

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

**MATTER NO: 17/NSW20**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)**  
Applicant

**ROBERT JAMES EVETT**  
Respondent

## **Final Decision and Reasons**

**2 September 2021**

Panel:

Maria McCrossin (Panel Chairperson)

Inge Kindermann (Business Member)

Tony Brain (Accounting Member)

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## Introduction

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1. This is an Application under s 1292 the **Act** lodged with **CADB** by the Australian Securities and Investments Commission (ASIC) on 21 October 2020. By this Application, ASIC asks CADB to cancel the registration of the Respondent, Robert James Evett (Mr Evett), a registered company auditor (**RCA**). Mr Evett was registered as a company auditor on 14 March 1995. He was, until 13 November 2020 a director of Bentleys NSW Audit Pty Ltd ACN 141611896 (**Bentleys**). **Bentleys** is registered as an authorised audit company under s 1299C of the **Act**.
2. ASIC contends that Mr Evett, as the lead auditor on **Bentleys**' audit of the profit and loss statement and balance sheet for **Halifax** Investment Services Pty Ltd, formerly known as **Halifax** Investment Services Ltd (interchangeably **Halifax**) for the financial years ending 2016, 2017 and 2018 (**Halifax Audits**) demonstrated numerous and repeated failings in the conduct of the audits, which resulted in material misstatements in **Halifax's** financial reports for each of those financial years remaining undetected. We note that **Halifax** is now in liquidation.
3. In submissions filed on behalf of Mr Evett, we were notified that Mr Evett does not admit any of the facts (save for the factual background to the Application that was set out in paragraphs 15-35 of ASIC's Concise Outline) or contentions in ASIC's Concise Outline. Mr Evett also:
  - (a) Consents to an order for the cancellation of his registration as an **RCA**, and:
  - (b) Opposes an order that he pay ASIC's costs in relation to the hearing under ss 223(1)(d) ASIC Act.
4. As is CADB's usual practice, the matter of costs and publicity in relation to this Application will be dealt with by way of a separate written decision.

## Relevant principles relating to a proposed consent order by CADB

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5. Notwithstanding the parties agree on the proposed order on ASIC's substantive Application, CADB's jurisdiction only arises under s 1292 of the **Act** if a Panel is satisfied that at least one of the three bases set out in that section has been established.<sup>1</sup>
6. Relevantly, ss 1292(1) provides:

*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, before, at or after the commencement of this section:*

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<sup>1</sup> See Hill J in *Davies v Australian Securities Commission* (1995) 59 FCR 221 at 233

*(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; or*

*(iii) is otherwise not a fit and proper person to remain registered as an auditor;*

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

7. We discuss further the nature of our task under ss 1292(1)(d) in paragraphs 18-21 below - suffice to say on this aspect that even if the parties, as they have in this matter, consent to the making of an order under ss 1292(1), this Panel must be independently satisfied that we have power to make an order.
8. Ss 1294(1) provides further that CADB must not make an order to cancel or suspend the registration of a person as an auditor or deal with the **RCA** in any of the other ways set out in ss 1292(9), unless CADB has given the person an opportunity to appear at a hearing and to make submissions and adduce evidence to CADB.
9. CADB's usual approach therefore is to provide a Respondent with time to respond to the matters alleged by ASIC with evidence and/or submissions and the right to appear at a hearing before the Panel should they wish. If a Respondent decides not to take up those opportunities, it is no impediment to a Panel of CADB subsequently proceeding with a hearing, and/or making an order under s 1292.
10. The matter under consideration is procedurally unusual insofar as Mr Evett, although not contesting ASIC's application for cancellation of his registration, has declined to agree to a statement of agreed facts (**agreed facts**) as CADB's Practice Note for parties on hearing procedures ([PN1](#)) contemplates will occur should parties propose agreed orders to a Panel. As was noted by ASIC in its submissions, the prescription in [PN1](#) for **agreed facts** to accompany any orders proposed by the parties is directed to providing the necessary factual substratum upon which a Panel may form its view as to whether CADB's jurisdiction under ss 1292(1)(d) is enlivened. So, while the absence of **agreed facts** does not preclude a Panel from making an order, it does mean that the Panel needs to be otherwise satisfied that there is evidence that reasonably supports the contentions advanced by ASIC to in turn be satisfied that the power to make an order under ss 1292(1)(d) arises. In the absence of **agreed facts**, this Panel has therefore reviewed and evaluated the evidence filed to form that view.
11. A hearing with either ASIC and/or both parties present is also usually part of the process under ss 1294(1). In this matter each party indicated their willingness to proceed on the basis that the parties would provide the Panel with written submissions and written statements of evidence as part of the pre-hearing preparation. A hearing was fixed following completion of that process.

