

IN THE MATTER of an Application by the Australian Securities and Investments Commission to the Companies Auditors Disciplinary Board (**CADB**) pursuant to section 1292 of the Corporations Act 2001

MATTER NO: 01/NSW23

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)
Applicant

ROCCO (ROY) LUCIANO SPAGNOLO
Respondent

DECISION of the Board to exercise its powers under s1292 Corporations Act (**Act**). Notice of this decision will be given to the Respondent under s1296(1)(a) of the Act and a copy of that notice will be lodged with ASIC under s1296(1)(b) of the Act.

20 September 2023

Panel:

Inge Kindermann (Panel Chairperson)

Naomi Rule (Business Member)

Tony Brain (Accounting Member)

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Application

1. This is an Application under s1292 of the Act lodged with **CADB** by the Australian Securities and Investments Commission (**ASIC** or **Applicant**) on 22 March 2023. By this Application, ASIC seeks orders including an order suspending the registration of the Respondent, Rocco (Roy) Luciano Spagnolo (**Mr Spagnolo** or **Respondent**) a registered company auditor (**RCA**).
2. Prior to the hearing in this matter, ASIC and Mr Spagnolo jointly filed a statement of agreed facts (**Agreed Facts**) and proposed consent orders.
3. A hearing was held before the Panel in this matter on 6 June 2023. During the hearing, and in response to matters raised by the Panel, the parties agreed to, and later jointly filed, a revised set of proposed consent orders (**Proposed Consent Orders**) for the consideration of this Panel.
4. By the Proposed Consent Orders, Mr Spagnolo consents to:
 - (a) An order suspending his registration as a company auditor for a period of 12 months.
 - (b) Certain undertakings to ASIC including in relation to restrictions on him auditing particular clients, the engagement of an RCA that ASIC specifically approves for the purpose of conducting reviews of a number of his audits after the suspension (**Peer Review**), and additional Continuing Professional Development (**CPD**) activities for three years.
 - (c) An order to pay ASIC's costs, in a fixed amount of \$20,000, within 28 days of any order.

Summary of ASIC's Contentions and Mr Spagnolo's Response

5. At the relevant times, the Respondent was a director and shareholder of Corporate Audit and Advisory Services Pty Ltd (ACN 142 211 247) (**CAAS**), an authorised audit company.
6. CAAS had been appointed as an auditor of Alliance Insurance Brokering Services Pty Ltd (now Alliance Management Group Pty Ltd) (ACN 095 376 882) (**AIBS**) since 21 June 2012. Mr Spagnolo was the RCA responsible for the audits of the financial reports of AIBS for the financial years ended 30 June 2019 (**FY19 Audit**) and 30 June 2020 (**FY20 Audit**).
7. ASIC alleges several instances of non-compliance by Mr Spagnolo with the Australian Auditing Standards (**ASAs**) issued by the Auditing and Assurance Standards Board (**AUASB**) and the requirements of the Act, in respect of the FY19 Audit and the FY20 Audit.

8. ASIC contends that for the purpose of s1292(1)(d)(i) and/or (ii) of the Act, Mr Spagnolo failed to perform adequately and properly the duties of an auditor and/or the duties or functions required by Australian law to be carried out or performed by a RCA in respect of the FY19 and FY20 Audits, and in particular that:
 - (a) contrary to paragraph 6 of ASA 500, Mr Spagnolo failed to obtain sufficient appropriate audit evidence of client monies held in trust (**Contention 1**);
 - (b) contrary to paragraph 15 of ASA 200, Mr Spagnolo failed to plan and perform the audits with an appropriate level of professional scepticism (**Contention 2**);
 - (c) contrary to paragraph 21 of ASQC1, Mr Spagnolo failed to implement policies and procedures to identify and evaluate circumstances and relationships that create threats to independence (**Contention 3**); and
 - (d) in breach of s990K of the **Act**, Mr Spagnolo failed to report to ASIC matters raised in the FY19 and FY20 audit management letters (**Contention 4**).
9. Mr Spagnolo accepted that, as a RCA, and the director of CAAS, he was responsible for the audits conducted by CAAS, and was required to comply with the relevant provisions in Part 7.8 of the Act applying to company audits which, in turn required compliance with the ASAs.
10. Mr Spagnolo also accepted that he did not comply with the professional standards referred to above and that this amounted to a failure on his part to carry out and perform adequately and properly his duties and functions pursuant to s1292(1)(d) in relation to the FY19 and FY20 Audits.
11. For the reasons explained in *Wessels*¹, we agree with the parties' submissions that we may proceed to consider this matter on the basis of the Agreed Facts and the Proposed Consent Orders.
12. CADB's jurisdiction and power to make orders nevertheless only arises under s1292(1)(d) if a Panel is independently satisfied that Mr Spagnolo has failed to carry out or perform adequately and properly the duties or functions of an auditor as required by s1292.

Approach to sub-section 1292(1)(d) – exercise of Board's power

13. Relevantly, s1292(1)(d) provides:

¹ [Wessels 05/QLD13 Decision of the Board 15 November 2013. paragraphs 6-23](#)

The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, ... :

(d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

(i) the duties of an auditor; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;

... by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

14. The Contentions advanced by ASIC refer to various provisions in the ASAs and the provisions of and regulations made under the Act. It is uncontroversial to propose that the requirements of the ASAs and relevant provisions and regulations under the Act in force from time to time will inform the general professional standard to be met by a RCA.²
15. In *Walker*³, the Board's task under s1292 was described as follows:

"It is beyond doubt that there are various sources from which an auditor's duties may arise and they include statutory provisions, the general law and codes and standards promulgated by professional bodies. In this case ASIC has framed a number of its contentions as being constituted by a contravention (or a failure to comply with) a specified statutory provision. However, whether there has been a contravention of any particular statutory provision is not a matter relevantly for us to decide. The exercise of our power under s1292 does not turn on our being satisfied as to a legal standard. It may be that the failure to carry out and perform a relevant duty is an offence, however that is not what we are called upon to determine by the terms of s1292. The question for us is the adequacy and propriety of the carrying out or performance of a relevant duty and that is to be judged by the Board making an evaluative and subjective determination (Albarran v CALDB [2006] FCAFC 69 at 45).

It is accepted in the accounting profession (including in the auditing and insolvency sectors) that registered company auditors and registered liquidators have a duty to observe what Campbell J called 'proper professional practice' (Re Vouris (2003) 47 ACSR 155 at para [100]) and what Branson J called 'accepted professional standards' (Goodman v ASIC [2004] FCA 1000). The codes and standards promulgated by professional bodies from time to time are widely regarded as being evidence, even if not technical proof, of what are accepted professional standards. This is not to say that those published codes

²[Evelt 17/NSW20 Decision of the Board 2 September 2021 paragraph 22](#)

³[Walker 06/VIC07 Decision of the Board 22 December 2008 paragraph 7.3](#)

and standards actually constitute duties of a practising accountant (although an auditor is obliged by law to conduct an audit in accordance with auditing standards – s307A(1) nor is it to say that accepted professional standards are actually defined or confined by the codes and standards any more than they are by obligations created by statute. However, it is relevant for us in reaching a view about what proper professional practice requires should be done or not done, to have regard to the published codes and standards.”

16. The assessment to be performed by the Board was discussed by the High Court in *Albarran v CALDB* (2007) 231 CLR 350, at 18:

*“In construing para (d) of s 1292(2), weight must be given to the introductory but controlling words ‘to carry out or perform adequately and properly’. Of the words ‘proper’ and ‘adequate’ as they appear here, Tamberlin J said in *Dean Willcocks v Companies Auditors and Liquidators Disciplinary Board* that they invite:*

‘The testing of performance against a relevant standard or benchmark of performance. The interpretation advanced for the appellant, in my view, is too narrow in requiring the identification of a specific duty directly imposed by legislation. The level of performance called for is that of “adequacy”. The standard is that the duty must be performed “properly”.

17. A detailed discussion of the principles which apply when dealing with an Application under s1292(1)(d) may be found in the Board’s decision in *ASIC v Evett*⁴.
18. The question then for this Panel is whether Mr Spagnolo has failed “*to carry out or perform adequately and properly*”, the duties or functions of an auditor, to an appropriate competency standard. In recent decisions⁵, the Board has adopted the terminology ‘**relevant benchmark**’ to refer to the standard to which it undertakes its assessment.
19. We also adopt the relevant benchmark terminology in this decision. We accept that Agreed Facts relevant to Mr Spagnolo’s compliance or otherwise with specific aspects of the statutory and regulatory framework in force at the time of the FY19 and FY20 Audits, will be instructive in determining whether he has met an appropriate competency/professional standard when carrying out and performing his audit duties.

