

The minutes of the meeting note that, as Hartley had resigned, no action was considered necessary in relation to his letter. Removing the one director who was questioning the company's financial position evidently facilitated West Coast's continued operation.

11.2 SALE OF SHARES AND LOAN TO VAXLON

If Greater Pacific had purchased in its own name all of the West Coast shares owned by Botena Investments Limited, it would have crossed the 20% limit on shareholdings and so would have been required to make an offer for all the shares of West Coast. This would have required a larger financial commitment than that needed to simply purchase the shares owned by Botena. Yuill was aware of this, but said that this was not a deciding factor in determining the eventual structure of the transaction [2].

On 1 June, Corner instructed McNall & Hordern to purchase 16,592,500 shares in West Coast using Monsoon, McNall & Hordern's nominee company, as the purchaser. He told Falk that the brokerage fee was to be paid by Bisley Investment. The purchase was made that day [3].

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[1] Corner - section 19 examination, 20 May 1991, pages 4472-4475; Statement of Jonathon Peter Hartley, 15 May 1991, para 11; Craven - section 541 examination, 26 June 1990, page 2392

[2] Yuill - section 541 examination, 29 September 1990, page 2815; Craven - section 541 examination, 26 June 1990, page 2392

[3] Falk - section 19 examination, 7 March 1992, page 5183; McNall & Hordern Sell and Buy orders, numbered 86 and 87

Mr Patrick Elliott, the Managing Director of Natcorp Holdings Limited, was approached to ask if he would assist Greater Pacific by holding some of the shares being purchased from Botena Investments Limited. Craven and Elliott then negotiated a fee for Natcorp Holdings Limited and a loan for the purchase price from Spedley Securities to Vaxlon, the company which would hold the shares. Yuill did not believe the loan was approved by the Board of Spedley Securities [4].

The only security for the loan referred to in any of the correspondence between Spedley Securities and Vaxlon or Natcorp Holdings in June and July 1988 was the deposit of Vaxlon's share certificates with Spedley Securities. Craven and Elliott have both stated that the loan was made on the basis that Spedley Securities could only have recourse to the shares in West Coast, even though this was not reflected in the correspondence. Although Yuill was aware of the loan, he said that he could not recall agreeing that the loan would be on a non-recourse basis [5].

Craven acknowledged that the market price of the shares was only marginally above the purchase price, which gave little security, especially as the loan was for 100% of the purchase price. He claimed that Spedley Securities was possibly prepared to lend to Vaxlon on that basis because of an "inherent value" in the shares of West Coast [6].

Greater Pacific filed a Notice of Interest of Substantial Shareholder on 3 June 1988, indicating that it held a 19.4% interest in West Coast, with shares held in its own name and by Spedley Nominees Pty Limited and Anfrank Nominees Pty Limited[7]. However, it is evident from the share certificates issued by West Coast that Monsoon eventually held the shares acquired in June 1988 for Greater Pacific.

On 10 June 1988, Spedley Securities lent Vaxlon $1,314,390.58 and paid McNall & Hordern the same amount for the purchase of 8,190,370 shares in West Coast. On the same day, Spedley Securities paid Greater Pacific $1,350,000 and Greater Pacific paid McNall & Hordern $1,348,373.82 for the purchase of 8,402,130 shares in West Coast [8].

On 20 June 1988, McNall & Hordern received a cheque for $13,234.17 from Bisley Asset. There is no evidence of who authorised this payment. It was recorded in the books of Bisley Asset as being for "consulting fees". Corner cannot recall any consulting services provided by McNall & Hordern [9]. The payment was treated by McNall & Hordern as the brokerage on the West Coast shares. It is quite unusual for the brokerage to be paid by an entity not involved in the transaction.

On 1 July 1988, Natcorp Holdings Limited sent an invoice for corporate advice to Craven, at Spedley Securities. The amount of the invoice was $65,500, 5% of the loan to Vaxlon. Craven

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[4] Yuill - section 541 examination, 26 June 1990, page 2409
[5] Letter from Vaxlon to Spedley Securities dated 16 June 1989; Craven - section 541 examination, 26 June 1990, pages 2392-2392; Yuill - section 541 examination, 29 September 1990, pages 2811-2812
[6] Craven - section 541 examination, 26 June 1990, pages 2394-2395
[7] Notice of Person Ceasing to be a Substantial Shareholder completed by Botena Investments Limited dated 3 June 1988
[8] Spedley Securities Cheque Nos 922131 and 922133; Spedley Securities Loan Trading Voucher J266; Greater Pacific Cheque No. 464922
[9] Bisley Asset cash payments book and Cheque No. 533696; Falk - section 19 examination, 7 March 1992, page 5195; Corner - section 19 examination, 20 May 1991, page 4477

authorised payment and the invoice was paid by Greater Pacific. Elliott claims that the fee was paid for advice which he gave to Spedley Securities [10]. Mr Richard Tiley, the Executive Director of Natcorp Holdings Limited, also cannot recall any discussion of advice being provided to Spedley Securities or any associated companies [11]. This suggests that the fee was attributable to something other than advisory services, such as the use of Vaxlon to hold shares for Greater Pacific.

11.3 CONCLUSIONS

The ASC sought advice from the Director of Public Prosecutions on whether charges could be laid against any of the participants in the transaction, such as charges under either section 11 of the Companies (Acquisition of Shares) Code or section 229 of the Companies Code. After receiving advice from Senior Counsel, it was decided that no charges would be laid.

> *The ASC believes that the arrangement to use Vaxlon to hold shares in West Coast for Greater Pacific could have been in breach of section 11 of the Companies (Acquisition of Shares) Code. The Notice of Interest of Substantial Shareholder completed by Greater Pacific failed to disclose that Greater Pacific had arranged for Vaxlon to hold shares on its behalf, and so may have been a misleading document.*
>
> *The loan to Vaxlon, being on a limited recourse basis, may not have been in the best interests of Spedley Securities, as the loan offered very little security to Spedley Securities.*
>
> *If the consultancy services and advice which were claimed to have been provided by Natcorp Holdings Limited to Spedley Securities were not in fact provided, Natcorp Holdings Limited may have created a false document, when it sent an invoice to Spedley Securities for these services. Bisley Asset also incorrectly recorded the payment to McNall & Hordern in its books, which concealed its involvement in this transaction.*

[10] Letter from Elliott to ASC dated 14 May 1996
[11] Invoice dated 1 July 1988, Greater Pacific Cheque No 464979; Corner - section 19 examination, 20 May 1991, page 4479; Tiley - section 19 examination, 19 June 1991, page 4598

CHAPTER 12 - FUTURES TRADING

12.1 FUTURES TRADING LOSSES

During the period 1984 to October 1988, Spedley Securities incurred futures trading losses of approximately $35 million. Statements from the International Commodities Clearing House show that losses of almost $21 million were incurred during the 1987 financial year, the highest loss in any one year. The method by which these losses were concealed and eventually discovered is reported on in para 1.17.

The ASC, assisted by the Sydney Futures Exchange Limited and the liquidator, was not able to identify any individual who may have acted improperly, so no further action could be taken in relation to this issue.

12.2 HAYTON'S DEALINGS WITH BAIN REFCO

All of the dealers at Spedley Securities enjoyed a significant amount of autonomy in their trading. They were not subject to any limits and were only required to report to Dawkins verbally about their trading [1]. This lack of internal controls allowed some transactions which overstated Spedley Securities' assets and understated the futures trading losses incurred between January and November 1988.

Spedley Securities paid $745,000 and $480,000 to Bain Refco in mid January 1988. These payments were recorded by Spedley Securities as loans to Bain Refco and by Bain Refco as deposits into Spedley Securities' futures trading account with Bain Refco for international trading [2]. It is unclear who arranged these payments.

The balance of the trading account with Bain Refco gradually decreased, as losses were incurred on futures trading. For example, it was debited by $171,575.64 on 18 January, $587,482.54 on 28 January and $386,465.24 on 24 February 1988, after unprofitable trading [3].

The loan to Bain Refco was one of the loans queried by P & M in their 7 October 1988 letter to Spedley Securities, as no interest was being charged to Bain Refco. If the loan were to be removed from Spedley Securities' books before the 31 October 1988 balance date, then the query in that letter would be dealt with. Dawkins spoke to Hayton on a number of occasions in October seeking repayment of the loan made to Bain Refco. On each occasion, Hayton assured him that the loan would be repaid by balance date [4].

Hayton arranged for Spedley Securities to pay $1,050,000 to Bain Refco on 31 October 1988. The funds were drawn from the deposit account of Panguna Development Pty Limited, a company of which Hayton was a shareholder and director. Hayton acknowledged instructing McLachlan to

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[1] Dawkins - section 7 examination, 7 September 1989, pages 6, 8
[2] Spedley Securities' Cheque Nos 163912 and 271618; Spedley Securities' Loan Statement for Bain Refco; Bain Refco Current Account Statement No 8683
[3] Bain Refco Trading Advices RC0025, RA0023, RA0022 and RE0021
[4] Interview between the ASC and Dawkins dated 25 September 1991, page 9

withdraw money from his account to deposit with Bain & Co, rather than Bain Refco, apparently to use for foreign exchange trading. Hayton's personal futures trading account at Bain Refco was credited with that amount. Bain & Co and Bain Refco did not do any foreign exchange trading for Hayton in that period [5].

Bain Refco then paid Spedley Securities $1,307,314.79, from Hayton's account ($1,300,000) and Spedley Securities' international futures trading account ($7,314.79). Hayton claimed that he told the officer of Bain Refco to deposit the money with Spedley Securities, if his trading account was in credit. This sum repaid Bain Refco's loan, with the balance treated as a deposit[6].

After Gray commented on a loss which had been incurred, Hayton arranged a further series of transactions which were implemented on 8 November 1988, which reversed the 31 October transactions. Spedley Securities made two payments to Bain Refco, one for $82,549.33, to repay the deposit, and one for $1,217,450.67, as another loan to Bain Refco. Bain Refco then paid $1,050,000 to Spedley Securities, which was credited to Panguna Development Pty Limited's deposit account [7].

The loan to Bain Refco was still outstanding when a provisional liquidator was appointed to Spedley Securities. However, the liquidator has advised the ASC that he accepted Bain Refco's explanation for the alleged loan and decided not to take any action to recover it [8].

A report was submitted to the Director of Public Prosecutions for advice on whether charges could be laid against Hayton under section 229(4) or section 560(1) of the Code. It was decided that charges would not be laid.

12.3 TAYLOR'S FUTURES TRADING

As part of the investigation of Spedley Securities' futures trading, the ASC became aware of the actions of Mr David Taylor, a futures trader at Bisley Commodity from 1986 to 1988. Taylor conducted much of Spedley Securities' trading [9].

Taylor had conducted a futures trading account for his own benefit, under the fictitious name of Ian McDonald. He apparently did this because he believed that the Sydney Futures Exchange Rules did not permit him to trade through an account in his own name [10]. This account was very profitable,

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[5] Spedley Securities' Cheque No. 167312, Bain Refco Ledger Postings Cash Book for Deposits; Hayton - section 541 examination, 22 November 1990, pages 3299-3300

[6] Bain Refco Ledger Postings Cash Book for Withdrawals, Bain Refco Cheque No. 575681, Spedley Securities' Loan Statement and Deposit Statement

[7] Spedley Securities' Cheque Nos 521107 and 521108; Spedley Securities Loan Trading Voucher and Deposit Trading Vouchers; Bain Refco Ledger Postings Cash Book for Deposits and Bain Refco Cheque No. 575730; Hayton - section 541 examination, 22 November 1990, pages 3299-3300

[8] Telephone conversation between Mr Murray Smith and Mr Brett Walker dated 12 July 1991

[9] Taylor - section 19 examination, 18 February 1992, pages 5068-5069

[10] Taylor - section 19 examination, 8 April 1992, page 5213 and letter from Garland Hawthorn Brahe to the ASC dated 20 February 1992

earning $92,000 in just over a year of trading. The cheques through which he obtained the earnings were cashed through an account at the TAB [11].

Using this account, he took the other side of orders by clients and traded on his own account before filling clients' orders. He did not tell clients, including Spedley Securities, that he was taking the other side of their orders [12].

For example, on 9 October, he bought ten Ten Year Bond futures contracts at the same time as Spedley Securities sold the same contracts. Taylor suggested, as a possible explanation for the 9 October trading, that he may have sold too many contracts so had to take some himself [13]. On 9 October, he also allocated eleven Ten Year Bond futures contracts to Ian McDonald, before filling a prior order for those contracts made by Spedley Securities [14]. These transactions could constitute breaches of sections 85(3), 138(6) and 151 of the Futures Industry (NSW) Code.

When questioned about this account in 1987 by officers of the Sydney Futures Exchange Limited, Taylor claimed that Ian McDonald was a real person. He initially made the same claim to the ASC during a section 19 examination [15]. Taylor has since admitted that Ian McDonald was fictitious, so his previous answer to the ASC during the examination was untrue.