⁴[Evett 17/NSW20](#)

⁵[Evett 17/NSW20](#) and [Loke 16/NSW20](#)

Relevant background and context to all Contentions

Mr Spagnolo and CAAS

20. Mr Spagnolo is a Fellow of the Institute of Chartered Accountants and a Fellow of the Certified Public Accountants.
21. Under auditor registration number 483464, he has been registered as an auditor since 19 January 2016 and practises at CAAS, an authorised audit company located in Griffith, New South Wales. Mr Spagnolo was a director and shareholder of CAAS at the relevant times.
22. CAAS had been appointed as an auditor of AIBS since 21 June 2012. Mr Spagnolo was the RCA responsible for the FY19 and FY20 Audits of AIBS.

AIBS

23. AIBS was a proprietary company that held an Australian Financial Services (**AFS**) licence and whose principal business was providing insurance broking services. Mr De Maria was the sole director of AIBS.
24. As part of its business, AIBS held funds on trust for insurers and/or insured, and it was required to comply with Part 7.8 of the Act relating to dealing with client money. Part 7.8 obliged AIBS, among other things, to place client's funds into a trust account and not withdraw such funds other than for certain permitted purposes.

Bank Accounts of AIBS

25. The following five bank accounts were held with the National Australia Bank (**NAB**) in the name of AIBS:
 - (a) Alliance Insurance Broking Services Cash Maximiser Account (**Cash Maximiser Account**);
 - (b) Alliance Insurance Broking Services Porsche Insurance Trust Account (**Porsche Trust Account**);
 - (c) Alliance Insurance Broking Services Trust Account (**AIBS Trust Account**);
 - (d) Alliance Insurance Broking Services Business Management Account (**Business Management Account**);
 - (e) Alliance Group Marketing Business Everyday Account (**Marketing Account**).

26. The AIBS Trust Account and Porsche Trust Account (collectively, **Trust Accounts**) were the two trust accounts held by AIBS for the purposes of receiving client monies.

Brenex Companies

27. The Brenex Companies (comprising Brenex Investments Pty Ltd and Clients Link Investments Pty Ltd) were involved in the property development business. They received investments to fund property projects. Each different development is operated under a special purpose vehicle.
28. The Respondent thought that Brenex and Clients Link were the same company.
29. Mr RP Spagnolo, who is a cousin of the Respondent and Mr Carioti were the directors of Brenex over the relevant period.

Clients Link Investment

30. In 2018 and 2019, AIBS arranged for monies held by it on trust for insurers and/or insured to be invested with Brenex and/or Clients Link.
31. In particular, AIBS made the following three transfers totalling \$7,900,000 from its Cash Maximiser Account to an account held with Westpac Banking Corporation in the name of Clients Link (**Clients Link Account**):
- (a) \$2,500,000 on 22 February 2018;
 - (b) \$2,400,000 on 19 March 2019; and
 - (c) \$3,000,000 on 14 May 2019.
- (collectively, **Clients Link Investment**).
32. The Clients Link Investment formed part of the reported funds held on trust by AIBS.
33. The first transfer of \$2,500,000 on 22 February 2018 was the subject of a written agreement between AIBS and Brenex. The agreement stated that the funds had been invested for a six-month term at a rate of 6% per annum (**Brenex Agreement**).
34. There were no further agreements entered into by AIBS in respect of the Clients Link Investment, and in particular:
- (a) there was no further agreement in respect of the first transfer of \$2,500,000 once the term of the initial agreement expired; and

- (b) there were never any agreements in place in respect of the further transfers of funds of \$2,400,000 and \$3,000,000.
35. AIBS received annual account statements from Clients Link (**Clients Link Statements**) in respect of the Clients Link Investment which:
- (a) were on a document with 'Clients Link Investments Pty Ltd' title at the top, and variously referred to the client account of 'Alliance Insurance Services Pty Ltd', 'Alliance Group' and 'Alliance Insurance Pty Ltd';
 - (b) indicated that the Clients Link Investment earned interest at 6% per annum, which was accrued monthly but was paid inconsistently; and
 - (c) stated the balance owed to AIBS from the Clients Link Investment was:
 - i. \$2,552,602 as at 30 June 2018;
 - ii. \$8,020,357 or \$8,025,809 as at 30 June 2019 (there are two different statements), the difference of which is accrued interest; and
 - iii. \$7,899,999 or \$8,136,469 as at 30 June 2020, the difference of which is accrued interest.
36. Until October 2020, AIBS received irregular interest payments from Clients Link in respect of the Clients Link Investment. Although interest was accrued monthly, payments were not received with any particular pattern (e.g. month or quarterly).

Fair Link Loan

37. ASIC alleges that the Clients Link Investment was then borrowed by Mr De Maria (**Fair Link Loan**) and improperly paid into a bank account for his own personal benefit. In each instance, the transfers of funds out of the Clients Link Account were made within a short period (eight days) following the deposit of funds from AIBS into the Clients Link Account.
38. In May 2021, ASIC commenced court proceedings against AIBS and Mr De Maria seeking restraint of the NAB bank accounts and an appointment of a provisional liquidator to AIBS. Subsequently, \$5m was paid into AIBS trust accounts pursuant to orders agreed to by AIBS and ASIC, which were endorsed by the Court.

A. AUDIT OF AIBS

Appointment of auditor

39. Initially from 16 August 2010 to 21 June 2016, Ms Jolly was the RCA responsible for auditing AIBS's profit and loss statements and balance sheets lodged with ASIC, and Mr Spagnolo was involved in the audits under her direction.
40. Mr Spagnolo obtained his audit registration in 2016. He was then the RCA responsible for auditing AIBS's profit and loss statements and balance sheets lodged with ASIC for the financial years ending 30 June 2017 (**FY17**), 30 June 2018 (**FY18**), 30 June 2019 (**FY19**) and 30 June 2020 (**FY20**).

Audits in FY19 and FY20

41. As an AFS licensee, AIBS is required to prepare and lodge an audited annual profit and loss statement and balance sheet, as well as the related auditor's report, with ASIC pursuant to s989B of the *Corporations Act*.
42. To meet the requirements of s989B(1) and (2) of the *Corporations Act*, AIBS prepared and issued its special purpose financial reports:
 - (a) for FY19 (**FY19 Financial Report**); and
 - (b) for FY20 (**FY20 Financial Report**)(collectively, **Financial Reports**).
43. The Financial Reports were signed by Mr De Maria as director of AIBS.
44. To meet the requirements of s989B(3) of the *Corporations Act*, CAAS prepared the following audit reports in respect of the Financial Reports:
 - (a) for FY19 (**FY19 Audit Report**); and
 - (b) for FY20 (**FY20 Audit Report**)(collectively, **Audit Reports**).
45. The Audit Reports were signed by Mr Spagnolo in his capacity as a director of CAAS, an authorised audit company.

Financial Reports

46. The Financial Reports provided the following information:

	30 June 2019	30 June 2020
Total assets	\$14,593,703	\$17,328,022
Net assets	\$3,701,172	\$5,580,438
Net profit	\$781,744	\$1,998,317

47. Note 8 to the financial statements in the Financial Reports provided that cash and cash equivalents balances were as follows:

	30 June 2019	30 June 2020
Cash at bank and in hand	\$76,485	\$266,236
Trust account	\$10,515,712	\$11,135,621
Cash and cash equivalents	\$10,592,197	\$11,401,857

48. Note 2(f) to the financial statements in the Financial Reports also stated that:

Cash and cash equivalents include cash on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less which are convertible to a known amount of cash and subject to an insignificant risk of change in value, and bank overdraft... [emphasis added]

Audit Reports

49. The Audit Reports included unmodified opinions that the financial reports of AIBS for FY19 and FY20 were in accordance with the *Corporations Act*, including:
- (a) giving a true and fair view of AIBS's financial positions as at 30 June 2019 and 30 June 2020 and of its performance for the years ended on those dates; and
 - (b) complying with all of the recognition and measurement requirements of the Accounting Announcements, and in accordance with the disclosure requirements of the Accounting Pronouncements that apply to a non-reporting entity.
50. The Audit Reports included the following statements in respect of the auditor's responsibility and independence:

Auditor's Responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. Those standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to

obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation of the financial report that gives a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independence

In conducting our audit, we have complied with the independence requirements of the *Corporations Act 2001*. We confirm that the independence declaration required by the *Corporations Act 2001*, which has been given to the directors of Alliance Insurance Broking Services Pty Ltd, would be in the same terms if given to the directors as at the time of this auditor's report.

51. ASIC's guide for Form FS71 *Auditor's Report for AFS Licensee* (attached to the form) provided the following guidance in completing the relevant form:

When expressing an opinion on the effectiveness of the specified internal controls and that each account required by sections 981B and 982B to be maintained by the licensee (the required accounts) has been operated and controlled in accordance with the relevant provisions of the Act, the auditor must obtain reasonable assurance that client money is correctly treated by the licensee and paid into or out of the required account only as required or permitted by Division 2 of Part 7.8 of the Corporations Act.

To obtain this assurance, the auditor would ordinarily perform audit procedures on client money that include:

- verifying that the licensee maintains the required accounts and that they are appropriately designated as a trust account or client segregated account;
- testing that client money is banked into the required account within one business day of receipt (section 981B and 982B);
- testing that payments into or out of the required account are only made as required or permitted under Division 2 of Part 7.8; and

- verifying that the licensee has appropriate processes for regularly reconciling the balances in the required account.

When expressing an opinion on the financial report/statements and to obtain reasonable assurance on compliance with the client money requirements of Division 2 of Part 7.8 of the Corporations Act the auditor would ordinarily perform substantive audit procedures on client money that includes:

- sample selection and testing of client balances through the use of external client confirmations;
- testing the client trust ledger reconciles to the bank reconciliations;
- investigation of reconciling differences in client money reconciliations that include clients' trust account and segregated accounts bank reconciliations;
- testing to ensure that monies are appropriately banked and applied; and
- audit procedures to reduce the risk of material misstatement of the financial report/statement for the classification and disclosure of clients' assets and the corresponding client liabilities.

CaseWare files

52. The audit files for FY19 and FY20 were managed via audit software utilised by CAAS, called 'CaseWare' (**CaseWare**).
53. The audit files for FY19 and FY20 extracted from CaseWare relevantly included the following information and statements:
- (a) The trust account balances comprise of the following accounts:

	30 June 2019	30 June 2020
AIBS Trust Account	\$1,425,298	\$2,745,223
Cash Maximiser Account	\$1,033,933	\$65,933
Porsche Trust Account	\$156,481	\$424,465
Clients Link Investment (excluding accrued interest)	\$7,900,000	\$7,900,000
Trust account	\$10,515,712	\$11,135,621

- (b) The reconciliations of trust funds were as follows:

	30 June 2019	30 June 2020
AIBS Trust Account		
Per trial balance	\$1,425,298	\$2,745,223
Per bank confirmation / bank statement	\$1,872,327	\$3,279,464
Reconciling items including:	(\$447,029)	(\$534,241)

<ul style="list-style-type: none"> Unpresented cheques / withdrawals Unpresented deposits 	(\$453,541) \$6,512	(\$544,828) \$10,587
Cash Maximiser Account		
Per trial balance	\$1,033,933	\$65,933
Per bank confirmation / bank statement	\$1,033,933	\$65,933
Reconciling items	-	-
Porsche Trust Account		
Per trial balance	\$156,481	\$424,465
Per bank confirmation / transaction history report	\$251,724	\$548,020
Reconciling items including:	(\$95,243)	(\$123,555)
<ul style="list-style-type: none"> Unpresented cheques / withdrawals Unpresented deposits 	(\$99,948) \$4,705*	(\$130,036) \$6,481*
Clients Link Investment		
Per trial balance	\$7,900,000	\$7,900,000
Per Clients Link Statement (account code 691/08)	\$8,020,357	\$8,136,469
Reconciling items including: - accrued interest	(\$120,357)	(\$236,469)

* *Balancing figures, being rounding up or down to full dollar amount.*

- (c) The CaseWare audit program for cash and cash equivalents for both FY19 and FY20 provided a summary of the audit work planned and the test results.
- (d) Procedures relating to understanding the entity and risk assessment were completed.
- (e) Audit risk of cash and cash equivalents balance was assessed as low. There was no fraud risk nor any 'significant risks' to be addressed.
- (f) Internal controls were assessed as effective with high reliance to be placed on them, including daily bank reconciliations and segregation of duties. However, none of the related work was documented, including tests of controls to be relied upon.
- (g) A conclusion that there were no assertions (Completeness, Existence, Accuracy and Cut-off, and Valuation) that could not be addressed by substantive testing.
- (h) There were substantive analytical procedures available (which could reduce the need for other procedures).
- (i) Analytical review for FY19 noted no significant change in cash, and for FY20 noted increase in cash was consistent with the increase in net profit.

- (j) Further substantive procedures were completed with no exceptions noted as stated in the audit working papers extract shown below:

FURTHER SUBSTANTIVE PROCEDURES		
<p>9. Obtain a list of all cash deposits/accounts held with financial institutions from the client (including any accounts closed during the year) and perform the following procedures:</p> <p>a. compare to prior period and obtain explanations for any additions/deletions; and</p> <p>b. discuss banking arrangements with the client to ensure all cash deposits/accounts are recorded on the list.</p>	<p>C</p>	<p>Completed, no exceptions Confirmed with Bank Confirmations Completed, no exceptions Spoke with Liborio</p>

However, there were no supporting workpapers documenting the work set out in the table above.

- (k) In relation to the audit of AIBS Trust Account, Cash Maximiser Account and Porsche Trust Account, the following audit evidence was obtained in FY19 and FY20:

- i. The AIBS Trust Account and Porsche Trust Account balances were checked against transaction history reports for one day, being 30 June 2020. The Cash Maximiser Account balance was checked against the monthly bank statement of June 2020. For the FY19 audit, Mr Spagnolo obtained bank confirmation from NAB, and trust balances were checked against it; and
- ii. For reconciling items, Mr Spagnolo only relied on the lists of transactions provided by AIBS. They were mainly described as commission expenses and GST incurred in June.

- (l) In relation to the audit of the Clients Link Investment, the following audit evidence was obtained in FY19 and FY20:

- i. Clients Link Statements for FY19 and FY20, which were provided to CAAS by AIBS; and
- ii. an invoice issued by AIBS to Clients Link on 29 June 2020 for interest receivable from January – June 2020 of \$236,469, with a handwritten note that the interest has been received by AIBS as per NAB bank account but has not been updated to the Clients Link statement, which was also provided to CAAS by AIBS.

54. The 'comments' and 'results' sections of the audit programs for FY19 and FY20 were completed in an essentially identical manner.

55. The audits were completed by other CAAS staff, and then reviewed by Mr Spagnolo. Mr Spagnolo could not confirm if he accessed the CaseWare files to

electronically sign off the workpapers or if he reviewed them only on screen or using a physical print out of the workpaper.

Legal Advice

56. During the process of undertaking the 2018 Financial Year Audit, Mr Spagnolo was provided with a copy of the Brenex Agreement and the Clients Link Statement. As part of the process of considering these documents, Mr Spagnolo sought and obtained legal advice in relation to whether AIBS was legally able to invest funds with Clients Link Investment, which as noted in paragraph 31 above, amounted to \$2,500,000.00. The legal advice was obtained on 13 July 2018. No further legal advice was obtained.

Management Letters

FY19 Management Letter

57. At the time of completing the FY19 Audit, as noted in paragraph 31 above, the Clients Link Investment had increased to \$7,900,000.00 (excluding interest).
58. Mr Spagnolo analysed the increased Clients Link Investment and documented that the amount invested was too high, and more of the money should be deposited into a “traditional bank” for “liquidity purposes”.
59. Mr Spagnolo made a judgment that the amount invested in the Clients Link Investment needed to be reduced, and as such, included it in a management letter to accompany the audit.
60. In November 2019, CAAS issued an audit management letter (**FY19 Management Letter**) to AIBS in respect of the FY19 audit conducted by it, which was signed by Mr Spagnolo.
61. The FY19 Management Letter identified the following concerns and made respective recommendations:
- (a) In respect of dealing with clients’ money:

1. Compliance with Part 7.8 of the Corporations Act - Part 1

Division 2 - Dealing with clients money

During our review of compliance with division 2 it is unclear whether the trust accounts are compliant with Section 981B(1)(a) which requires that accounts are designated as trust accounts.

Recommendation

It is a recommend (*sic.*) that all trust accounts are designated as an account for the purposes of Section 981B(1)(a) before the next audit.

(b) In respect of trust account deposits:

2. Trust Account Deposits

During our review of deposit holdings, we have identified is (*sic.*) a substantial amount of trust funds deposited in a high interest investment account. The deposited funds held with the investment account had increased significantly from previous years.

This in turn has seen the cash holdings with NAB significantly decrease over the period.

As the amounts are held on Trust in the capacity of an AFSL Licensee, there are relevant cash holding requirements that must be satisfied to comply with the ASIC's RG166.

Therefore, it would be prudent to allocate the majority of the client trust account cash holdings in an at call deposit account with one of the major banks, such as NAB.

Recommendation

We recommend that you transfer the majority of trust account cash holdings invested with Brennex Investments into the designated trust accounts with the NAB.

(c) In respect of special provisions relating to insurance:

4. Compliance with Part 7.8 of the Corporations Act - Part 2

Division 4 - Special provisions relating to insurance

During our review of compliance with division 4, the following issues were observed:

- There were policies where money was not received from the insured within the relevant period (< 90 days), and on each occasion there was no evidence of the required notification to the insurer; and
- There were also policies, where money received from insured was not paid to the insurer within the relevant period (< 90 days).