Taylor also caused Bisley Commodity to make arrangements with some of its trading staff, himself included, to allow them to conduct house trading accounts and to be paid a commission from any profits earned from that trading [16]. As the employees would have a beneficial interest in those accounts, that trading would be in breach of General By-Law G10c of the Rules of the Sydney Futures Exchange Limited.

Taylor traded with his house trading account in a similar manner to that in which he had used the Ian McDonald account. For example, on 10 November 1988, he sold four Ten Year Bond futures contracts for his house account at the same time as he sold ten such contracts for Spedley Securities. Spedley Securities' order had been to sell thirty contracts, so it appeared that Taylor had sold for his own account before selling on his client's behalf. His explanation for this was that he probably sold the first four for his own account before receiving the order to sell thirty for Spedley Securities. He may have sold the next ten to the same broker and recorded the two transactions on one trading docket [17]. On the same day, he also bought four Ten Year Bonds futures contracts for his house account at the same time as Spedley Securities was selling those contracts [18]. This conduct could also be in breach of sections 85(3), 138(6) and 151 of the Futures Industry (NSW) Code.

On 22 June 1992, the ASC gave Taylor notice under section 1193 of the Corporations Law offering him an opportunity to attend a hearing into whether or not the ASC should prohibit him from acting

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[11] Bisley Commodity Cheque Nos 699588, 699478, 397547, 199377, 382236 and 102590; Taylor - section 19 examination, 8 April 1992, pages 5209-5210
[12] Taylor - section 19 examination, 8 April 1992, page 5241
[13] Taylor - section 19 examination, 8 April 1992, page 5280
[14] Deal Nos 9911885, 991233, 962846 and 804078
[15] Taylor - section 19 examination, 18 February 1992, pages 5153-5160; 8 April 1992, page 5217
[16] Memorandum from Taylor to John Walsh dated 13 April 1988
[17] Deal No. 618602; Taylor - section 19 examination, 8 April 1988, page 5234
[18] Deal No 618530

as a representative of a futures broker or futures adviser. Taylor waived the right to a hearing and consented to a three year banning order, from 1 August 1992 to 31 July 1995. Taylor made no admissions regarding the matters alleged in the Notice of Hearing, other than admitting conducting accounts under false names [19].

12.4 CONCLUSIONS

Despite extensive enquiries into the cause of Spedley Securities' futures trading losses, the ASC was unable to form a conclusion as to whether the losses had been caused by fraudulent activity.

The ASC concluded that, subject to any relevant submissions by Hayton, the transactions relating to the Bain Refco loan and his conduct in attempting to conceal trading losses are grounds on which to conclude that Hayton was not a suitable person to hold a licence as a dealer on the Sydney Futures Exchange.

[19] Section 1194 Order made by the ASC dated 1 September 1992

CHAPTER 13 - PRIVATISATION OF GREATER PACIFIC

13.1 PROPOSAL FOR PRIVATISATION

In January 1988, the Australian Stock Exchange Ltd ("the Exchange") asked all listed companies, including Greater Pacific, to provide information to it about the cost and market values of its investments in listed shares as at 31 December 1987. The Exchange intended to release the information to the market [1]. Greater Pacific's portfolio then had a market value of $72.7 million and a cost value of $119 million.

Yuill instructed Levings to sell part of the portfolio, with the sale to be made effective from 31 December 1987 [2]. Shares with a book value of $40,751,107.48 - and market value of $13,185,078.94 - were sold for $36,394,069.40. [3]. One result of the sale was that Greater Pacific did not have to report a very large fall in value. Greater Pacific then advised the Exchange that it held shares with a market value of $59.5 million and a cost value of $78.2 million [4].

Levings said that he was not told the identity of the purchaser, a shelf company called Pluteus (No 137), until late 1988 [5]. The sale was booked to Greater Pacific's Sundry Debtor account during most of 1988. Levings arranged for the shares to be repurchased by Greater Pacific in October 1988, before he resigned [6].

Beatty said that the Board considered the effect of the stock market crash on Greater Pacific's portfolio on a number of occasions, both in relation to the company's accounts and in response to requests from the Exchange and the Corporate Affairs Commission. The Board relied on information provided by the executive directors of the company. He and Yuill had reviewed Greater Pacific's portfolio after the letter from the Exchange arrived, but he was not aware of the sale to Pluteus (No 137). Bowman and Corner have also said that they did not know of the sale [7].

Yuill then decided to make a takeover bid for the shares in Greater Pacific which he did not already own or control and to privatise Greater Pacific. He told Beatty that he wanted to take advantage of the disparity between the market price of Greater Pacific's shares and what he considered to be their underlying value. Yuill also said he wanted to privatise Greater Pacific because listed investment companies had lost favour, so would be unable to raise further funds, and because of the advantages to the Spedley group of reducing the number of listed companies [8]. Beatty also said that Yuill arranged an extension of the financial year of Greater Pacific, with the consequence that an audit was not required at that time[9]. Yuill told Craven that he wanted to privatise Greater Pacific to

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[1] Letter from Greater Pacific from the Australian Stock Exchange (Melbourne) Ltd dated 22 January 1988
[2] Statement of Ross Arnold Levings dated 25 February 1991, paras 22 and 23
[3] Greater Pacific Journal Voucher J068 and attached schedule of shares
[4] Letter from Greater Pacific to the Australian Stock Exchange (Melbourne) Limited dated 17 February 1988
[5] Statement of Ross Arnold Levings dated 25 February 1991, para 34
[6] Greater Pacific Journal Voucher J163
[7] Beatty - section 19 examination, 19 March 1991, pages 4370-4372; Bowman - section 19 examination, 22 January 1991, pages 3879-3880; Corner - section 19 examination, 21 January 1991, page 3811
[8] Beatty - section 541 examination, in the liquidation of Greater Pacific, 23 August 1990, page 347
[9] Beatty - section 19 examination, 19 March 1991, page 4373

avoid problems such as that which arose with the shares [10]. This suggests that Yuill wanted to privatise Greater Pacific to avoid the reporting and disclosure requirements of a public, listed company.

The proposal was announced to the Exchange on 7 June 1988. Pluteus (No 180) was incorporated as the vehicle for the takeover.

13.2 OBTAINING FINANCE FROM BNZ

Yuill and Craven approached BNZ, by at least mid April 1988, to obtain finance for the takeover.

Mr Paul Akers, an officer of BNZ, recommended approval of the loan to Pluteus (No 180) on 17 May 1988. Akers had obtained information about Greater Pacific from recent accounts, a surplus liquid funds statement as at 31 December 1987, the letter to the Exchange about the company's share portfolio and an announcement to the Exchange about the company's profit for the six months to 31 December 1987. These were provided by Craven. Akers had also obtained the accounts of BR Yuill Holdings, a substantial shareholder in Greater Pacific, for the year ended 30 June 1987 and the offer documents [11].

Yuill or Craven told Akers that Greater Pacific would repay the loan by selling its investment in Spedley Holdings to GPI Leisure for $18 million and its investment in Peter Kurts Properties, which had a market value of $11 million [12].

Akers assessed the value of the shares in Greater Pacific, which were the primary security for the loan, at the bid price of $0.50 per share rather than the market value - approximately $0.30 per share. Akers considered that the market figure was inappropriate because of the high probability of a successful bid. If the market value was used, a loan of only $22.1 million could have been approved.

On that basis, Akers concluded that Greater Pacific had net tangible assets of $63.5 million. Akers' credit memorandum was reviewed by Mr David Cameron, who made an assessment using market values, as he believed that the company's own assessment of the value of its assets was not well substantiated. On this basis, Greater Pacific had very little cover for a loan of $33.5 million, as its excess of tangible assets over liabilities was reduced to $40.3 million [13].

Akers noted that a high percentage of Greater Pacific's assets were readily saleable, including the shares in Bisley Investment, GPI Leisure, Spedley Holdings and Peter Kurts Properties. It is arguable that the shares in Spedley Holdings were not readily saleable, as Spedley Holdings was not a listed company.

BNZ granted a facility with a limit of $33.5 million on 1 June 1988 [14]. It was eventually taken up by Pluteus (No 209), who on-lent to Pluteus (No 180). Between 6 June and 7 July 1988, the parties

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[10] Craven - section 7 examination, 8 December 1989, page 108
[11] BNZ's file produced to the ASC during its investigation
[12] Statement of Paul Francis Akers dated 30 May 1991, paras 11 and 31
[13] Handwritten memorandum from Cameron to the Credit Committee dated 19 May 1988
[14] Letter from BNZ to Yuill dated 1 June 1988

entered a number of loan agreements, guarantees by BR Yuill Holdings, share mortgages, a charge and an underwriting agreement, to put the facility and security in place.

13.3 THE TAKEOVER OFFER

A Letter of Offer dated 28 June and a Part A Statement dated 16 June were sent to shareholders and to Greater Pacific on 28 June 1988, offering $0.50 per share. The offer was open until 28 July 1988.

Greater Pacific distributed a Part B Statement on 14 July, recommending that the offer be accepted. Yuill, Craven and Bowman did not give opinions because of their associations with Pluteus (No 180) and GPI Leisure respectively [15]. The Part B Statement made no reference to GPI Leisure's recent borrowing and investment of $100 million in Spedley Holdings or to its role as an underwriter of the Bisley rights issue. An Expert's Report prepared by Young of Baron Partners was circulated with the Part B Statement. The report concluded that the offer was fair and reasonable.

When the offer closed, Pluteus (No 180) had received acceptances from only 81.2% of the shareholders. Vandervee then made an offer to acquire all the shares, with more than 90% being acquired by December 1988. The balance was then acquired compulsorily. On 23 December 1988, an Extraordinary General Meeting of Greater Pacific resolved to privatise the company and change its name to "Greater Pacific Investments Pty Limited" [16].

13.4 PREPARATION OF THE EXPERT'S REPORT

Young was approached by Craven to prepare an expert's report to accompany the Part B Statement. Young relied on the publicly available accounts and reports about Greater Pacific, GPI Leisure and Spedley Holdings. He had requested management accounts for GPI Leisure, the Austotel Trust, and Spedley Holdings, but Yuill, Craven and Beatty, on behalf of the companies of which they were directors, refused his request [17]. Beatty said that he was not entitled to provide management accounts for GPI Leisure without the approval of the Board, or accounts for the Austotel Trust without the trustee’s consent. He said that he relied on Yuill to provide a briefing to Young and denies that he refused such a request.

Craven provided additional information in response to questions from Young. Craven sought instructions from Yuill on any sensitive matters. He claimed that Yuill told him not to volunteer information about Spedley Holdings' preference share issue [18].

Young's report included evaluations of Greater Pacific's investments in GPI Leisure and Spedley Holdings. The evaluations did not include any reference to the $100 million which GPI Leisure borrowed from Standard Chartered and invested in Spedley Holdings. The evaluation of Spedley Holdings stated that further capital was raised during 1988 through a preference share issue,

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[15] Minutes of a meeting of directors of Greater Pacific dated 14 July 1988; Part B Statement, page 1
[16] Minutes of a meeting of directors of Greater Pacific dated 23 November 1988 ; Minutes of the Extraordinary General Meeting of Greater Pacific dated 23 December 1988
[17] Young - section 19 examination, 22 January 1991, pages 3898 and 3904
[18] Craven - section 19 examination, 20 December 1989, pages 269-270

without giving the identity of the investor (refer to Chapter 2). That information was not publicly available in July 1988, when the report was being prepared. The evaluations also did not refer to ANI's increased funding of companies in the Spedley group.

13.5 INFORMATION NOT DISCLOSED

BNZ was informed that the current market value of Greater Pacific's share portfolio was $73.5 million. This was $14 million more than the value disclosed to the Exchange in February, with the difference apparently being the value of the investment in Spedley Holdings [19]. This value for the portfolio was only achievable because of the sale of some shares to Pluteus (No 137), which was not disclosed to BNZ or Young.

Greater Pacific's net worth may also have been misstated, because of the sale and repurchase of 10 million shares in Bond Corp Holdings. Greater Pacific sold them in August 1987 for $24,998,400 and repurchased them for $24.9 million in December 1987, even though their market value had fallen by then [20]. The unrealised loss incurred when the shares were repurchased was still on Greater Pacific's books in 1988 when the takeover documents were being prepared.

The value of Greater Pacific's receivables disclosed in the accounts as at 31 December 1987 could also be criticised. There were outstanding loans to Rothwells of $3.5 million and to the then unknown sundry debtor (later disclosed to be Pluteus (No 137)) for the share purchase of $36.3 million. It is arguable that those debts could have been regarded as doubtful, particularly as the identity of one of the debtors was still unknown.

There were also some differences between the ledger of Greater Pacific obtained by the ASC during the investigation and the information provided to BNZ by Craven. The ledger disclosed current liabilities of $118,404,000 while BNZ's figures show current liabilities of only $80,303,000. The figure provided to BNZ for investments was also $100,000 lower than the figure shown in the ledger.

The balance sheet provided to BNZ showed accumulated profits of $47.9 million. The ledger indicated unappropriated profits of $41.98 million. This was only possible because part of the loss in value on Greater Pacific's share portfolio had been offset by a revaluation of the Brockman project and subsequent sale to a subsidiary for the revalued price. The realised profit of $35 million was then taken into account by Greater Pacific, even though it would have been eliminated on consolidation of the accounts.

BNZ and Young were not advised of the increased reliance of companies in the Spedley group on ANI for funding or the deterioration of Greater Pacific's financial position since December 1987. That deterioration was demonstrated by its monthly management accounts.

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[19] BNZ Credit Memorandum dated 17 May 1988, Annexure 5

[20] Greater Pacific Deposit Voucher D034; Greater Pacific Journal Voucher J025, Greater Pacific Cheque Nos 857383, 857364 and 809234

If BNZ had known of the misstatements and the true net value of Greater Pacific, the loan probably would not have been approved [21].

Young stated that knowledge of the decrease in value of Greater Pacific's portfolio and the sale of part of it to a shelf company would have made a difference to his report, because of its effect on the value of Greater Pacific's shares [22]. The ASC also considers that GPI Leisure's investment in Spedley Holdings should have been disclosed in the Part B Statement, to provide complete information to shareholders, even though it made the takeover offer more attractive to shareholders [23].

13.6 CONCLUSIONS

The Director of Public Prosecutions was asked to advise whether there was sufficient evidence to support charges against any person involved in the preparation of the Part B Statement or Expert's Report or charges against any person involved in the credit application. The Director of Public Prosecutions advised that no charges should be laid.

> *The ASC believes that Yuill misled the Exchange, by selling part of Greater Pacific's share portfolio to a shelf company before complying with a request for information from the Exchange, to avoid disclosing a large loss.*
>
> *The ASC believes that Yuill caused misleading information to be given to BNZ about Greater Pacific and its investments, to obtain finance for a takeover bid for Greater Pacific. Misleading information may also have been given to Young, for the preparation of the Expert's Report.*

[21] Statement of Paul Francis Akers dated 30 May 1991, para 60; Culkin - section 19 examination, 29 January 1991, pages 4108-4109
[22] Young - section 19 examination, 23 January 1991, page 3984
[23] Letter from Russell Lander to the ASC dated 19 August 1991

CHAPTER 14 - INSIDER TRADING

14.1 PRIVATISATION OF GREATER PACIFIC

It is evident that, by March 1988, Yuill had decided to make a takeover bid for the shares in Greater Pacific and that the bid price would be $0.50 per share. Pliner had been instructed by then to correspond with the Victorian Corporate Affairs Commission about the form of the offer. Yuill's intention was not announced to the Stock Exchange until 7 June 1988.

14.2 TRADING IN GREATER PACIFIC'S SHARES

On 21 April 1988, Yuill instructed McNall & Hordern to purchase 1 million shares in Greater Pacific, at a price of up to $0.26 per share, for Nodrogan [1]. The purchases were made on that day in instalments of 6,000 shares purchased for $0.23 each and 994,000 purchased for $0.25 each. With brokerage fees and stamp duty, the total cost was $252,378.86 [2].

The purchase was disclosed in the Part A Statement as a purchase by an entity associated with Pluteus (No 180) [3], so Yuill was not attempting to conceal that he had purchased shares in Greater Pacific before the takeover was announced.

As the registered owner of these shares in Greater Pacific, Monsoon received the offer letter and Part A and Part B Statements for the takeover offer. Yuill instructed Falk to accept the offer [4]. Monsoon then received a cheque for $500,000 from Pluteus (No 180) on 11 August. It paid $500,000 to Nodrogan [5]. This gave Nodrogan a profit of $247,621.14. The profit was obtained at the expense of Pluteus (No 180), another company run by Yuill.

The market price for Greater Pacific's shares after the announcement was between $0.42 and $0.53 from 9 June to 31 July [6]. This suggests that knowledge of the proposed takeover may have affected the price of shares in Greater Pacific [7].

14.3 CONCLUSIONS

A report on this matter was submitted to the Director of Public Prosecutions for advice on whether charges could be laid against any of the individuals involved, under sections 229(3) and 229(4) of the Code or section 128 of the Securities Industry Code. The Director of Public Prosecutions advised that charges could not be laid.

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[1] Falk - section 19 examination, 23 January 1991, pages 3957 and 3959 and Buying Slip
[2] McNall & Hordern Contract Note D738
[3] Part A Statement, page 9
[4] Falk - section 19 examination, 23 January 1991, page 3967
[5] Letter from Pluteus (No 180) to McNall & Hordern; McNall & Hordern Cheque No. 002116
[6] Registers of Sales of shares in Greater Pacific produced to the Exchange
[7] Letter from Russell Lander to the ASC dated 27 March 1991

The ASC believes that Yuill, through Nodrogan, purchased shares in Greater Pacific at market prices after he had decided to make a takeover offer at a higher price. Nodrogan subsequently made a profit on those shares, by accepting the takeover offer.

It is noted that section 1002P of the Law, which came into effect on 1 August 1991, now explicitly permits natural persons to engage in the type of conduct considered in this Chapter.

CHAPTER 15 - CIVIL ACTIONS

15.1 INTRODUCTION

Liquidators had been appointed to most of the companies which were the subject of the investigation, before the investigation commenced. The liquidators were conducting litigation in both New South Wales and England for claims arising from the collapse of the various companies associated with Spedley Securities. Most of the actions were settled in 1992, although proceedings brought by the liquidator of GPI Leisure on behalf of the convertible note holders have been set down for hearing in 1999.

The ASC considered that there was little scope for it to commence civil proceedings without duplicating the liquidators' efforts. However, as well as taking two civil actions, the ASC assisted the liquidators by providing copies of documents, pursuant to section 25 of the ASC Law, when it was appropriate to do so.

15.2 BONDORO

Greater Pacific's records showed that it was owed approximately $9.6 million, including capitalised interest, by Bondoro, a shelf company purchased by B & McK from Shelfcom Pty Limited in July 1987 [1].

Bondoro had purchased Guntawang, a property near Mudgee used for horse breeding and spelling. The contract for sale was signed by Zemancheff and Reid, partners in B & McK, as director and secretary of Bondoro.

A search of the Corporate Affairs Commission's records in 1990 revealed that the directors and shareholders of Bondoro were still the original Shelfcom employees. No steps were ever taken to formally appoint company officers, despite attempts by one of Guntawang's staff members to have officers appointed.

Despite this, it seems clear that Bondoro was under Yuill's control and that the property was bought for Yuill. The managers of Guntawang took instructions from him. Yuill and his family were the only people to occupy the main residence on Guntawang [2]. Yuill also acted as if he controlled Bondoro, giving instructions to his solicitor in relation to litigation against Bondoro [3].

Greater Pacific advanced the purchase price for Guntawang ($2.8 million) and a second property ($1.5 million) purchased by Bondoro. It also paid for substantial renovations, furnishings and operating costs. The funds came from reducing its deposits with Spedley Securities [4].

There is no evidence of any security being given to Greater Pacific for the advance of funds for the purchase of the property, the improvements or other expenses. There is also no evidence of

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[1] Greater Pacific ledger for Bondoro; Capel - section 295 examination, 5 April 1990, page 629
[2] Crockett - section 295 examination, 3 April 1990, pages 561-564, 570
[3] Webeck - section 295 examination, 3 April 1990, page 552
[4] Spedley Securities Cheques and Trading Vouchers

contemporaneous documentation giving the terms for repayment of those funds. Yuill's solicitors claimed that the loan was repayable after 15 years and that preference shares in Bondoro were to be issued to Greater Pacific, to convert the debt to equity [5].

The Supreme Court granted an injunction to secure the assets of Bondoro and appointed Mr Richard Brien as interim receiver on 13 March 1990, following an application by the Corporate Affairs Commission. Mr Brien was appointed receiver and manager of the assets of Bondoro on 7 May 1990 and then liquidator of Bondoro on 31 December 1991. This action benefited Bondoro's creditors by preventing the dispersal of Bondoro's assets.

15.3 GREATER MIDWEST

The annual return of Greater Midwest for the year ended 30 June 1988 lodged with the Corporate Affairs Commission showed that the company had assets of $2,454,852 and liabilities of $67,354. On 31 January 1989, the directors of Greater Midwest resolved to pay a dividend of $1,904,380.32 to the shareholders, payable immediately. This effectively stripped Greater Midwest of its assets.

On the same day, Yuill wrote to Jones, confirming a discussion which had been held that day. The letter said that BT Insurance would pay $14 million to ANI for its shares in Spedley Holdings and would procure payment of $8.5 million from a third party. This would ensure that ANI did not take a loss on the sale of its shares in Spedley Securities.

On 3 February 1989, ANI Corp sold its shares in Greater Midwest to Greater Pacific for $8.9 million. Yuill and Craven signed the agreement for Greater Pacific. Maher and one of ANI's secretaries signed it for ANI Corp. It was a term of the agreement that Greater Midwest would sell its insurance licence and pay the proceeds to ANI [6]. The liquidator of Greater Pacific was subsequently advised that the insurance licence was worth only approximately $125,000 [7]. The accounts of Greater Midwest, showing its net assets, were annexed to the agreement. It is evident that Greater Pacific was getting no substantial advantage from the transaction.

At the request of the liquidator of Greater Pacific, the Corporate Affairs Commission made an application to the Supreme Court of New South Wales and obtained an order appointing Mr Brien as receiver of the assets of Greater Midwest on 25 July 1990. He was then appointed liquidator of Greater Midwest on 28 November 1991. No further action was considered necessary, because of the number of other matters which had already been investigated.

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[5] Letter from Simons & Baffsky to Ferrier Hodgson dated 23 August 1989
[6] Share Acquisition Agreement, Clause 3.4
[7] Letter from RN Walker Pty Limited to Ferrier Hodgson dated 17 July 1989

CHAPTER 16 - THE DIRECTORS

16.1 DUTIES OF DIRECTORS

The primary source of a director's statutory duties was section 229 of the Code (now section 232 of the Law), which reflects, to some extent, the common law and fiduciary duties of directors. A director is required to act honestly and exercise a reasonable degree of care and diligence in the exercise of his or her powers (sections 229(1) and 229(2) of the Code). A director is prohibited from making improper use of the position, or information acquired through his or her position as a director, to gain an advantage or to cause detriment to the company (section 229(3) and 229(4) of the Code).

There is also a considerable body of case law on the duties of directors, in which the statutory and other duties are interpreted in a commercial context. The director's duty to the company will vary according to the size and business of the company and the experience and skills that the director held himself or herself out as having in support of the appointment. The obligations on a director include:

- becoming familiar with the business of the company and how it is run;
- ensuring that the board has ways to audit the management of the company so that it can satisfy itself that the company is being properly run; and
- meeting as often as required to carry out the board's duties and responsibilities [1].

The director can rely on management to provide necessary information to the Board and advise it of any areas of difficulty which merit attention. However, a director cannot rely on management if he or she is aware of circumstances which plainly indicate that it was not reasonable to do so [2].

Directors can breach their duties to the company by action or inaction. If, for example, a director is put on notice that there is a problem within the company and fails to take action to remedy it, there may be a breach of the duty to act with care and diligence.

The directors of the companies the subject of the investigation spent varying amounts of time engaged in the companies' business. Yuill was clearly an executive director of Spedley Securities, Greater Pacific and GPI Leisure, as he devoted all his time to the affairs of those companies and made day to day decisions about their operations. Craven and Bowman also gave large proportions of their time to the companies of which they were directors. Maher and Gray took some part in the day to day management, by, for example, discussing or arranging specific transactions with Yuill, but were not involved in all facets of the company's operations.

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[1] Daniels v. Anderson (1995) 16 ACSR 607, page 664
[2] Re City Equitable Fire Insurance Co [1925] Ch 407, page 428

16.2 DIRECTORS OF SPEDLEY SECURITIES

16.2.1 Unauthorised loans by Spedley Securities

Maher, Jones and Gray expected that all loans would be subject to Board approval [3]. They did not notice that the value of loans shown on the management accounts was increasing by more than the value of loans for which Board approval was sought. Maher's explanation for this was that the accounts gave a cumulative total of loans outstanding, some of which had been approved some years previously, so it was not possible to ascertain from the monthly accounts whether all loans were coming before the Board [4].

Hawkins, Gray and Maher each became aware that Yuill was making loans without the Board's approval. Hawkins knew this from the early 1980s, but was told by Yuill to "keep his nose out" of what Yuill was doing. He then did not tell the other directors of what he knew. Gray and Maher discovered the unauthorised loans in late 1987 [5]. After being put on notice that Yuill had made loans without the Board's approval, the directors did nothing during 1988 to ensure that he had actually ceased doing so, until the end of the financial year, apart from giving the instructions to Yuill referred to above. As reported in previous chapters, Yuill in fact continued to make loans without seeking the Board's approval, most notably to Greater Pacific [6].