Recommendation

It is a recommend (*sic.*) that all requirements of Division 4 are complied with. In particular, it is recommended that processes are reviewed and changes implemented to reduce the high occurrence of breaches before the next audit.

(d) In respect of the registration of trading names:

6. Registration of trading names

The Insuremyclub and Porsche Insurance trading names are not registered with ASIC under Alliances-AFS license number.

Recommendation

Advise ASIC of these additional trading names.

62. ASIC was not notified of any of the issues raised in the FY19 Management Letter.
63. The FY19 Management Letter included a header title 'Management Response' as well as blank space for such a response. However, no management response from AIBS in respect of any of the issues raised and recommendations made was received (and none was documented).
64. AIBS did not respond to any of the concerns raised in the FY19 Management Letter.

FY20 Management Letter

65. At the time of completing the FY20 Audit, as noted in paragraph 31 above, the Clients Link Investment was 7,900,000.00 (excluding interest).
66. As with the FY19 Audit, Mr Spagnolo analysed the increased Clients Link Investment and again documented that the amount invested was too high, and more of the money should be deposited into a "traditional bank" for "liquidity purposes"
67. Mr Spagnolo considered that in order to ensure that it was more "liquid" (that is, that it could be withdrawn quickly if needed), it needed to be reduced, and as such, again included it in a management letter to accompany the audit.
68. In November 2020, CAAS issued an audit management letter (**FY20 Management Letter**) to AIBS in respect of the FY20 audit conducted by it, which was signed by Mr Spagnolo.
69. The FY20 Management Letter was in essentially identical terms to the FY19 Management Letter, and it identified the same concerns and made the same respective recommendations.
70. ASIC was not notified of any of the issues raised in the FY20 Management Letter.
71. The FY20 Management Letter included a header titled 'Management Response' as well as blank space for such a response.

72. After the FY20 Management Letter was issued, another staff member of CAAS met with the Financial Controller of AIBS on or around 3 February 2021 (being the first available opportunity to meet in person as a result of the lockdowns imposed by the Covid-19 pandemic) seeking an explanation and a remedial course of action by AIBS to attend to the matters raised in the FY20 Audit Management Letter.
73. Mr Spagnolo's evidence is that during this meeting, AIBS was put on notice that a failure to undertake such action before the next financial year would result in the inability to complete the audit or they would have to issue a qualified audit report at the very least. However, this "notice" is not documented in the FY20 Management Letter, the CaseWare file or elsewhere.
74. The response given at the meeting by the Financial Controller on behalf of AIBS in respect of the issues raised and recommendations made was documented via handwritten notes in the copy of the FY20 Management Letter.

B. MR SPAGNOLO'S EXPLANATIONS

75. Mr Spagnolo provided the following general explanations in relation to the Contentions:
 - (a) Mr Spagnolo thought that Alliance Insurance Pty Ltd and Alliance Insurance Brokering Services Pty Ltd were the same company.
 - (b) Mr Spagnolo thought that Brenex Investments Pty Ltd and Clients Link Investments Pty Ltd were the same company.
 - (c) Mr Spagnolo did not know what Brenex did, and he did not know about the business activities of Brenex or Clients Link. Mr Spagnolo was not aware if Brenex held funds in a bank.
 - (d) Mr Spagnolo was not involved in sourcing or setting up the Clients Link Investment.
 - (e) Mr Spagnolo was aware of the initial agreement for six months term in respect of the Clients Link Investment, but did not know what happened after that and was not aware of any subsequent agreements.
 - (f) Mr Spagnolo considered the Clients Link Statements were equivalent to a bank statement and had no reason to believe it was not sufficient for audit purposes. However, in respect of the CaseWare audit program where it stated that further substantive procedures in respect of cash & cash equivalents was 'completed, no exceptions' and 'Confirmed with Bank Confirmations' – Mr Spagnolo accepted there was an exception

because Clients Link was not a bank, a bank confirmation had not been relied upon, and this should have been written in the Assessment Sheet.

- (g) Mr Spagnolo understood that the investment was set up by Mr RP Spagnolo and was intended to enable AIBS to get a high rate of interest on the client trust account cash holdings. Further, he understood that the investment was receiving 6% interest because it was not as liquid. He considered this was 'fine' for 'a little bit of money'.
 - (h) Mr Spagnolo became concerned when the proportion of invested funds increased in 2019. Mr Spagnolo's main concern was in respect of the amount of funds invested and the liquidity of those funds. This concern was brought up in the FY19 Management Letter, and then again in the FY20 Management Letter.
 - (i) During the February 2021 meeting, AIBS was put on notice that a failure to undertake such action before the next financial year would result in the inability to complete the audit or that they would have to issue a qualified audit report at the very least.
 - (j) The fact that money was not received from the insured within the relevant period did not cause Mr Spagnolo any concerns in respect of AIBS complying with its AFS licencee as the money was paid, it was just late.
 - (k) Despite the issues raised in the FY19 Management Letter and FY20 Management Letter, Mr Spagnolo did not consider that the respective audit reports had to be qualified.
76. Having regard to Mr Spagnolo's role and responsibility as lead auditor for the AIBS' FY19 and FY20 Audits conducted by CAAS, under s989CA(2) of the Act, he was required to ensure that the audits were conducted in accordance with the Auditing Standards and included any statements or disclosures required by those Standards. To the extent there were matters that were not performed adequately and properly by CAAS, we are satisfied that these matters would reflect instances of Mr Spagnolo failing to meet the Relevant Benchmark.
77. ASIC contends that for the purpose of s1292(1)(d)(i) **and/or** (ii) of the Act, Mr Spagnolo failed to perform adequately and properly the duties of an auditor and/or the duties or functions required by Australian law to be carried out or performed by an RCA. Below we set out our consideration of each of the Contentions by reference to the Agreed Facts in order to make our evaluation of Mr Spagnolo's performance of his duties in relation to the FY19 and FY20 Audits. In the absence of submissions as to the basis upon which Mr Spagnolo's

performance comes within or falls outside the scope of s1292(1)(d)(ii), and for expediency, our consideration proceeds on the basis of s1292(1)(d)(i) only.

Contention 1 – obtaining sufficient and appropriate audit evidence

78. Contention 1 alleges that Mr Spagnolo failed to obtain sufficient appropriate audit evidence of client monies held in trust, specifically the NAB accounts and the Clients Link Investment.
79. Paragraph 6 of ASA 500 requires an auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.
80. Paragraph 5 of ASA 500 further relevantly provides that:
 - (a) Audit evidence means information used by the auditor in arriving at the conclusions on which the auditor’s opinion is based; and it includes both information contained in the accounting records underlying the financial report and information obtained from other sources.
 - (b) Sufficiency (of audit evidence) means the measure of the quantity of audit evidence. The quantity of the audit evidence needed is affected by the auditor’s assessment of the risks of material misstatement and also by the quality of such audit evidence.
 - (c) Appropriateness (of audit evidence) means the measure of the quality of audit evidence; that is, its relevance and its reliability in providing support for the conclusions on which the auditor’s opinion is based.

Trust Accounts

81. AIBS's trust account assets were held in the Cash Maximiser Account, Porsche Trust Account, AIBS Trust Account, and Clients Link Investment.
82. The trust account balances were identified and reconciled in the CaseWare files.
83. It is not in issue that:
 - (a) Mr Spagnolo did not request and obtain bank confirmation directly from NAB to confirm the trust accounts’ balances as at 30 June 2020;
 - (b) the balances were only supported by transaction history reports of one day, being 30 June 2020, for AIBS Trust Account and Porsche Trust Account and a monthly bank statement of June 2020 for Cash Maximiser Account;

- (c) Mr Spagnolo did not confirm directly with NAB whether all three bank accounts held by NAB were trust account in nature for both years;
 - (d) in respect of the unrepresented cheques/withdrawals referred to in reconciliations, did not obtain invoices, receipts and/or subsequent bank statements to confirm that the amount had been transferred; and
 - (e) Mr Spagnolo did not conduct tests of payments made into and out of those accounts to ensure that they were only made as required or permitted under Division 2 of Part 7.8 of the *Corporations Act*.
84. Having regard to the aspects of an auditor's duty to obtain sufficient audit evidence reflected in paragraph 5 of ASA 500, we are satisfied, based on the evidence outlined in paragraph 83 that Mr Spagnolo failed to carry out the duties of an auditor within the meaning of s1292(1)(d)(i).