The 7 October 1988 letter from P & M referred to a number of outstanding loans, many of which had been queried in P & M's 7 December 1987 letter. This demonstrates that little had changed in the time since the directors discovered that unauthorised lending was taking place. In November 1988, Maher asked for a list of receivables, which disclosed that unauthorised loans had been made. Maher said that he did not attempt to have Yuill's directorship terminated, because he believed that his services would be needed to recover the receivables [7].

> *The ASC believes that the directors were put on notice in 1987 that Yuill had disregarded the Board's policy about authorisation of loans. Despite this, they took no effective steps during 1988 to ensure that this practice would not continue. This may have permitted Yuill to make loans to his own companies, without the Board's knowledge or approval. Their failure to act could have been a breach of their duties to act with the degree of care and diligence which would be expected to have been discharged in these circumstances.*

Some of the loans made by Yuill without the Board's approval may also have entailed breaches of his duty to Spedley Securities. It was not in the best interests of Spedley Securities to lend on a non-recourse basis or to debtors with little ability to repay the loans, such as Rothwells, but Yuill arranged loans on such terms.

> *It is arguable that Yuill failed to act in the best interests of Spedley Securities, by arranging loans on terms which carried a high risk to Spedley Securities.*

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[3] Statement of John Maher dated 9 October 1991, para 64; Gray - section 541 examination, 3 May 1990, page 927; Statement by Neil Jones dated 27 May 1992

[4] Maher - section 541 examination, 3 May 1990, page 878

[5] Statement of Kenneth Hawkins dated 10 June 1992, para 11, Maher - section 19 examination, 20 February 1991, page 4248, letter from Gilbert & Tobin to ASC dated 31 May 1996, Statement of David Gray dated 10 September 1991, para 66.

16.2.2 Knowledge of end of year transactions

The directors were provided with management accounts each month, as part of the board papers, which gave information about the monthly and year to date income, profit or loss and the quantities of assets and liabilities. The management accounts during 1987 and 1988 demonstrated that Spedley Securities' financial position was weak. For most of the financial years ending on 31 October 1987 and 1988, the company had sustained trading losses and its liabilities exceeded its assets. This should have put the directors on notice that the financial position of Spedley Securities was precarious.

As reported in Chapter 1, this situation had changed dramatically by the 31 October balance date in 1987 and 1988, because of a number of transactions on or just before that date. As Yuill arranged those transactions, he was obviously aware of them and approved them [8].

Maher was aware of some of the transactions, such as the sale of bonds and shares to ANI. There were others that he was not told about until after they had been effected, such as the substitution of GPI Leisure for Greater Pacific as Spedley Securities' biggest debtor and the sale of shares to Pluteus (No 152). He was told of the sale to Pluteus (No 152) as a proposed transaction in November 1988. In fact the transaction had already occurred by that time. He believed that the profits brought to account at the end of the year were genuine, because of representations by Yuill during the 1987 year, that transactions would be completed by 31 October 1987, to give a profit. Maher participated in the decision to recoup the futures trading losses [9]. Maher resigned as a director of Spedley Securities on 31 January 1989, shortly before the 1988 accounts were signed. Prior to resigning, he had requested advice on matters which were to be included in the 1988 accounts, and that advice had not been received.

Gray and Jones had little recollection of most of the balance date transactions and did not question how the losses could become profits in the space of only one month. They also did not know of the substitution of GPI Leisure for Greater Pacific until after it had happened. While Gray was told of the "proposed sale" to Pluteus (No 152) in November, Jones did not hear of it until December. Both of them say that they were not involved in the discussion about the futures trading losses. Gray has claimed that Yuill gave explanations for the alterations in the company's financial position which seemed reasonable [10].

Hawkins knew of some transactions, such as the conversion of loans to bills (which he regarded as common practice among banks, although the short term of the bills was unusual) and the sale of bonds to ANI. He has no recollection of other transactions, such as the transfer of profits from First

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[6] See for example, para 1.14

[7] Maher - section 19 examination, 20 February 1991, page 4248; section 541 examination, 28 May 1990, page 1204

[8] Refer to Chapter 4

[9] Maher – section 541 examinations, 30 April 1990, pages 690, 693-4; 3 May 1990, page 909, 16 May 1990, pages 700-701, 1 June 1990, page 1436, 13 November 1990, pages 3048, 3050; Letter from Gilbert & Tobin to ASC dated 31 May 1996

[10] Letter from Minter Ellison to ASC dated 1 May 1996; Gray – section 541 examinations, 30 April 1990, pages 734, 737; 4 May 199, pages 941-943; 31 May 1990, pages 1385-7; Section 19 examination 9 November 19992, page 33, 21 February 1991, page 4282. Jones – section 541 examinations, 30 May 1990, pages 1304, 1311, 1313, 1320; 1 June 1990, pages 1477, 1482-85

Federation and Security Deposits. He also learnt of the "proposed sale" to Pluteus (No 152) in November 1988. He was a party to the discussion about the futures trading losses [11].

It can be seen that most of the directors of Spedley Securities had knowledge of some of the balance date transactions, at least before the accounts were signed. At the very least, they had the September management accounts in each year as a basis for comparison with the end of year accounts. This should have put them on notice that something had happened in October of each year, to bring about the marked change in the company's financial situation. However, the directors did not question how this dramatic turnaround had happened or consider, in the light of their knowledge of the above mentioned transactions, whether the accounts presented a true and fair view of the company's financial position. It may be that Yuill gave explanations for the turnaround, but such explanations should have been viewed with some caution.

> *Because of the substantial difference between the September management accounts in 1987 and 1988 and the final accounts and because of the knowledge of balance date transactions which each director had, the ASC believes that the directors of Spedley Securities at the time the accounts were signed should have considered with some suspicion whether the accounts presented a true and fair view of the company's financial position.*

16.3 DIRECTORS OF GPI LEISURE

16.3.1 Guarantees

To assist Spedley Securities to have its accounts signed by the auditor in 1988, GPI Leisure gave two guarantees for the benefit of Spedley Securities (Refer to paras 1.16 and 1.17).

Beatty and Yuill were both aware of at least some of these guarantees. Beatty claims that there were substantial benefits to GPI Leisure from giving those guarantees. In addition, Craven signed the guarantee of the minority shareholders' portion of the futures trading losses. Gray denied having knowledge of the guarantee of receivables until 31 January 1989, when he was presented with the accounts of Spedley Securities, although Beatty said that he discussed it with Gray. The other directors of GPI Leisure were not examined about their knowledge of the guarantees.

> *Given the tenuous nature of any benefit to GPI Leisure from these guarantees, the ASC believes that Yuill and Craven did not act with the degree of care and diligence required in those circumstances when they arranged or signed the guarantees.*

16.3.2 Investment in Spedley Holdings

In 1988, GPI Leisure subscribed for preference shares in Spedley Holdings costing $100 million [12]. Yuill knew that Spedley Holdings' financial state was not accurately reflected by its 1987 accounts, because of the balance date transactions which had concealed its true financial position. Craven also knew of the balance date transactions, so would have been in a good position to assess whether the investment in Spedley Holdings was a sound investment for GPI Leisure. The other directors of GPI Leisure were not in a position to make an assessment of Spedley Holdings' true value.

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[11] Hawkins – section 541 examination 3 October 1990, pages 2964, 2967, 2970-1; 16 October 1990, page 2960. Letter from Hawkins to the ASC dated 9 May 1996.
[12] Refer to Chapter 2

The ASC believes that, because of the true financial position of Spedley Securities and Spedley Holdings, GPI Leisure's investment in Spedley Holdings may not have been a beneficial investment for the company. The ASC believes that Craven and Yuill may not have acted with the degree of care and diligence required in those circumstances by arranging this transaction.

16.3.3 1988 round robin

There were two transactions in the 1988 round robin which adversely affected GPI Leisure. The first was the substitution of GPI Leisure for Greater Pacific as a debtor of Spedley Securities. GPI Leisure changed from being a creditor of Spedley Securities to being a debtor of Spedley Securities and a creditor of Greater Pacific. Given Greater Pacific's weak financial position, this was not in GPI Leisure's best interests. Yuill and Craven were obviously aware of the transaction as they, respectively, designed and implemented it. The other directors of GPI Leisure say that they were not aware of it, although Yuill claimed that he sought advice from Beatty about the transaction. Beatty denies that this is so (refer to para 1.14.1) [13].

The second transaction was the loan to Pluteus (No 152) which was used to purchase Spedley Securities' share portfolio for a price in excess of its value and to repay a debt owed to Spedley Securities. Pluteus (No 152) had very few assets and little prospect of being able to repay the loan. Yuill and Craven were aware of the loan. The other directors either did not know about the loan or were not examined on the issue (refer to para 1.14.2).

The ASC believes that Yuill arranged for GPI Leisure to make loans and obtain loans, which were not in the company's interests. Yuill may have made an improper use of his position.

Craven may have failed to act honestly or with the degree of care and diligence required in the circumstances. After receiving advice from the DPP, it was decided that Craven would not be charged with any offences arising from these matters.

Because of the benefit which Spedley Securities obtained from these loans, it may also be that Yuill and Craven used their positions with GPI Leisure to gain a benefit for Spedley Securities.

16.4 DIRECTORS OF GREATER PACIFIC

16.4.1 Kirkland-Whittaker Invoice

Yuill arranged for Greater Pacific to pay £1,000,000 to Kirkland-Whittaker (London) Limited as payment of an invoice for services which had not been - and would never be - provided. (Refer to para 8.1). This allowed Kirkland-Whittaker (London) Limited and, in turn, Spedley Holdings, to declare a higher income for the financial year. There was no benefit for Greater Pacific from making a payment of that size, without receiving anything in return.

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[13] Craven – section 541 examination, May 1990, page 84; Beatty – section 19 examination, pages 14-15, 26, 30-31; Potts – section 19 examination, 25 January 193, pages 35-38; Bowman – section 19 examination, page 21; Corner – section 19 examination, 20 February 1991, page 4203.

The ASC believes that Yuill used his position as a director of Greater Pacific, to obtain a benefit for Kirkland-Whittaker (London) Limited and Spedley Holdings. This may have been an improper use of his position.

16.4.2 Underwriting agreement for the Bisley rights issue

Yuill arranged for Greater Pacific to be a sub-underwriter of the Bisley rights issue, when he knew that there was likely to be little interest in the issue, outside the major shareholders. The decision to be a sub-underwriter was not approved by the Board of Greater Pacific (refer to para 9.1). However, Corner, as a director of Bisley Investment and Triton, would have known that Greater Pacific had signed the agreement.

Yuill and Corner may not have acted with the required degree of care and diligence, because of the high possibility that Greater Pacific would have to subscribe for a large number of shares in Bisley Investment, at a price much higher than their market value.

16.4.3 1988 round robin

Greater Pacific became a creditor of three companies associated with Connell, as part of the 1988 round robin. It also purchased $25 million in Rothwells bills, as part of the round robin (refer to paras 1.14.3 and 1.14.4). These transactions took place after much public speculation about Rothwells' future and only four days before a provisional liquidator was appointed to Rothwells. In those circumstances, it is difficult to see how there could have been any benefit to Greater Pacific from entering into those transactions.

Yuill arranged the transactions. Beatty was aware that Greater Pacific was buying the bills from Rothwells. He said that he relied on advice from Yuill that the purchase would not involve further borrowing by Greater Pacific, that Rothwells would repay the bills and that the transactions related to Yuill personally, not to Spedley Securities. He also relied on the fact that Greater Pacific was then privatised. It has since been claimed by Beatty that the transaction may have benefited GPI Leisure by reducing Spedley Securities' exposure to Rothwells, so there was no breach of any duty owed to Greater Pacific. Beatty has also claimed that, in any event, it would have been possible to have ratified the transaction at a general meeting of the privatised Greater Pacific [14]. The examinations of the other directors did not canvass these issues.

The ASC believes that the purchase could not have been for Greater Pacific's benefit. Yuill's role in arranging the transaction may have amounted to a failure to act diligently or an improper use of his position.

16.5 DIRECTORS OF OTHER COMPANIES

This section is not an exhaustive examination of all the conduct of directors of other companies which may have occurred. However, it is a distillation of the more serious conduct which came to the ASC's attention during the investigation.

16.5.1 Pluteus (No 137)

At Yuill's instigation, Pluteus (No 137) purchased shares from Greater Pacific for $36,394,069.40. The value of those shares was only $13,185,078.94. This allowed Greater Pacific to report a

[14] Letter from Kemp Strang & Chippindall to ASC dated 27 June 1997

smaller decrease in the value of its shares to the Exchange. There could be no possible benefit for Pluteus (No 137) from this transaction.