Clients Link Investment

85. The Financial Reports of AIBS stated that Clients Link Investment comprised a large proportion of the total assets (classified as cash and cash equivalents) of AIBS, being 72% and 64% of total assets as at 30 June 2019 and 30 June 2020, respectively.
86. The CaseWare files identified balances of the Clients Link Investment, reconciliations conducted in respect of the trust funds, and the audit evidence obtained.
87. Mr Spagnolo raised the issue of the amount held in the Clients Link Investment and the need to transfer the amount into a "traditional" bank so that the investment was more "liquid" in the FY19 Management Letter and the FY20 Management Letter.
88. It was admitted by Mr Spagnolo that when conducting the FY19 and FY20 Audits, and in particular considering the Clients Link Investment:
- (a) he did not obtain the Clients Link statements directly from Brenex/ Clients Link and did not seek audit evidence to confirm the nature and the term of the Clients Link Investment, noting that:
 - i. the Brenex Agreement in respect of the \$2,500,000 invested for a six months term did not satisfy the classification as cash and cash equivalents, which required it to be a short-term investment with maturity of three months or less;
 - ii. there were no other agreements in respect of the Clients Link Investment; and

- iii. Mr Spagnolo did not understand the nature of the Clients Link Investment;
 - (b) he did not appropriately evidence his assessment as to whether the Clients Link Investment was compliant with the 'client money account' requirements of s981B(1)(a) & (b) and/or s981C(1) of the *Corporations Act*; and
 - (c) in respect of the reconciling items noted for Clients Link Investment, except for one invoice, he did not seek evidence to confirm:
 - i. whether the nature of the difference noted in 2019 was consistent with the brief explanation provided in the AIBS' trust account reconciliation and whether the amount had been received by AIBS as at 30 June 2019; and
 - ii. whether AIBS had received the interest invoiced as at 30 June 2020.
89. The audit procedures referred to above in respect of the Clients Link Investment were relevant audit duties within the meaning of s1292(1)(d)(i). Details of the scope of what was involved to adequately perform the duty were reflected by the terms of ASA500.6 that we have outlined in paragraphs 79 and 80. Based on the evidence outlined in paragraph 88, we are satisfied Mr Spagnolo did not adequately carry out his duty in the FY19 and FY20 Audit.

Conclusion

90. Based on our conclusions in paragraphs 84 and 89, we are satisfied that Mr Spagnolo failed to perform the duties of an auditor within the meaning of s1292(1)(d)(i) of the Act.
91. We are therefore satisfied that Contention 1 is established.

Contention 2 – exercising professional scepticism

92. Contention 2 alleged that, contrary to paragraph 15 of ASA 200, Mr Spagnolo failed to plan and perform the audits with an appropriate level of professional scepticism. At the hearing, ASIC confirmed that 'the primary contention is that such scepticism was not exercised when Mr Spagnolo was considering the Clients Link Statements'.
93. Paragraph 15 of ASA 200 provides that an auditor is required to plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.
94. Paragraph 13 of the ASA 200 further relevantly provides that:

- (a) Professional scepticism means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of audit evidence.
 - (b) Misstatement means a difference between the amount, classification, presentation, or disclosure of a reported financial report item and the amount, classification, presentation, or disclosure that is required for the item to be in accordance with the applicable financial reporting framework. Misstatements can arise from error or fraud.
 - (c) Risk of material misstatement means the risk that the financial report is materially misstated prior to audit. This consists of two components, described as follows at the assertion level:
 - i. Inherent risk means the susceptibility of an assertion about a class of transaction, account balance or disclosure to a misstatement that could be material, either individually or when aggregated with other misstatements before consideration of any related controls.
 - ii. Control risk means the risk that a misstatement that could occur in an assertion about a class of transaction, account balance or disclosure and that could be material, either individually or when aggregated with other misstatements, will not be prevented, or detected and corrected, on a timely basis by the entity's internal control.
95. The application of professional scepticism is of central importance to the performance of an audit and the need for professional scepticism in an audit cannot be overemphasised.⁶
96. The explanatory material included as part of the ASA 200 compilation that applied at the time of the FY19 and FY20 Audits provides further guidance on professional scepticism as follows:

A20. Professional scepticism includes being alert to, for example:

- *Audit evidence that contradicts other audit evidence obtained*
- *Information that brings into question the reliability of documents and responses to enquiries to be used as audit evidence*
- *Conditions that may indicate possible fraud*

⁶[Aug 2012 AUASB Bulletin Professional Scepticism in an Audit of a Financial Report](#)

- *Circumstances that suggest the need for audit procedures in addition to those required by the Australian Auditing Standards.*

A21. *Maintaining professional scepticism throughout the audit is necessary if the auditor is, for example, to reduce the risks of:*

- *Overlooking unusual circumstances*
- *Over generalising when drawing conclusions from audit observations*
- *Using inappropriate assumptions in determining the nature, timing, and extent of the audit procedures and evaluating the results thereof.*

A22. *Professional scepticism is necessary to the critical assessment of audit evidence. This includes questioning contradictory audit evidence and the reliability of documents and responses to enquiries and other information obtained from management and those charged with governance. It also includes consideration of the sufficiency and appropriateness of audit evidence obtained in the light of the circumstances, for example, in the case, where fraud risk factors exist and a single document, of a nature that is susceptible to fraud, is the sole supporting evidence for a material financial report amount.*

A23. *The auditor may accept records and documents as genuine unless the auditor has reason to believe the contrary. Nevertheless, the auditor is required to consider the reliability of information to be used as audit evidence. In cases of doubt about the reliability of information or indications of possible fraud (for example, if conditions identified during the audit cause the auditor to believe that a document may not be authentic or the terms in a document may have been falsified), the Australian Auditing Standards require that the auditor investigate further and determine what modifications or additions to audit procedures are necessary to resolve the matter.*

A24. *The auditor cannot be expected to disregard past experience of the honesty and integrity of the entity's management and those charged with governance. Nevertheless, a belief that management and those charged with governance are honest and have integrity does not relieve the auditor of the need to maintain professional scepticism or allow the auditor to be satisfied with less than persuasive audit evidence when obtaining reasonable assurance.*

97. Mr Spagnolo admitted that when auditing the financial reports of AIBS in FY19 and FY20, he did not undertake a critical assessment of the audit evidence relating to the Clients Link Investment, and he was not alert to a number of conditions, which could have indicated possible misstatement due to error or fraud.

98. In particular, in respect of the Clients Link Statements:

- (a) the Clients Link Statements were not obtained directly from Brenex/Clients Link;
 - (b) the confirmation requests were either not sent to Brenex/Clients Link, or the responses to such requests were not received from Brenex/Clients Link. They were provided to CAAS by the Group Financial Controller of AIBS;
 - (c) there were anomalies and inconsistencies in the Client Link Statements such as, for example:
 - i. the statements variously listed investor names as 'Alliance Group' and 'Alliance Insurance Pty Ltd' (in FY19), and 'Alliance Insurance Services Pty Ltd' (in FY20), and none of them referred to AIBS;
 - ii. there were two statements in respect of the balance as at 30 June 2019, and they contained different investment balances, namely \$8,020,357, and \$8,025,809. The difference in the amount was due to accrued interest, but this was not addressed in the audit working papers for cash and cash equivalents; and
 - iii. having regard to the amount and nature of the investment, the statement had some unusual features such as, for example, there were blank fields, there was no ACN and there was no letterhead.
99. Independent or external verification and confirmation of information received from the entity being audited is a key element of demonstrating that appropriate professional scepticism has been applied. Mr Spagnolo's conduct in paragraphs (a) and (b) above, is evidence of a lack of exercise of scepticism and rigour.
100. Further, there were anomalies and inconsistencies on the face of the Client Link Statements, there was no evidence that matters had been investigated, followed up or critically assessed by Mr Spagnolo and the audit evidence retained in relation to the Clients Link Statements was not sufficient to satisfy the requirements of ASA 500.6.
101. Mr Spagnolo's evidence was that he did not understand the Clients Link Investment, he considered the Clients Link Statements were equivalent to a bank statement and had no reason to believe it was not sufficient for audit purpose. In respect of the CaseWare audit program where it stated that further substantive procedures in respect of cash & cash equivalents was 'completed, no exceptions' and 'Confirmed with Bank Confirmations' – Mr Spagnolo accepted there was an exception because Clients Link was not a bank, a bank confirmation had not been relied upon, and this should have been written in the Assessment Sheet.

102. It is not in issue that Mr Spagnolo was the Lead Auditor in each of the FY19 and FY20 AIBS' audits and s989CA(2) of the Act imposed the duty on him to ensure those audits were conducted in accordance with the Auditing Standards including ASA200. The Auditing Standards under s336(1) of the Act are legislative instruments and we are satisfied that conducting an audit in accordance with the Auditing Standards reflects the duty of an auditor within the meaning of s1292(1)(d)(i). Relevant aspects of the scope of the duty to exercise professional scepticism as indicated by ASA 200 are outlined in paragraphs 93-96.
103. The matters of evidence set out in paragraphs 97 and 98 above demonstrate in our view that Mr Spagnolo failed to apply appropriate professional scepticism in the FY19 and FY20 Audits and accordingly we are satisfied Mr Spagnolo failed to carry out his duties within the meaning of s1292(1)(d)(i) of the Act.
104. We are therefore satisfied that Contention 2 is established.

Contention 3 – policies & procedures and threats to independence

105. Contention 3 alleged the failure by Mr Spagnolo to implement or follow proper policies and procedures in identifying and evaluating the potential conflict of interest in terms of CAAS auditing financial reports of AIBS having regard to his relationship to Mr Roy Patrick Spagnolo (**Mr RP Spagnolo**).
106. Mr Spagnolo's explanation was that he did not consider that he had a conflict of interest due to his relationship with Mr RP Spagnolo, and he did not know if he disclosed the relationship to the audit team.
107. Mr Spagnolo signed independence declarations in respect of the FY19 and FY20 Audits, as required by s307 of the Act, confirming that, to the best of his knowledge and belief, there have been:
- (a) no contraventions of the auditor independence requirements as set out in the Corporations Act in relation to the audit; and
 - (b) no contraventions of any applicable code of professional conduct in relation to the audit.
108. Further, by signing the Form FS71 lodged with ASIC for FY19 and FY20, Mr Spagnolo declared that:

11 Independence and Quality Control

We have complied with the relevant ethical requirements relating to assurance engagements, which include independence and other requirements founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

The firm applies Australian Standard on Quality Control ASQC 1 Quality Control for Firms that Perform Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements, and accordingly maintains a comprehensive system of quality control including documented policies and procedures regarding compliance with ethical requirements, professional standards and applicable legal and regulatory requirements.

109. Auditor independence is fundamental to the credibility and reliability of auditor's reports and therefore to the credibility and reliability of audited financial reports. The *Corporations Act* sets out the general requirements for auditor independence, which are supplemented by the independence requirements of the ASAs and Accounting Professional and Ethical Standards Board's (APESB's) 100 Code of Ethics for Professional Accountants.
110. The Agreed Facts did not address whether or not Mr Spagnolo in fact had a conflict of interest; rather it addressed the issue of whether he failed to implement or follow proper policies and procedures in identifying and evaluating the potential conflict of interest, having regard to paragraph 21 of ASQC1.
111. It was accepted by Mr Spagnolo that there was a potential for a conflict of interest to exist in respect of CAAS undertaking an audit of financial reports of AIBS because:
 - (a) AIBS made a substantial investment with Brenex and/or Clients Link;
 - (b) Mr RP Spagnolo was one of the two directors of Brenex, and Clients Link was part of the Brenex Companies which he jointly operated with Mr Carioti;
 - (c) The Respondent, as the director of CAAS who signed the Audit Reports, held primary responsibility for the audits of AIBS;
 - (d) Mr RP Spagnolo is a cousin of Mr Spagnolo;
 - (e) Mr RP Spagnolo has a long standing relationship with AIBS' sole director, and originally introduced the Respondent to that director; and
 - (f) The Respondent was aware of the above matters.
112. Conflicts of interest (including potential or perceived) exist on a spectrum of severity and can take many forms. In considering the significance of any particular matter, qualitative as well as quantitative factors should be taken into account. For example, factors indicating a particular closeness with a remote relative may suggest the relationship more closely resembles that of a close family member. The consequences of not recognising the risk of conflicts in an

audit context can undermine confidence in the integrity of the audit, and the perception of conflict alone can be enough to cause concern.

113. Paragraph 21 of ASQC1 provides that the *auditing firm* is required to establish policies and procedures designed to provide it with reasonable assurance that the firm, its personnel and, where applicable, others subject to independence requirements (including network firm personnel) maintain independence where required by relevant ethical requirements, laws and regulations.
114. Paragraph 21 of ASQC1 further provides that such policies and procedures shall enable the firm to:
 - (a) Communicate its independence requirements to its personnel and, where applicable, others subject to them; and
 - (b) Identify and evaluate circumstances and relationships that create threats to independence, and to take appropriate action to eliminate those threats or reduce them to an acceptable level by applying safeguards, or, if considered appropriate, to withdraw from the engagement, where withdrawal is possible under applicable law or regulation.
115. More detail is provided in ASQC1 paragraph 22, which states that such policies and procedures shall require:
 - (a) Engagement partners to provide the firm with relevant information about client engagements, including the scope of services, to enable the firm to evaluate the overall impact, if any, on independence requirements;
 - (b) Personnel to promptly notify the firm of circumstances and relationships that create a threat to independence so that appropriate action can be taken; and
 - (c) The accumulation and communication of relevant information to appropriate personnel so that:
 - i. The firm and its personnel can readily determine whether they satisfy the independence requirements;
 - ii. The firm can maintain and update its records relating to independence; and
 - iii. The firm can take appropriate action regarding identified threats to independence that are not at an acceptable level.
116. Mr Spagnolo accepted that within CAAS, and for the purposes of the FY19 and FY20 Audits, he was responsible for implementing the firm's system of quality control and complying with ASQC1 paragraph 21.

117. ASIC also relied on the following agreed facts relevant to Contention 3:
- (a) The Respondent did not disclose to CAAS, and the CAAS audit team, his relationship to Mr RP Spagnolo;
 - (b) The Respondent did not document on the CaseWare file or elsewhere the evaluation of the relationship and whether it could create threats to his and the audit team's independence in conducting the audits; and
 - (c) The Respondent did not take any appropriate action to eliminate threats to independence or reduce them to an acceptable level.
118. To the extent audit firm quality control procedures mandated by ASQC1 identify duties and/or duties of a function under s1292(1)(d), their terms may be relevant to our evaluation of the existence and scope of a duty within s1292(1)(d)(i) or (d)(ii) and the professional standard to be met by a RCA in the performance of that duty. We are satisfied the scope of Mr Spagnolo's duty under s1292(1)(d)(i) included the matters outlined in paragraphs 113 and 114 above and further explained by paragraph 115.
119. Based on the particular circumstances set out in paragraphs 111 and 117, and Mr Spagnolo's admissions, we are satisfied having regard to the scope of the relevant duty identified by ASQC1 as outlined in paragraphs 113-115, that Mr Spagnolo failed to implement on behalf of CAAS, or take adequate or proper steps to follow, the policies and procedures identified by ASQC1 as necessary to implement and follow to identify and evaluate the potential for actual (or perceived) conflicts of interest that may have existed in terms of CAAS auditing the FY19 and FY20 financial reports of AIBS.
120. In our view, Mr Spagnolo should have identified and disclosed his family relationship to the CAAS audit team and appropriately documented his evaluation of the circumstances and his conclusions, including whether and how they could create a threat to independence and the rationale for the conclusion reached as to what steps, if any, were necessary to address any threats. The duty identified by ASQC1 involves careful evaluation of each relationship and the associated circumstances. Whilst the relationship that is the subject of Contention 3 is not a direct relationship between the Respondent and the audit client, in our evaluation it is nevertheless sufficiently close to establish the Contention.
121. For the reasons set out above, we are satisfied that Contention 3 is established.

Contention 4 – reporting s990K matters to ASIC

122. Contention 4 alleges that Mr Spagnolo failed to report to ASIC the matters raised in Management Letters issued by CAAS to AIBS in approximately November 2019 and November 2020 in respect of the FY19 and FY20 Audits.
123. Section 990K of the *Corporations Act* requires an auditor of the AFS licensee to report to ASIC (by lodging a written report with ASIC within 7 days after becoming aware of the matter) any matter that, in the opinion of the auditor:
- (a) Has adversely affected, is adversely affecting or may adversely affect the ability of the licensee to meet the licensee's obligations as a licensee (990K(2)(a)); or
 - (b) Constitutes or may constitute a contravention of:
 - i. A provision of Subdivision A or B of Division 2 (or a provision of regulations made for the purposes of such a provision) (990K(2)(b)(i)); or
 - ii. A condition of the licensee's licence (990K(2)(b)(iv)).
124. ASIC has framed Contention 4 as a breach of section 990K of the Act. Whether there has been a contravention of any particular statutory provision is not a matter relevantly for the Board to decide. We refer to and repeat what was said in *Walker*⁷ that the exercise of the Board's power under s1292 does not turn on our being satisfied to a legal standard. Our role is to determine whether Contention 4 has been established on the evidence, that is, whether Mr Spagnolo has failed to carry out or perform the duties under s1292(1)(d) and in making that determination our role is to evaluate the scope of the relevant duty or duties identified by ASIC's contention within the meaning of s1292(1)(d) and whether they were performed adequately and properly.
125. In Contention 4, ASIC points to a duty on Mr Spagnolo, as an auditor of an AFS licensee (**AFSL**), to notify ASIC of any matters falling within the scope of s990K. We agree that the obligation on an AFSL auditor to notify ASIC of those matters identified by s990K of the Act is a duty within the meaning of s1292(1)(d)(i).
126. Auditor reporting obligations have been part of Australian law for many years and encourage the timely notification of possible breaches of law. Given the 7 day reporting time frame under section 990K, it is likely that for most matters, the auditor would not wait until they lodge the FS71 to report matters to ASIC.