> *The ASC believes that Yuill took advantage of his position as a director of Pluteus (No 137) to gain an advantage for Greater Pacific. As the purpose of the transaction was to minimise the losses which had to be disclosed to the Exchange, Yuill may have failed to act honestly as a director of Greater Pacific.*

16.5.2 Vaxlon

Elliott, on behalf of Vaxlon, arranged with Craven, on behalf of Spedley Securities, for the loan from Spedley Securities to Vaxlon, for the purchase of shares in West Coast. Although they both say that the loan was to be on a limited recourse basis, none of the correspondence expressly reflects this intention (Refer to para 11.2). Consequently, Vaxlon, a company with no other assets or source of income, would have had no written evidence of the loan's limited recourse nature, if that had been contested by Spedley Securities and repayment sought.

> *Elliott, as a director of Vaxlon, did not ensure that a term of the loan which gave substantial protection to Vaxlon was encapsulated in the documentation about the loan. This could have exposed Vaxlon to repayment of the $1.3 million loan, when its only assets would have been the shares in West Coast.*

16.6 CONCLUSIONS

Craven was disqualified from managing a company for a period of five years, from 3 August 1990 to 3 August 1995. He will also be prohibited from managing a corporation for five years after his release from prison, as a result of his conviction for the charges referred to in Chapter 9. No disqualification action was taken pursuant to section 600 of the Law against other directors, because most of them were only directors of related companies which went into liquidation.

Despite the possibility, in the ASC's view, that some of the matters reported in this Chapter may have amounted to a failure by directors to meet their obligations, charges were not laid in every instance. One of the reasons for this is that evidence which supports the ASC's beliefs had, in some cases, come from statements made by the directors in examinations after privilege had been claimed, and that evidence was not available from any other source. In addition, other charges had been laid against the principal actors.

CHAPTER 17 - THE AUDITORS

17.1 CONDUCT OF THE AUDITS BY P & M

The obligations placed on an auditor by the Code are noted in para 1.1. In addition to the Code's requirements, members of the Institute of Chartered Accountants in Australia and the Australian Society of Certified Practising Accountants were (and are) required to follow the principles of audit conduct and performance which are set out in Statement of Auditing Standards AUS 1 which is issued by those bodies.

AUS1 described the basic principles which govern the professional responsibilities of auditors. It was supported by Statements of Auditing Practice ("AUPs") which provided practical guidance on the application of the principles comprising the standards.

Murrell and Launders were members of the Institute of Chartered Accountants in Australia.

P & M were appointed as auditors of the Spedley Group in 1977, and were the auditors during the period relevant to the investigation. Murrell signed the auditor's report on Spedley Securities' accounts for the financial year ended 31 October 1987. Launders was primarily responsible for the conduct of the audit, with Murrell relying on his work [1]. In the following year, Launders was the engagement partner and signed the report on the accounts. In both 1987 and 1988, McGrane was the review partner. Before 1987, there was no review partner assigned to Spedley Securities [2]. The ASC's investigation focussed primarily on Launders' work in conducting the audit of Spedley Securities' accounts for 1987 and 1988. In this Chapter, references to "the auditor" are to be taken as references to Launders.

P & M's audit manual for 1987 and 1988 reflected the Auditing Standards and Auditing Practices in force at that time. Launders said that he followed the procedures set out in the manual [3]. In the ASC's opinion, there were some deficiencies in the conduct of the audits in 1987 and 1988.

The circumstances of the audits generated difficulties for the auditor. For example, Launders sought independent verification of some assets, in accordance with normal auditing procedures. He is unlikely to have known that some audit evidence, such as a letter obtained from Bond Corp Holdings [4] in 1989, an apparently unrelated company, was false. That letter confirmed two debts that were owing to Spedley Securities, when those debts were fictitious.

Yuill's ability to obtain such "evidence" made it difficult for the auditor to identify all the items that were not fairly stated in the accounts. However there were other aspects of the audits which the ASC believes do not reflect the application of appropriate levels of skill, care, competence and independence by the auditor.

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[1] Murrell - section 295 examination, 16 May 1990, pages 1126-1127
[2] Murrell - section 295 examination, 16 May 1990, page 1128
[3] Launders - section 295 examination, 28 May 1990, pages 1369-1370
[4] Letter from Bond Corp Holdings to P & M dated 31 January 1989

17.2 DEFICIENCIES IN THE AUDITS

17.2.1 End of Year Transactions

Launders was aware from at least 1986 of transactions entered into by Spedley Securities near its balance dates, to cause a short term change in the assets it held. He said that he did not believe that these transactions were necessarily designed to improve the appearance of the accounts [5].

Aspects of the audit work relating to the end of year transactions in 1987 and 1988 are considered below.

Sale of Shares to ANI

This matter is described in para 1.6. Shares in listed companies were sold, subject to a put and call option, to ANI on 30 October 1987 for $26.68 million, which was funded by a bill of exchange. The shares were repurchased on 6 November 1987, the bill was cancelled and the related blank share transfer forms were returned unprocessed to Spedley Securities.

Launders was aware that ANI had required Spedley Securities to repurchase the shares. The audit working papers include letters from ANI to Spedley dated 5 November 1987 and 6 November 1987 relating to the repurchase, the return of the bill of exchange, return of blank transfers and settlement of interest. The audit workpapers also include confirmation from various stockbrokers that shares the subject of the ANI sale were held by the brokers' nominee companies on behalf of Spedley Securities at 31 October 1987, although they had been sold by Spedley Securities to ANI on the previous day [6].

The auditor concluded that the transaction was properly recorded in Spedley Securities' accounts as a sale on 30 October 1987. Launders said he distinguished the transaction from a sale subject to a buy-back obligation where there exists an obligation to repurchase [7]. Launders failed to qualify the audit report even though the financial statements did not reflect the reversal of the sale, which occurred within 6 days of balance date.

The ASC considers that, contrary to the opinion stated in the auditor's report, the accounts were not properly drawn up in accordance with the provisions of the Companies Code. The accounts were prepared on the basis that the sale and related transactions had occurred. On that basis, ANI Corp's right to put the shares back to Spedley Securities gave rise to a material contingent liability which should have been disclosed.

More significantly, the principal effect of the transactions was to "window dress" the accounts by materially altering the composition of current assets shown in the notes. The ASC considers that a competent, independent auditor would have recognised this and would have qualified the auditor's report on the basis that this caused the accounts not to give the required true and fair view.

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[5] Launders - section 541 examination, 26 September 1990, page 2673

[6] Letters dated 24 November 1987 to various brokers, signed by brokers' staff and filed with workpaper 3107 in the Spedley Securities workpapers.

[7] Letter from Corrs Chambers Westgarth to the ASC, page 7

Decline in Value of Shares

This matter is described in para 1.7. In March 1988, Launders discovered that shares repurchased from ANI on 5 November 1987 had been omitted from a post balance date review of Spedley Securities' share portfolio conducted on 14 December 1987 prior to signing the Spedley Securities audit report.

The shares had declined in value by $6.9 million. Launders had said there should be a note included in the accounts of Spedley Holdings and that Spedley Securities' accounts, which had already been signed, may need to be withdrawn and revised [8].

Launders was shown a put and call agreement dated 30 November 1987 between Spedley Securities, ANI Corp and Greater Pacific, in relation to those shares. Launders relied on the Agreement to justify not requiring the directors to amend the 1987 accounts or taking other action to prevent reliance on his report, although he believed that the agreement was not prepared or executed until March 1988. It was not shown to him until then, when he raised his concern about the loss in value of the shares.

Spedley Securities' directors had already demonstrated that they were able to enter into agreements which, although having no material long term effect, were relied upon by those directors in avoiding particular disclosures in the accounts. To that extent, such agreements were shams.

Given this background and the belief that the 30 November put and call agreement did not come into existence until March 1988, a reasonable auditor would have been put on notice that the option granted by the agreement may not be exercised by Spedley Securities.

Spedley Securities would only avoid loss if the option was exercised. Launders said he knew at the time of signing the report on Spedley Holdings' accounts that it had not been exercised. There was still a possibility of loss from the repurchase of shares from ANI in November 1987. Launders has indicated reliance on the obligation of the directors of Spedley Securities to exercise the option if the market value of the shares was below the exercise price [9]. This, at best, appears naive.

For the accounts to give the required true and fair view, disclosure of the post-balance date decrease in the value of the shares would have been required, as well as disclosure of the reliance placed on the agreement.

As mentioned in paragraph 1.5, Approved Accounting Standard ASRB 1002: "Events Occurring After Balance Date", which applied to the 1987 accounts, required information on some events which occurred after balance date to be included in the accounts. In the case of events which did not relate to any conditions existing at balance date, but whose effects was material in relation to the accounts, a description of the event and where possible, an indication of the financial effect, was required to be included in the notes to the accounts. These requirements should have guided the auditor in assessing whether the required standard of disclosure had been met.

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[8] Letter from Corrs Chambers Westgarth to the ASC, page 9
[9] Letter from Corrs Chambers Westgarth to the ASC, page 9

The ASC believes that in the circumstances, a competent auditor would not have been satisfied with accepting the put and call agreement as justification for allowing continued reliance on the financial statements and the auditor's report.

Fee Income

This matter is considered in para 1.10. Spedley Securities received $9 million of fee income from Bond Finance and $2 million from Oakhill on 30 October 1987.

The audit workpaper on which the fee income was analysed records amounts totalling $2,305,447 [10]. Launders said he became aware of the additional $9 million income from Bond Finance, possibly as a result of a bank reconciliation which shows $9 million as an outstanding deposit [11].

Launders said that initially the only audit evidence supporting this material transaction was a receipt voucher generated by Spedley Securities recording a $9 million receipt as commission, fees and profit share. He said that as a consequence, he asked an audit assistant to look at Spedley Securities' payment vouchers and prepare a working paper listing all payments to Bond group companies after 31 October 1987 [12].

The assistant prepared a workpaper dated 24 November, 1987 and Launders reviewed it and noted on it: "Work paper prepared to ensure $9 million received from Bond taken to profit was not repaid in November" [13]. The workpaper does not include a payment of $9,005,770 on 3 November 1987 by Spedley Securities to Bond Corp Holdings. In addition, the period selected excludes a payment by Spedley Securities to Bond Corp Finance on 23 October of $9,906,902 for the purchase of commercial bills.

Launders said the audit procedure involved looking at Spedley Securities' payment vouchers [14]. He did not ask the assistant to look at any other documents. He later said that the step was unnecessary and that he would not have caused the review to be carried out had the evidence he later obtained been available at the time.

Launders requested and obtained additional evidence and explanations to support the fee income [15]. He was given an original letter dated 3 December 1987 from Bond Corp Holdings, signed by P.G. Beckwith, Managing Director. The letter set out fees and profit share totalling $11 million, confirmed that a cheque for $9 million was sent on 30 October 1987 and referred to $2 million as "amount to be received from Oakhill Pty Limited".

Launders said he was satisfied with the reliability of this audit evidence [16]. However, he made additional enquiries of Yuill, requesting further background in relation to each item, even though he had what might be considered independent documentary evidence of the payments. This action is

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[10] Audit workpaper 5007
[11] Letter from Corrs Chambers Westgarth to the ASC, page 11
[12] Letter from Corrs Chambers Westgarth to the ASC, page 14
[13] Audit Workpaper 1603
[14] Letter from Corrs Chambers Westgarth to the ASC, page 14
[15] Letter from Corrs Chambers Westgarth to the ASC, page 11 and annexure 19
[16] Letter from Corrs Chambers Westgarth to the ASC, page 11

indicative of the difficult circumstances of this audit. Seeking further information was appropriate in the circumstances.

In accepting the discussion with Yuill as audit evidence, Launders did not seek further documentary evidence to support the explanations given by Yuill in relation to the following matters[17]:

- the $1 million fee for assisting the Austotel Trust's takeover of some hotels in 1986. Launders was not aware of the nature of the assistance and did not see any documents indicating its nature. In a workpaper headed "Bond Corp. fees and profit share" dated 15 December 1987, he wrote: "BR Yuill & JA Craven were involved in the buy-out of Tooheys pubs by Austotel. Not aware of any fees being previously received. Given the value of the deal in the order of $300m the above fee although late in coming as trust was set up in 85 is not unreasonable" [18];

- the $0.5m described as "Final sub-underwriting fee re your participation in the North Kalgurli/Metals Exploration acquisition of shares". , Launders was aware that Spedley Securities had received a sub-underwriting fee which had been brought to account partly in 1986 and partly in 1987. He accepted that the $0.5 million was a further sub-underwriting fee but did not check the sub-underwriting agreements to see whether they provided for this fee. The audit work paper records only the following confirmation in respect of this item: "BR Yuill was involved in setting up the underwriting and SSL actually participated as sub-underwriter in 1986. Total issue value of $270m. Again same comments as in (1) above" [19]. ("(1) above" refers to the Austotel fee comments above);

  The last sentence appears to indicate an assessment and acceptance of the transaction on the basis that "Given the value of the deal, the fee is not unreasonable";

- the $9.5 million fee from the Paragon Resources N.L. deal. Yuill said this was based on an unwritten agreement which provided for Spedley Securities to receive interest plus 20% of any profit made on the deal in exchange for advancing approximately $10 million to Bond [20].

  Launders said he asked Yuill why Paragon's accounts did not show Spedley Securities or any of the Bond group of companies as a shareholder and why there was no evidence of any large share movements. Yuill allegedly replied to this effect: "Although Bond has no direct interest, Bond is involved via Oakhill. No shares have been sold - the profit is a notional profit based upon market values at various points in time".

  Launders said he then enquired how future movements in market value might affect Spedley Securities' share of profit. He alleges Yuill replied to this effect: "Future movements in market value have no effect on Spedley's profit. Given the nature of the deal, Spedley is not

[17] Letter from Corrs Chambers Westgarth to the ASC, page 14
[18] Letter from Corrs Chambers Westgarth to the ASC, page 12; audit workpaper 5008
[19] Letter from Corrs Chambers Westgarth to the ASC, page 12, audit workpaper 5008
[20] Letter from Corrs Chambers Westgarth to the ASC, page 13

prepared to request specific calculations. There is approximately another $2 million to $3 million yet to be received".

Launders said he accepted this explanation. In his workpaper he states [21]: "Given the nature of the deal, the fact that cash has been received and Bond Cor. have confirmed the nature of the payments it is considered that all appropriate audit steps have been undertaken".

Launders was correct in seeking further evidence in support of the fees received. The letter from Bond Corp Holdings should have aroused his concerns about its value as audit evidence for the following reasons:

- it did not accompany the payment of $9.0 million but was received more than 1 month later;
- it was apparently prepared after and in response to Launders' request to Spedley Securities' officers for supporting documents in relation to the fee income, and no existing documents were provided in response to the request;
- it was not from the company which paid the $9.0 million, Bond Finance. Whilst this fact might not ordinarily be sufficient on its own to give rise to concerns, when taken together with the other matters, it ought to have added to the concerns.

In view of the importance of obtaining additional corroborating evidence for the fee income, it is difficult to understand why Launders accepted Yuill's explanations, which became less credible as they progressed, and failed to check parts of the explanations to such documentary evidence as existed (eg. sub-underwriting agreements).

It was on the basis of the letter from Bond Corp Holdings and the additional explanations from Yuill that Launders characterised as unnecessary the audit step which he initiated of examining all payments to Bond group companies after 31 October 1987. Launders' actions indicate that he considered himself to be put on enquiry in relation to the fee income transactions. He then failed to take some steps that were open to him and accepted explanations which the ASC believes a competent auditor would not have regarded as adequate evidence in the circumstances.

Conversion of Loans to Bills

This matter is considered in para 1.8. Loans receivable totalling $90,400,877 were converted to bills receivable which matured by 14 November 1987. On maturity, the journal entries setting up the bill accounts in Spedley Securities' books were reversed.

Spedley Securities' balance sheet showed the amounts as bills in the analysis of assets required by Schedule 7 to the Regulations. There was no note in the accounts disclosing the post-balance date reversion of the bills to loans receivable and no recognition of the discount that would have been necessary to trade the bills in the money market.

[21] Audit workpaper 5008

The bills were described in the accounts as being "valued at face value less unearned income calculated on the number of days to maturity". However, bills with a face value of more than $88 million were shown in the auditors working papers as having a book yield of 0.001%. A hand written notation against $78 million of these stated "LOANS - SUPPORTD BY BILLS. NIL IYTM" [22].

The bill transactions appear to have been a sham designed to artificially improve the liquidity profile of the balance sheet and the apparent quality of the assets. This view is based on the short term of the bills, their uncommercial yield rates and their reversion to loans shortly after balance date.

Launders said he believed it was appropriate for these bills to be described as commercial bills of exchange. He said he regarded a commercial bill of exchange as one that could be traded in the market place. He said he believed they could be traded although he was not aware of bills with such short maturity period being traded [23]. The auditor should have been aware that there was little market for seven day commercial bills especially if they were not accepted or endorsed by a bank.

Launders' view was that the bills were simply evidencing the loans and that the bills and loans, in substance, were the same, both involving the advance of funds in exchange for interest and an expectation of repayment [24].

The ASC considers that a competent auditor would have applied a principle of substance over form. Based on the evidence that the bill transactions were a sham, a fair reflection of Spedley Securities' position would have involved elimination of the transactions and recognition of the loans on the balance sheet and not the bills.

There should also have been an assessment of whether some of the loans should have been disclosed as non-current assets and whether recovery of some of the debts was doubtful, so that a provision was required. Categorising some of the debts as non-current and providing for any doubtful debts would have reduced Spedley Securities' apparent ability to meet the financial conditions attached to its dealer's licence. The auditor's working papers do not evidence consideration of these issues in connection with the loans that were converted to short term bills.

The amount involved in the conversion of loans receivable to commercial bills was material. There were strong indications that the conversion amounted to nothing more than "window dressing" and that there were possible implications for Spedley Securities' dealer's licence. The ASC considers that in the circumstances, a competent auditor would not have given an unqualified report in respect of this item.

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[22] IYTM means interest yet to mature

[23] Letter from Corrs Chambers Westgarth to the ASC, page 31

[24] Launders - section 295 examination, 6 June 1990, pages 1698, 1704; Section 541 examination, 26 September 1990, pages 2691-2692

Sale of Bonds to ANI

This matter is considered in para 1.5. Spedley Securities sold Commonwealth Bonds with a market value between $4,257,953 and $4,376,094 to ANI on 30 October 1987 for $5,672,000 and repurchased them on 2 November 1987 for the same amount. By selling the bonds to ANI for a short period, Spedley Securities' directors avoided dealing with them in the financial statements. Instead they brought to account, as current assets, commercial bills purchased from ANI, which reflected the approximately $1.3 million above-market sale of the bonds to ANI.

The auditor was aware that the bonds had been repurchased by Spedley Securities shortly after balance date at a price which was significantly above market value. Launders said P & M decided that the financial statements should be viewed as if these transactions had not occurred. He therefore noted them as a reversal of the bond sale in his audit materiality sheet, and included recognition of a $1.39 million loss[25]. In accordance with standard auditing practice, uncorrected misstatements of assets, liabilities, expenses and revenue were listed on a materiality sheet by the auditor and summarised or aggregated to assess materiality. The resultant net amounts were not considered material by Launders and no adjustments were made.

As a consequence, P & M's decision about how the financial statements should have been viewed in relation to these transactions was not affected. The financial statements reflected the bills rather than the Commonwealth Bonds, and the approximately $1.39 million loss, which was noted in Launders' materiality sheets, was not taken up in the profit and loss account.

Launders has since said that "(t)he undeniable fact is that the bonds were long term assets which upon maturity would have realised book value. The loss referred to is therefore purely based on the hypothetical proposition that the bonds were current assets."[26] The ASC finds this account curious, firstly because the loss had been noted by Launders as a potential adjustment in his own working papers, and secondly, because the $5.7 million cost of the bills was brought to account as a current asset. That $5.7 million was a material part of the surplus liquid funds required by Spedley Securities to meet its securities dealer's licence condition.

In addition, as explained in para 1.5, the requirement to deal with the post-balance date transactions, particularly the 2 November 1987 purchase of the bonds from ANI at an above-market price, was not overcome by aggregating without adjustment the items which were misstated in the October 1987 accounts.

The purchase of bonds at $1.39 million above market price after balance date is regarded by the ASC as material in terms of accounting standard ASRB 1002: "Events Occurring after Balance Date". That standard stated:-

> *"The effect of an event occurring after balance date is material if its omission, non-disclosure or mis-statement is likely to affect economic decisions, or other evaluations, made by users entitled to rely on the accounts or group accounts."*

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[25] Letter from Corrs Chambers Westgarth to the ASC, pages 31-32; Audit materiality sheets
[26] Letter from G. Launders to ASC dated 1 July, 1997, page 30.

The ASC considers that the test in this standard was met in the circumstances. In these circumstances, a competent auditor would have qualified the audit report in respect of failure to disclose a material post balance date event.

Profit Transfers

This matter is considered in para 1.11. Spedley Securities obtained a profit of $2,594,738 by purchasing Treasury Notes from Security Deposits and reselling them on the same day, 30 October 1987, to First Federation. It recorded a further profit of $319,881 by selling Commonwealth Government Bonds to First Federation on 30 October 1987 and repurchasing them on the same day.

Launders' opinion about profit transfers was that it was common practice for groups of companies to spread profits among the member companies. He could see no difficulty with that practice, where the transfer was irrevocable, the creditors of the company from which funds were transferred were not disadvantaged and the transfer was legal [27]. Murrell also had no difficulty with transferring profits as the Spedley companies had the same ultimate shareholders.

The ASC considers that the transactions underlying the profit transfers were contrived. In both cases, the assets ended up where they had started. The only money to change hands represented the profits which were transferred to Spedley Securities.

As explained at paragraph 1.11.2, the ASC considers that the treatment of these transferred profits in Spedley Securities' 31 October 1987 accounts caused the accounts not to give a true and fair view of the company's profits for that year.

> *The auditor's report on the accounts stated that the accounts were properly drawn so as to give, amongst other things, a true and fair view of the results of the company for the year. The ASC considers that in the circumstances, a competent auditor would not have formed that opinion.*

17.2.2 Value of Receivables

This matter is referred to at paras 1.15 and 1.16, in relation to the 1988 accounts. The conversion of loans into bills which matured a few days after balance date was similar to action taken at the time of the 31 October 1987 accounts. Comments on audit failures alleged by the ASC in respect of the 1987 conversion are set out at para 17.2.1 "Conversion of Loans to Bills". Similar concerns apply in respect of the 1988 conversion. The amounts shown for receivables in Spedley Securities' 31 October 1988 accounts, net of provisions totalling $14 million, were $162.8 million current and $11.6 million non-current.

Launders said that of a loan portfolio of some $300 million, $232 million was assessed in the audit as collectable and that further evidence of collectability of some $68 million was required [28]. His statements as to lack of progress on the part of Spedley Securities' directors in providing evidence as to collectability and the circumstances of his reliance on a guarantee of up to $100 million by GPI Leisure are referred to in paragraph 1.16.

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[27] Letter from Corrs Chambers Westgarth to the ASC, pages 16 and 33
[28] Letter from Corrs Chambers Westgarth to the ASC, page 22

Launders had drafted a note which identified the amount of the guarantee and the identity of the guarantor (which had some common directors with Spedley Securities). This information was ultimately not provided in the accounts. Launders has said that Beatty deleted it from the note Launders had drafted. The events leading to the inclusion of the note referring to the guarantee have been set out in para 1.16.

Launders said that Beatty maintained that disclosure of the guarantee was required "only where, in the opinion of the directors, there is a difference between the realisable value and book value .... Spedley directors take the view that the provision is adequate so Schedule 7 disclosure is not required". Beatty has denied being asked to provide any advice on the appropriate disclosure requirements [29].

Launders said he considered then accepted Beatty's opinion, even though he had relied on the guarantee. He produced an audit working paper dated 30 January 1989 which indicates that he undertook what he termed a subjective analysis of the $68 million to determine whether there was any clear basis for challenging the directors' proposed note. He considered "the individuals behind various companies, the individuals' apparent substance in financial terms and details of assets behind the loans as provided by Spedley directors" [30]. The 30 January date on the audit working paper is curious. The guarantee was signed on 31 January, and it was on that day that Beatty is alleged to have put his opinion about the note to Launders.[31]

Launders' working paper indicates that $12.1 million of the loans were doubtful and that he had not been able to obtain satisfactory evidence that loans totalling $55.9 million were recoverable [32]. Notwithstanding this lack of evidence, Launders accepted the following statement in the accounts: "The directors believe that, without reliance on any guarantee, there is no material difference between the estimated realisable value of assets and the net book value of assets shown in the accounts".

His working paper then states [33]: "However for truth and fairness decided to disclose in note 27 the fact that a guarantee does exist". This suggests that Launders was uncomfortable about the opinion which he alleges Beatty provided. Launders says that disclosure of the guarantee was made solely as a result of the fact that there existed some $55.9 million of receivables upon which he had insufficient appropriate audit evidence to conclude as to their collectability. He says that neither he nor McGrane, the review partner, was uncomfortable with Beatty's statements and that they considered the opinion to be correct[34]. Launders did not seek independent legal advice.

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[29] Letter from Corrs Chambers Westgarth to the ASC, page 21; Letter from Kemp Strang & Chippindall to ASC dated 27 June 1997

[30] Working Paper dated 30 January 1989, annexure 23 to Letter from Corrs Chambers Westgarth to the ASC; Letter from Corrs Chambers Westgarth to the ASC, page 21

[31] Letter from Corrs Chambers Westgarth to the ASC dated 30 May, 1996 page 21.

[32] Letter from Corrs Chambers Westgarth to the ASC, page 22

[33] Working Paper dated 30 January 1989

[34] Letter from G Launders to ASC dated 1 July, 1997 page 34.