⁷ [Walker 06/VIC07 Decision of the Board 22 December 2008 paragraph 7.3](#)

127. In this matter, in Forms FS71 titled 'Auditor's Report for AFS Licensee' (**Forms FS71**) lodged with ASIC for FY19 and FY20, section 12 titled 'Section 990K Matters' was left blank by Mr Spagnolo, thereby confirming that all relevant matters had been reported to ASIC as required by s990K of the *Corporations Act*, either previously or in other parts of that form.
128. No other information or details were provided in Forms FS71 regarding any matters which were required to be reported to ASIC under s990K (for example, section 10 titled 'Non-material matters' was also left blank), and no such matters were otherwise reported by Mr Spagnolo to ASIC.
129. It was accepted by Mr Spagnolo that he should have properly considered whether the following matters raised in the FY19 and FY20 Management Letters were potential contraventions by AIBS within the scope of s990K, which should have been notified to ASIC:
- i. A non-compliance with s981B(1)(a) of the Act requiring AIBS to pay money into an account with an Australian ADI, or of a kind prescribed by Regulations, and is designated as an account for the purpose of s981B of the Act.
 - ii. A non-compliance with the obligation on AIBS to pay money from the insured to the insurer and receive money from the insured within the relevant period (<90 days) as required under s985B of the Act.
 - iii. A non-compliance with the cash holding requirements set out in ASIC's Regulatory Guide 166 titled 'Licensing: Financial Requirements', noting that according to Forms 71 lodged on behalf of AIBS for FY19 and FY20, AIBS had been subject to 'Option 2' cash needs requirements as part of the AFS licence, and:
 - iv. A non-compliance with the requirement on AIBS to register all trading names utilised by it with ASIC ('Insuremyclub' and 'Porsche Insurance'), as required by s914A(8) of the *Corporations Act* and reg 7.06.04(1)(b) of the *Regulations*.
130. The issues identified in the FY19 and FY20 Management Letters relating to client money accounts and cash holding requirements were serious, and the potential deficiencies could have had significant consequences.
131. In his s19 examination, Mr Spagnolo confirmed that there was no record on the audit file documenting any consideration by him (or the audit team) about whether any matters raised in the Management Letters should be reported to ASIC. Mr Spagnolo said "it would have just been a discussion and I would have made the call".

132. Aspects of Mr Spagnolo's initial evidence about the matters raised in the Management Letters was troubling. For example, Mr Spagnolo's view was that the fact that money was not received from the insured within the relevant period did not cause him any concerns in respect of AIBS complying with its AFS licence "as the money was paid, it was just late". This is also despite the reference in the Management Letters to the "high occurrence of breaches". Mr Spagnolo later seemed to accept that AIBS' failure to address the issues raised in the Management Letters would result in the inability to complete the audit or that they would have to issue a qualified audit report at the very least.
133. AFSL audits, encompassing both a financial and compliance audit component, are a specialised area of audit practice. Mr Spagnolo's evidence was that prior to taking on the audit of AIBS and one other AFSL entity, he had only audited regional, not-for-profit community organisations and self-managed super funds. He now accepts that the audit engagements in respect of both AFSL entities was beyond his capability and that of his firm.
134. We are satisfied based on the Agreed Facts and Mr Spagnolo's admissions, that Mr Spagnolo, failed within the meaning of s1292(1)(d)(i) to carry out the duty to report we have identified in paragraph 125.
135. This duty involved properly considering matters brought to his attention in the FY19 and FY20 Audits and forming (and documenting) an opinion on whether there was an obligation to notify ASIC about any of the matters raised in the Management Letters. There is no evidence that this occurred. Due to Mr Spagnolo's failures, ASIC was not made aware in 2019 or 2020 of potential contraventions by AIBS.
136. We are therefore satisfied that Contention 4 is established.

Parties submissions on Proposed Consent Orders

137. In the circumstances, our jurisdiction under s1292(1)(d) has been enlivened.
138. The parties submitted Proposed Consent Orders, which they asked the Board to make, as follows:
1. *Pursuant to sub-section 1292(1) of the Corporations Act 2001 (Cth) (Act), that the registration of Mr Rocco (Roy) Luciano Spagnolo (Mr Spagnolo) as a company auditor be suspended for a period of 12 months.*
 2. *Pursuant to sub-section 1297(1)(a) of the Act, that the order for suspension in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Spagnolo a notice of the decision pursuant to sub-section 1296(1)(a) of the Act.*

3. *Pursuant to sub-section 1292(9)(b) of the Act, that Mr Spagnolo is required to give undertakings in the form attached as Schedule A to these orders.*
4. *Pursuant to section 223 of the Australian Securities and Investments Commission Act 2001 (Cth), that Mr Spagnolo pay the Applicant's costs in the fixed sum of \$20,000 within twenty-eight (28) days of the date of this order.*

139. The undertaking proposed by the parties is set out in Schedule A.

140. At the hearing, ASIC submitted that the sanctions proposed are warranted in this matter for the following main reasons:

- (a) This is not a case of a minor technical breach, but is a case where the audit was profoundly deficient and the auditor failed in respect of fundamental responsibilities and functions, and this occurred over two consecutive audits;
- (b) The sanctions proposed are aimed at protection of the public:
 - i. Firstly, by ensuring that Mr Spagnolo undertakes further education via CPD (continuing professional development) points which are specifically targeted to areas of concern. The proposed orders would also ensure that Mr Spagnolo is provided with guidance and oversight by a suitable peer reviewer and that temporarily he does not undertake higher risk audits;
 - ii. Secondly the proposed orders also provide for general deterrence. That is, deterring future misconduct of other auditors, as the imposition of these sanctions would emphasise the seriousness of consequences of non-compliance with their duties;
 - iii. Thirdly, and in particular, if the reasons are published, the decision would serve the purpose of educating the auditing profession about issues that can arise during the audit, what conduct falls below the level and standard of performance required by s1292(1)(d), and potential consequences of failures to comply with their duties as auditors;
 - iv. Fourthly, ASIC is performing its function of overseeing, investigating and enforcing failures by registered company auditors that contributes to upholding public confidence. If it is established an auditor fails to meet an appropriate standard of performance, the Board may perform its function of imposing an appropriate sanction to protect the public.

- (c) Finally, the impact of a proposed sanction on the auditor is to be given limited consideration, as the Board's jurisdiction is protective and its prime concern is the protection of the public.
141. ASIC submitted that the 12 month suspension proposed is appropriate and would also allow an appropriate interval for Mr Spagnolo to carry out the additional steps of further education and guidance from the proposed peer review.
142. ASIC further submitted that any longer period of suspension would not appropriately reflect the various mitigating factors, which were identified by ASIC at the hearing as:
- (a) There has been no allegation of any dishonesty or malice and Mr Spagnolo's good character is not in contention.
 - (b) Mr Spagnolo has been cooperative with ASIC at all stages in these proceedings, and has acted in a manner that reflects an appropriate standard of professionalism and integrity;
 - (c) Mr Spagnolo has recognised and accepted breaches of his duties and voluntarily taken some steps since these breaches have occurred and has shown a willingness and preparedness to carry out further steps in terms of education and compliance; and
 - (d) Overall, ASIC accepts that Mr Spagnolo has shown remorse and insight, such that there is limited need for personal deterrence, as such.
143. It was further submitted by ASIC that the undertakings to the proposed consent orders are appropriate as they ensure that Mr Spagnolo, for a period of time, does not undertake audits of higher risk clients. They also ensure that Mr Spagnolo will undertake further necessary education via tailored CPD requirements and incorporate supervision requirements that will ensure that Mr Spagnolo's auditing work is reviewed by an appropriately qualified peer who can provide professional guidance and feedback to Mr Spagnolo, and completion of some of these audits can be overseen by ASIC.
144. At the hearing, the approach taken by Mr Spagnolo's Counsel was to fully endorse the submissions made by ASIC on the proposed sanctions. It was shortly submitted on behalf of Mr Spagnolo that a 12 month suspension represents an apt period to meet the aim of protection of the public and the regulator's concerns, and also takes into account the Respondent's character referees, co-operation, remorse and contrition.