Launders said that the existence of a legally enforceable and commercially justified guarantee for $100 million, given by a substantial public company led to his conclusion "that the $15 million provision for doubtful debts was adequate for audit purposes" [35].

Section 285(3)(a)(ii) of the Companies Code required an auditor to state whether the accounts are drawn up in accordance with the provisions of the Code, and section 285 (3)(e) required that the auditor state, if he is not satisfied as to any matter referred to in paragraph (3)(a), "his reasons for not being so satisfied".

Launders' reliance on the guarantee indicates that he could not have been satisfied with the directors' belief that, "without reliance on the guarantee, there is no material difference between the estimated realisable value of assets and the net book value of assets shown in the accounts". The ASC therefore considers that by not qualifying his report, Launders failed to discharge his duties under the Code.

Section 285(3)(d) of the Companies Code required auditors to state in their report any matter not set out in the accounts without regard to which a true and fair view of the matters dealt with by the accounts would not be obtained.

Launders considered it necessary to rely on the guarantee in forming his opinion that the accounts gave the required true and fair view. The ASC has difficulty in understanding why he did not regard information about the guarantee and his reliance on it to be matters required to be stated pursuant to section 285(3)(d) of the Code. The amount of the guarantee, its terms and the identity of the guarantor, were all matters to which he had regard in forming his opinion, yet neither the information nor the extent of his reliance was stated pursuant to section 285(3)(d) in his report.

17.2.3 Futures Losses

The concealment and discovery of Spedley Securities' futures losses is reported in para 1.17. The falsification had been occurring since 1984, according to Launders[36].

The audit staff were provided with copies of the ICCH statements, which had been altered by Dawkins. Launders claimed to be unaware that his staff were accepting photocopies rather than originals [37]. He says that he assumed his staff would know that they should be obtaining original documents or informing him if originals were not available. He did not seek, or instruct his staff to seek, the original statements.

In failing to ensure that original documents rather than copies were relied on for such a material item, the auditor failed to follow the guidance provided by AUP 14 - Statement of Auditing Practice, Audit Evidence. Many of the factors referred to in AUP 14 as influencing an auditor's judgement as to what is sufficient appropriate audit evidence were present in this case.

Launders also failed to obtain independent confirmation from ICCH of the balance of the account from 1986 to 1988, although he has said that such confirmation was sought in 1984 and 1985. In

[35] Letter from Corrs Chambers Westgarth to the ASC, page 22
[36] Section 7 examination of Launders, dated 24 August 1989, page 7

failing to obtain independent confirmation of this balance, the auditor failed, in the ASC's view, to comply with Statement of Auditing Standards AUS 1.

Statement of Auditing Standards AUS 1 set out the auditing standards which were mandatory from 1 July, 1987. In relation to audit evidence, AUS 1 expressed the principles required to be followed as:-

> *"21. Auditors shall obtain sufficient appropriate audit evidence through the performance of compliance and substantive procedures to enable them to draw reasonable conclusions therefrom on which to base their opinion on the financial information."*

Launders maintains that the audit procedure was satisfactory. He referred to other audit procedures that he or his staff conducted, besides checking the balances each 31 October [38]. Those tests did not detect the losses which were being incurred. If original evidence had been obtained, it is extremely likely that the losses would have been discovered in the years before Dawkins confessed.

The losses and the manufactured fee income used to cover part of the losses were not disclosed as separate items in the 1988 accounts of Spedley Securities. The additional interest payment by Greater Pacific and the interest forgiven by ANI were incorporated in the disclosures of interest received and interest paid but they were not specifically disclosed as extraordinary or abnormal items [39]. Launders accepted these arrangements with only one requirement. He wanted some form of documentary evidence of the amounts forgiven or the additional amounts due, even though he knew that they were manufactured after the 1988 balance date

The ASC considers that Launders had insufficient regard to the financial significance of the transactions. Even if these items could be properly included in the 1988 financial year, the ASC believes that the losses and additional "income" should have been disclosed as extraordinary or abnormal items of revenue, in accordance with clause 8(1) of Schedule 7 to the Companies (NSW) Regulations and the accounting standard AAS 1 - Profit and Loss Statements.

Launders said his views, and those of some of his partners and a standards review manager of his firm, were that there were two related transactions: the loss and the making-up of that loss. These two transactions, he said, had the effect of transferring any loss out of the company and the net effect on the company was nil. It was his view that as a consequence, there was no extraordinary item and no abnormal item which required disclosure [40].

The ASC considers that the losses and the arrangements to recoup the losses should not have been treated as offsetting items having no net effect. Each item should have been separately disclosed. The failure to include such disclosure gave a misleading impression of Spedley Securities' results. This in turn would have prevented the Corporate Affairs Commission (as the licensing authority), Spedley Securities' financiers and interested members of the public from making informed decisions about the management and financial health and prospects of Spedley Securities.

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[37] Letter from Corrs Chambers Westgarth to the ASC, page 41
[38] Letter from Corrs Chambers Westgarth to the ASC, page 41
[39] Spedley Securities 1988 Accounts, note 14
[40] Section 7 examination of Launders, dated 24 August 1989, page 30

The ASC believes that a competent auditor would have obtained adequate audit evidence, and would not have issued a report that was unqualified in respect of the non-disclosure of the losses and the transactions which were contrived to offset the losses.

17.3 CONCLUSIONS

As Launders may have been called as a witness in some of the criminal trials and because of pending civil proceedings, the ASC deferred consideration of a referral of his conduct to the Companies Auditors and Liquidators Disciplinary Board ("CALDB"). It was then discovered that Launders had left Australia and had indicated that he intended to settle permanently in Vanuatu. Launders was notified that the ASC intended seeking cancellation of his registration on the basis that he had ceased to be an Australian resident. Launders tendered his resignation as a registered company auditor.

Prior to Launders' letter of resignation being processed, Launders told an ASC officer in a telephone conversation that he had no intention of returning to Australia within 3 to 5 years. The possibility of his eventual return caused the ASC to review the evidence of Launders' conduct and to form the view that he had failed to carry out or perform adequately and properly his duties as auditor of Spedley Securities in respect of the financial year ended 31 October 1988 (the year in which Launders was the engagement partner and signed the audit report on the accounts) [41].

Launders did not accept this view. His view was that the audit of Spedley Securities conformed in all material respects with applicable accounting and auditing standards and Companies Code requirements. Launders said his former partners at Priestley & Morris held the same view of the adequacy of the audit [42].

Conscious of a number of issues including the cost and time involved in pursuing CALDB action in the circumstances, the ASC took into account advice from Launders that he has no desire to ever again practice as an auditor in Australia [43] and cancelled Launders' registration as an auditor in accordance with his request.

The relevant information in this report will be referenced so that it can be taken into consideration if Launders applies for registration as an auditor in the future.

Murrell resigned as a registered company auditor at the time he retired. The ASC had not, at that stage, decided whether there was a basis for a referral to the CALDB.

In the opinion of the ASC, Launders' actions indicate serious deficiencies of competence and judgment in that he:-

- *failed to qualify his report in respect of non-disclosure of material post-balance date events and their effect;*

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[41] Internal ASC memorandum by Glynn Hardingham
[42] Letter from Launders to ASC dated 11 August 1994
[43] Letter from Launders to ASC dated 11 August 1994

- *accepted contrived transactions which, while having no long term effect, were relied on by the directors to avoid disclosure in the accounts;*

- *failed to obtain adequate audit evidence in respect of a material balance sheet item and failed to check the basis for material income items to existing documentary evidence;*

- *failed to include information in his report required pursuant to section 285(3)(d) and (e) of the Code in relation to matters not set out in the accounts, despite his lack of satisfaction that the accounts were drawn up in accordance with the provisions of the Code; and*

- *failed to comply with accounting standards*

in circumstances where the ASC believes a competent auditor would not have issued an unqualified report.

Some of the transactions which the ASC believes should have resulted in a qualified auditor's report assisted Spedley Securities to give the appearance of meeting the liquidity conditions of its securities dealer's licence. Although non-compliance would not have led to automatic revocation or suspension of the licence, a qualified auditor's report would have led to a close examination of Spedley Securities' financial position and consideration of its suitability to continue dealing in securities.

The ASC is of the view that Launders failed to carry out or perform adequately or properly his duties as auditor of Spedley Securities.

ANNEXURE 1 - LIST OF COMPANIES INVESTIGATED

PART ONE

Spedley Holdings Limited
Spedley Securities Limited
Greater Pacific Investments Pty Limited
GPI Leisure Corporation Limited
Anneli Pty Limited
BR Yuill Holdings Pty Limited
Bachot Pty Limited
Binali Pty Limited
Bondoro Pty Limited
Nodrogan Pty Limited
Pluteus (No 102) Pty Limited
Pluteus (No 137) Pty Limited
Pluteus (No 152) Pty Limited
Pluteus (No 180) Pty Limited
Tenway Pty Limited
Tourist Holiday Villages Limited
Vandervee Pty Limited
Wondalo Pty Limited
Woodash Holdings Pty Limited
Yabcara Pty Limited

PART TWO

Adalia Pty Limited
Agricultural and Financial Management (Aust) Pty Limited
Aldershot Limited
Apparel Wear Pty Limited
Assetpride Limited
Austin Morgan & Co Pty Limited
Austin Morgan Pty Limited
Austotel (NSW) Pty Limited
Austotel Finance Limited
Austotel Management Pty Limited
Austotel Pty Limited
Austotel Trading Pty Limited
Australian National Industries Limited
B & McK Custodians Pty Limited
BT Insurance (Holdings) Limited
BT Insurance Co Limited
Babet Corporation Limited
Baron Nominees Pty Limited
Beverage Nominees Pty Limited
Bisley Asset Management Pty Limited
Bisley Commodity Brokers Pty Limited
Bisley Investment Corporation Limited
Bisley Investment Management Limited
Bisley Properties Limited
Bisley Securities Limited
BMC Mortgage Corporation Pty Limited
Bond Brewing Investments Pty Limited
Bond Corporation Holdings Limited
Bond Corporation Pty Limited
Bond Media Limited
Buckmont Limited
Caldring Pty Limited
Cethana Pty Limited
CL-Alexanders Laing & Cruikshank Holdings Australia Pty Limited
Dirham Pty Limited
EOE (No 78) Pty Limited
Enan Holdings Pty Limited
Ennael Pty Limited
Fanteray Pty Limited
Fidana Pty Limited
Fikara Pty Limited
First Federation Discount Company Limited

Gayval Investments Pty Limited
Gosford Heights (Finance) Pty Limited
GPI Securities Pty Limited
Greater Midwest Insurance Limited
Henzor Pty Limited
Hubbard & Co Pty Limited
Idameneo (No 219) Pty Limited
Jimjur Pty Limited
Junenet Pty Limited
Kirkland-Whittaker (Australia) Pty Limited
Kirkland-Whittaker Group Limited (London)
Kirkland-Whittaker Pty Limited
Kitool Pty Limited
Kizcloud Pty Limited
Kylnine Pty Limited
Lafouzia Pty Limited
Lanivet Pty Limited
Leepard Pty Limited
Lenoc Pty Limited
Lumley Corporation Limited
Magrim Pty Limited
Malindi Pty Limited
Marchet Pty Limited
Masken International Pty Limited
Maylet Pty Limited
McNall & Hordern Financial Services Pty Limited
McNall & Hordern Holdings Limited
McNall & Hordern Limited
Merops Pty Limited
Moysana Pty Limited
Necreva Pty Limited
Newstead South Pastoral Company Pty Limited
Nicron Resources Limited
Northern Start Holdings Limited
Oakhill Pty Limited
Oakminster Pty Limited
Oakridge Pty Limited
Oceania Holdings Pty Limited
Ontario Pty Limited
PC Joseph and Associates Pty Limited
Petrocarb Exploration NL
Plakuno Pty Limited
Pluteus (No 154) Pty Limited
Pluteus (No 164) Pty Limited
Pluteus (No 165) Pty Limited
Pluteus (No 179) Pty Limited
Pluteus (No 209) Pty Limited
Pluteus (No 255) Pty Limited
Pluteus ACT (No 8) Pty Limited
Raynesford Investments Pty Limited
Rothwells Limited
Security Deposits Limited
Skateway Pty Limited
Spedley Corporate Services Limited
Spedley Holdings (UK) Limited
Spedley Management Services Limited
Spedley Nominees Pty Limited
Spedlety PWT Limited
Spedley Services Limited
Staverson Securities Limited
Tenzor Resources Limited
Tenzora Pty Limited
Thoroughbred Racing & Breeding Australia Limited
Thredbo Valley Lodge Limited
Tricontinental Corporation Limited
Tulloch Lodge Limited
Tulloch Lodge Syndications Pty Limited (formerly Pluteus (No 167) Pty Limited)
Tussoria Pty Limited
Tutero Pty Limited
Vaxlon Pty Limited
Wencorp Limited
Wessex Fund Management Limited
West Coast Holdings Limited
William Inglis & Son Limited
Yonilla Pty Limited

ANNEXURE 2 - SHAREHOLDING DIAGRAMS AND DIRECTORS

DIRECTORS OF THE MAJOR COMPANIES INVESTIGATED

This information was obtained from the ASC's records of directorships. It shows only the people who were directors in the period investigated. No resignation dates have been given, where the directors were still in office when the companies were wound up.

SPEDLEY SECURITIES LIMITED

Name	Date of Appointment
David Gray	5/5/77
Kenneth Hawkins	20/5/77
Kenneth Hughesden	21/6/77
Neil Jones	20/2/85
John Maher	5/5/77
Brian Yuill	20/5/77

SPEDLEY HOLDINGS LIMITED

Name	Date of Appointment
David Gray	5/5/77
Kenneth Hawkins	20/5/77
Kenneth Hughesden	21/6/77
Neil Jones	20/2/85
John Maher	5/5/77
Brian Yuill	20/5/77

BISLEY INVESTMENT CORPORATION LIMITED

Name	Date of Appointment	Date of Resignation
James Corner	19/2/83	
Ronald Gray	11/4/79	
Brent Potts	03/5/79	31/1/89
Theodore William West	14/3/85	31/1/89
Brian Yuill	25/9/79	
Brian McGowen	8/4/87	

GREATER PACIFIC INVESTMENTS PTY LIMITED

Name	Date of Appointment	Date of Resignation
James Beatty	24/5/85	6/4/89
Paul Bowman	30/6/86	6/4/89
James Corner	24/5/85	6/4/89
James Craven	19/2/85	
Ross Levings	24/5/85	13/11/88
Brian Yuill	8/8/84	

GPI LEISURE LIMITED

Name	Date of Appointment	Date of Resignation
James Beatty	20/6/86	
Paul Bowman	20/6/86	
James Corner	20/6/86	2/5/89
James Craven	20/6/86	
Robin Stornmonth-Darling	20/6/86	
David Gray	24/2/87	31/1/89
Brent Potts	20/6/86	
Brian Yuill	20/6/86	11/4/89

ANNEXURE 3 – DRAMATIS PERSONAE

The following individuals and companies played significant roles in the events which were the subject of the investigation and are frequently referred to in the Report. Inclusion in this list does not however infer that the Report contains criticism of the individual or company.

Name	**Abbreviation**
Agricultural & Financial Management Pty Limited *A company controlled by Corner*	Agricultural & Financial
Aldershot Limited *A 100% owned subsidiary of Spedley Holdings.*	Aldershot
The ANI Corporation Limited *A company related to ANI*	ANI Corp
Australian National Industries Limited *Shareholder in Spedley Holdings. ANI provided temporary financial support to Spedley Securities. Its balance date was 30 June.*	ANI
B & McK Custodians Pty Limited *A nominee company controlled by partners in B & McK which sub-sub-underwrote the Bisley rights issue.*	B & McK Custodians
BR Yuill Holdings Pty Limited *Formerly Hapeni Pty Ltd. Yuill and Levings were the shareholders and directors. The company owned 39.9% of Greater Pacific in 1986-87.*	BR Yuill Holdings
BT Insurance (Holdings) Limited *58% owned by Bisley Investment. BT Insurance bought ANI's shares in Spedley Holdings in February 1989.*	BT Insurance
Bain Refco Commodities *Futures dealer used by Spedley Securities*	Bain Refco
Baker & McKenzie *Solicitors for the companies investigated. Solicitors from B & McK who acted for the companies include Ralph Pliner, Quentin Digby and Edwin Zemancheff.*	B & McK
Bank of New Zealand *Bankers to the Bisley group of companies. Lent money to Pluteus (No 209) and GPI Leisure.*	BNZ

Mr James Beatty *Partner of B & McK, Chairman of GPI Leisure and Greater Pacific, director of subsidiaries of Greater Pacific and B & McK Custodians.*	Beatty
Beverage Holdings Pty Limited *A company controlled by Mr Peter Lucas, a director of Rothwells.*	Beverage Holdings
Bisley Asset Management Limited *Subsidiary of Bisley Investment*	Bisley Asset
Bisley Commodity Brokers Pty Limited *A subsidiary of Bisley Investment and a member of the Sydney Futures Exchange.*	Bisley Commodity
Bisley Investment Corporation Limited *See "Background to the Companies"*	Bisley Investment
Bond Corporation Finance (NSW) Limited	Bond Finance
Bond Corporation Holdings Limited	Bond Corp Holdings
Bond Corporation Investments Pty Limited	Bond Corp Investments
Bond Corporation Pty Limited	Bond Corp
Bond Lending Pty Limited *Companies controlled by Mr Alan Bond. Their balance date was 30 June.*	Bond Lending
Bondoro Pty Ltd *A company used by Yuill to purchase a property at Gulgong. McConnell, Reid & Zemancheff acted as the company's officers, although they were not formally appointed.*	Bondoro
Sir Paul Bowman *Director of GPI Leisure and Greater Pacific and one of GPI Leisure's nominees on the Board of Austotel Management Pty Ltd.*	Bowman
Mr Lawrence Connell *Director of Rothwells.*	Connell

Mr John Corner — Corner

Managing Director of Bisley Investment and BT Insurance Holdings. He was a director of GPI Leisure, Greater Pacific, McNall & Hordern, Triton and West Coast.

Mr James Craven — Craven

Alternate director of Spedley Securities and Spedley Holdings and director of West Coast, GPI Leisure, Greater Pacific and subsidiaries of Spedley companies and Greater Pacific. Craven was manager of the Corporate Finance Department at Spedley Securities and one of GPI Leisure's nominees on the Board of Austotel Management Pty Ltd.

Mr Peter Dawkins — Dawkins

Senior money market manager at Spedley Securities. He worked with Mr Peter McLachlan, Mr Peter Hayton, Mr Stuart Hudson and Mr Scott Larimore.

Mr Patrick Elliott — Elliott

Managing Director of Natcorp Holdings Limited. Also a director of, and controlled, Vaxlon Pty Limited.

Enan Holdings Pty Limited — Enan

Company run by Mr William Colwell and Mr Paul Peters

First Federation Discount Company Limited — First Federation

A subsidiary of Greater Pacific, sold to Spedley Holdings. A licensed dealer in the official money market.

Glenarm Holdings Pty Limited — Glenarm

Hawkins' private company and a shareholder in Spedley Holdings.

GPI Leisure Corporation Limited — GPI Leisure

See "Background to the Companies"

Mr David Gray *Director of ANI from 1982 until 1986 and director of Spedley Holdings and its subsidiaries from 1977 to 1989. Director of GPI Leisure.*	Gray
Greater Midwest Insurance Limited *Originally a subsidiary of ANI, it was sold to Greater Pacific*	Greater Midwest
Greater Pacific Investments Pty Limited *See "Background to the Companies"*	Greater Pacific
Mr Ken Hawkins *A director of Spedley Holdings and its subsidiaries, he established Spedley Securities with Yuill and ran its Melbourne office.*	Hawkins
Mr Keith Hughesdon *Based in London, he was a director of Spedley Holdings and Chairman of the UK companies associated with Spedley Securities.*	Hughesdon
Ms Ann Jenkins *Yuill's secretary and a signatory to his private companies' bank accounts.*	Jenkins
Mr Neil Jones *Director and Chairman of ANI and director of Spedley Holdings and its subsidiaries.*	Jones
GW Joynson & Co Limited *Futures trading company incorporated in England, controlled by William West*	Joynson
Kirkland-Whittaker Group Limited *78% owned subsidiary of Spedley Holdings, incorporated in England. Robert Dibben was a director.*	Kirkland-Whittaker Group
Kitool Pty Limited *Involved in the Rome land deal, borrowing $52 million from Equiticorp Australia Limited, Aldershot, Greater Pacific and Bisley Investment.*	Kitool

Kizcloud Pty Limited — Kizcloud
Owned by Paul Ramsay Holdings Pty Limited.

Ms Anna-Marie Kwan — Kwan
Accountant for Greater Pacific, GPI Leisure and First Federation and later for Spedley Securities and Spedley Holdings.

Lafouzia Pty Limited — Lafouzia
Company incorporated in Queensland, controlled by Con Galtos, who was an employee of the Bisley group of companies.

Mr Graham Launders — Launders
Auditor, P & M. He was the audit partner for Spedley Securities in 1988.

Mr Ross Levings — Levings
Company Secretary for the Spedley group of companies, with responsibility for the accounting records of the group.

Shareholder and director of Tourist Holiday Villages, BR Yuill Holdings, Pluteus (No 180) and Nodrogan, although Levings had no beneficial interest in the companies [1].

LR Connell & Partners — Connell & Partners
A partnership between Connell and his wife.

Mr John Maher — Maher
Director of Spedley Holdings, Spedley Securities and ANI.

Mr Robin McGee — McGee
Managing director of First Federation and Security Deposits

McNall & Hordern Limited — McNall & Hordern
Subsidiary of Bisley Investment and member of the Australian Stock Exchange.

[1] Statement by Ross Arnold Levings dated 25 February 1991, paras 39-42

Monsoon Nominees Pty Limited — Monsoon
Nominee company used by McNall & Hordern for share purchases.

Mr Lyel Murrell — Murrell
Auditor, P & M. He was the audit partner for the Spedley companies before 1988.

Nodrogan Pty Limited — Nodrogan
Shareholders and directors were Yuill and Levings, as trustee. It was a shareholder in Spedley Holdings.

Oakhill Pty Limited — Oakhill
A company controlled by Connell

Mr Ralph Pliner — Pliner
Partner in B & McK

Pluteus (No 137) Pty Limited — Pluteus (No 137)
Shelf company incorporated in February 1988, with Yuill and Levings as directors

Pluteus (No 152) Pty Limited — Pluteus (No 152)
Shelf company incorporated on 1 October 1987. Yuill was elected as a director although the Corporate Affairs Commission was not advised of the change of directors.

Pluteus (No 180) Pty Limited — Pluteus (No 180)
Shareholders and directors were Yuill and Levings.

Pluteus (No 209) Pty Limited — Pluteus (No 209)
Company used by Yuill to borrow money from BNZ for the takeover of Greater Pacific

Mr Brent Potts — Potts
Stockbroker with Potts West Trumbull & Co and director of GPI Leisure, Bisley Investment and BT Insurance.

Priestley & Morris — P & M
Auditors for ANI, Spedley Securitiesand Spedley Holdings. Launders, Murrell and David McGrane were primarily responsible for the audits.

Ms Janice Pullen *Accountant for the Spedley Group, until November 1988.*	Pullen
Rothwells Limited *A company conducting business as a merchant bank, run by Connell. A provisional liquidator was appointed to Rothwells on 3 November 1988.*	Rothwells
Security Deposits Limited *Subsidiary of Greater Pacific, sold to Spedley Holdings. It was a dealer in the unofficial money market.*	Security Deposits
Skateway Pty Limited *A company controlled by Con Galtos*	Skateway
Spedley Holdings Limited *See "Background to the Companies"*	Spedley Holdings
Spedley Securities Limited *See "Background to the Companies"*	Spedley Securities
Standard Chartered Bank *International bank which lent money to GPI Leisure.*	Standard Chartered
Staverson Securities Pty Limited *Took up shares in the Bisley rights issue through B & McK Custodians*	Staverson
Triton Investment Corporation Limited *A company controlled by Corner.*	Triton
Vandervee Pty Limited *Company incorporated in October 1988 with Yuill and Craven as directors*	Vandervee
Vaxlon Pty Limited *Incorporated in May 1988, it was owned by Natcorp Holdings Limited and Natcorp Nominees Pty Limited. The directors were Pat Elliott and Richard Tiley, executives of Natcorp Holdings Limited.*	Vaxlon

West Coast Holdings Limited — West Coast
Company incorporated in Western Australia, it owned half a rare earth deposit known as the Brockman Project. Craven and Corner were directors.

A liquidator was appointed on 6 February 1991.

Woodash Holdings Pty Limited — Woodash
Private company of Craven

Mr Paul Young — Young
Director of Baron Partners Ltd, a corporate advisory company, which provided advice to companies associated with Yuill.

Mr Brian Yuill — Yuill
A director of companies in the Spedley group, GPI Leisure, BR Yuill Holdings, Nodrogan and Bisley Investment and its subsidiaries. Managing director of Spedley Securities and Greater Pacific.

Yuill was an experienced money market dealer, having worked at Martin Corporation, where he met Connell, Hawkins and Craven.

ANNEXURE 4 - 1987 CONVERTIBLE NOTE ISSUE

ANNEXURE 5 – 1988 ROUND ROBIN TRANSACTIONS

ANNEXURE 6 - $17 MILLION NODROGAN LOANS

ANNEXURE 7 – CHELSEA PROPERTY PURCHASE

ANNEXURE 8 - $3.5 MILLION LOAN TO TRITON

ANNEXURE 9 – BISLEY LOANS