Decision and Orders

145. The Board's power to sanction an RCA under sub-sections 1292(1) and 1292(9) of the Act is discretionary.
146. The relevant principles to be considered in determining appropriate sanctions are set out in the Board's decision in *ASIC v McVeigh*⁸ and *ASIC v Fernandez*⁹. Key aspects of the principles are summarised in the Board's [Practice Note 1](#) (Sept 2020) as follows:
- (a) The principal purpose of the proceedings is protective rather than punitive and the guiding principle is the protection of the public.
 - (b) The protection of the public includes ensuring that those who are unfit to practise do not continue to hold themselves out as fit to practise.
 - (c) The protection of the public includes deterrence.
 - (d) It also includes the maintenance of a system under which the public can be confident that practitioners will know that breaches of duty will be appropriately dealt with and that the regulatory scheme is effective in maintaining high standards of professional conduct.
 - (e) The impact of the Board's orders on the registered auditor is to be given limited consideration, as the prime concern of the Board is the protection of the public.
 - (f) Relevant matters include the Respondent's recognition and acceptance of breaches of duty, attitude to compliance generally and willingness to improve. Genuine acceptance of failure, contrition and remorse are necessary prerequisites to rehabilitation.
 - (g) If a Respondent is considered not to be fit and proper, suspension is not appropriate unless the Board can be confident that the Respondent would be fit and proper after the period of suspension.
147. In our view, it is appropriate to make the orders sought by the parties.
148. We consider that the Proposed Consent Orders are within a permissible range of sanctions and also take into account that ASIC, the guardian of the relevant public interest, is agreeable to the proposed orders.
149. Mr Spagnolo has cooperated fully with ASIC during the course of its investigation, and the admissions made by him in this matter demonstrate a level of contrition and remorse. Mr Spagnolo's good character, as attested by

⁸ [McVeigh 10/VIC08](#)

⁹ [Fernandez 02/VIC13](#)

his referees has also been a factor considered by the Panel in forming our view as to whether the Board can be confident Mr Spagnolo will be fit and proper to remain registered as an auditor following a period of suspension.

150. Mr Spagnolo's agreement to give the undertakings set out in Schedule A, and the steps he has already voluntarily undertaken, demonstrate both a recognition by him that his conduct did not meet the required professional/competency standard of a RCA, and a willingness on his part to improve.
151. The suspension of Mr Spagnolo's registration as an auditor for twelve months provides time for him to complete further targeted education to ensure he will in future be equipped with appropriate specialist audit knowledge and understanding to perform his duties at an appropriate professional standard.
152. The peer review process contemplated in Schedule A establishes a mechanism to provide support to Mr Spagnolo in the initial audits he is involved in following the resumption of his registration. It will also provide visibility to ASIC and should any material issues be identified by the peer reviewer, ASIC will be able to take further appropriate action.
153. For the reasons set out above, we have decided to exercise our powers under s1292 of the Act by making the orders set out below.
154. We make the following orders:
 1. Pursuant to sub-section 1292(1) of the *Corporations Act 2001* (Cth) (**Act**), that the registration of Mr Rocco (Roy) Luciano Spagnolo (**Mr Spagnolo**) as a company auditor be suspended for a period of twelve (12) months.
 2. Pursuant to sub-section 1297(1)(a) of the Act, that the order for suspension in paragraph 1 will come into effect at the end of the day on which the Board gives Mr Spagnolo a notice of the decision pursuant to sub-section 1296(1)(a) of the Act.
 3. Pursuant to sub-section 1292(9)(b) of the Act, that Mr Spagnolo give undertakings to ASIC, hereby noted by the Board, as set out in Schedule A to these orders.
 4. Pursuant to section 223 of the ASIC Act, that Mr Spagnolo pay the Applicant's costs in the fixed sum of \$20,000 within twenty-eight (28) days of the date Mr Spagnolo is provided with a notice of this decision pursuant to sub-section 1296(1)(a) of the Act.

Inge Kindermann
Panel Chairperson
20 September 2023

Schedule A - Undertaking from Mr Spagnolo to ASIC noted by Board

Restrictions on particular clients

1. Mr Spagnolo, in his capacity as an individual or lead auditor, must not audit any non-audit clients of his (or where the client is a client of another entity that Mr Spagnolo is a director or owns at least 50% interest). This undertaking is to remain in place indefinitely, but Mr Spagnolo may be released from this undertaking by agreement of ASIC upon application by Mr Spagnolo to ASIC.
2. Mr Spagnolo will not audit entities holding an Australian Financial Services Licence (**AFSL**) and listed entities for a period of 3 years.

Audit reviews by Peer Reviewer post-suspension

3. Mr Spagnolo must engage at his own cost, an ASIC approved registered company auditor (**Peer Reviewer**) to review and report to ASIC the review findings of his:
 - a. first three audits after the suspension; and
 - b. a client that represents no less than 15% of Mr Spagnolo's anticipated remuneration (being the total remuneration received by Mr Spagnolo and/or an authorised audit company where Mr Spagnolo is the lead auditor);or, if there is no client that represents no less than 15% of Mr Spagnolo's anticipated remuneration, the next largest client;
unless such a client is already captured by the first three audits, in which case paragraph 3(b) does not apply.

AFSL audit reviews by Peer Reviewer

4. Mr Spagnolo must engage at his own cost, a Peer Reviewer to review and report to ASIC the review findings of his first two audits of AFSL entities after the 3 year period referred to at undertaking 2 above.

Arrangements for engagement of Peer Reviewer

5. In order to enable ASIC to consider whether a prospective Peer Reviewer is suitable Mr Spagnolo shall, within 30 days of his registration as an auditor resuming, provide ASIC with a curriculum vitae of at least one proposed Peer Reviewer together with draft written terms for the proposed engagement of the Peer Reviewer to review the Audits and if applicable, other audits that Mr Spagnolo will conduct.
6. Mr Spagnolo will ensure that a term of the retainer with which the Peer Reviewer must agree to comply is that as soon as practicable, and no later than 3 months after he completes each audit the Peer Reviewer will:

- 6.1. provide ASIC with an opinion in writing as to whether each audit has in all material respects been conducted in accordance with the *Corporations Act 2001* (Cth), the *Corporations Regulations 2001* (Cth) and standards promulgated by the Auditing and Assurance Standards Board, the Australian Accounting Standards Board and the Accounting Professional & Ethical Standards Board, including the APES 110 Code of Ethics for Professional Accountants (**Relevant Requirements**) (**Peer Reviewer's Statement**); and
 - 6.2. provide the reasons on which the opinion is based.
7. Mr Spagnolo acknowledges the said terms of engagement must be approved in writing by ASIC before the engagement is finalised. Mr Spagnolo shall not proceed with engaging a Peer Reviewer until he has received approval in writing from ASIC.
8. Should the Peer Reviewer's Statement not conclude that the audits have been conducted in all material respects in accordance with the Relevant Requirements, Mr Spagnolo acknowledges that ASIC is entitled to take such action as it thinks fit as a result thereof.

Membership of professional body

9. At all times Mr Spagnolo maintains his registration as a company auditor, Mr Spagnolo will use reasonable endeavours to retain his membership of the CPA Australia (**CPA**), or Chartered Accountants Australia & New Zealand (**CA ANZ**) or the Institute of Public Accountants (**IPA**) until 30 June 2026.

Annual CPD requirement

10. At all times Mr Spagnolo maintains his registration as a company auditor, Mr Spagnolo must complete, for each of the financial years 2024, 2025 and 2026, ten (10) additional verifiable hours of Continuing Professional Development (**CPD**) (**Verifiable CPD**) activities, of which at least 2 hours pertain specifically to each of the following areas:
 - a. Auditing standards,
 - b. AFSL requirements and audit of AFS licensees, and
 - c. Australian Professional and Ethical Standards Board (APES) 110 Code of Ethics for Professional Accountants (including Independence Standards).
11. Mr Spagnolo must provide ASIC evidence of his completion of the CPD hours required by CPA, CA ANZ and/or IPA and the ten additional CPD hours required by ASIC on 31 July of each year for the years ending:
 - a. 30 June 2024;
 - b. 30 June 2025; and

c. 30 June 2026 (where applicable).

12. Verifiable CPD means CPD activities for which there is verifiable evidence to support their completion. Verifiable Evidence means evidence that is objective, and capable of being proven and retained in either written or electronic form.

Must not endorse

13. Mr Spagnolo must not endorse any application with ASIC of another person to be a registered company auditor until 30 June 2026.

Non-compliance

14. Should Mr Spagnolo become aware that any of the above undertakings have not been complied with, Mr Spagnolo shall within 5 business days of becoming aware of such issue notify ASIC in writing of the details of the non-compliance including the date on which it occurred and the circumstances and reasons for which it occurred.

15. Mr Spagnolo acknowledges that should he fail to comply with any of these undertakings, ASIC is entitled to take such action as it thinks fit in relation to any such non-compliance.

Documents

16. The documents required to be provided to ASIC pursuant to these undertakings are to be directed to the attention of the Senior Executive Leader, Financial Reporting & Audit team, ASIC, Level 5, 100 Market Street, Sydney 2000 and service of those documents is also to be effected by email to the attention of brett.crawford@asic.gov.au or by alternative method advised by ASIC to Mr Spagnolo.