12. In terms of the evidence we have considered, ASIC's case is based on:
  - (a) Documentary evidence from the **Bentleys** audit files for the financial years 2016, 2017 and 2018.
  - (b) Witness statements of ASIC employees Mr Purdon and Mr Rea.
  - (c) Correspondence between **Bentleys** and **Halifax**.
  - (d) Documents extracted from the **Halifax** website.
  - (e) A transcript record of the examination of Mr Evett pursuant to s19 ASIC Act [signed by Mr Evett as an accurate record of the examination] (**s19 evidence**).
13. Mr Evett, as we have noted, indicated that he did not wish to file evidence in these proceedings.
14. The Panel's approach has been to review all the documentation set out in paragraph 12 as referenced in each of the 13 contentions advanced by ASIC. This decision sets out with respect to each contention, those facts alleged by ASIC which the Panel is satisfied have been reasonably established based on our review, and on which our conclusion with respect to each contention has been based.
15. Before turning to a consideration of each of ASIC's contentions, we first summarise the contextual facts that were not in issue between the parties and outline our view on the threshold issues that have general relevance to our determinations on each of the contentions.

### **Factual background not in issue**

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16. Mr Evett noted in his submissions to CADB that the factual background to ASIC's application was set out in uncontroversial terms at paragraphs 15-35 of ASIC's Concise Outline.
17. We therefore accept that factual background as not in issue. It is as follows:
  - (a) Since 14 March 1995 Mr Evett has been registered as an auditor pursuant to s 1280 of the **Act**. He was a director of **Bentleys** from 23 January 2012 to 13 November 2020.
  - (b) Since 1 March 2010, and at least until these proceedings were filed in December 2020, **Bentleys** has been registered as an authorised audit company under s 1299C of the **Act**.
  - (c) At the time these proceedings were filed, **Bentleys** was the appointed auditor of **Halifax**, having been appointed on 1 May 2013. **Bentleys** audited the profit and loss statement and balance sheet for **Halifax** for each of the financial years from 2012-13 through to 2017-18.

- (d) Mr Evett was the **Bentleys** director who was:
  - (i) The **RCA** primarily responsible to **Bentleys** for the conduct of the **Halifax Audits** (the **Lead Auditor**).
  - (ii) Responsible for the **Halifax** audit engagements in each relevant year and responsible for the performance of the audits, including the auditor's report that was issued on behalf of **Bentleys**, and who had the appropriate authority from ASIC (the **Engagement Partner**).
- (e) For the purposes of the Report on Internal Controls and Required Accounts for each the financial years from 2015-16 through to 2017-18, responsible for the **Halifax** engagement and its performance, and for the assurance report authority from ASIC (the **Lead Assurance Practitioner**).
- (f) Mr Evett had been the **Lead Auditor, Engagement Partner** and **Lead Assurance Practitioner** for each of **Halifax's** annual audits since August 2010, including prior to joining **Bentleys** as a director.
- (g) **Bentleys** produced to ASIC the entirety of its auditing files in respect of the **Halifax** Audits for FY16, FY17 and FY18 in their native CaseWare format (collectively the **Audit Files** or variously the **2016, 2017** or **2018 Audit File**). The **Audit Files** also included the assurance work conducted by Mr Evett as the **Lead Assurance Practitioner**.
- (h) **Halifax** has, since 19 February 2003, held an Australian Financial Service License (**AFSL**).
- (i) **Halifax's AFSL**, at all relevant times, authorised it to carry on a financial services business in the following ways:
  - (i) Provide financial product advice for specified classes of financial products including derivatives, foreign exchange contracts and securities.
  - (ii) Deal in financial products by, among other things, applying for, acquiring, varying, or disposing of derivatives and foreign exchange contracts (itself, or on behalf of other persons) and securities (on behalf of other persons).
  - (iii) Make a market for foreign exchange contracts and derivatives for retail and wholesale clients.
- (j) **Halifax** provided broking and investment services for financial products. Its clients invested in a range of different financial products broadly described as:
  - (i) exchange traded financial products; and
  - (ii) over the counter (**OTC**) financial products including derivatives such as Contracts for Difference (**CFDs**), futures, margin foreign

exchange contracts (**Margin FX**) and option contracts over Margin FX Products (**FX Options**) (**Margin FX** and **FX Options** collectively being **FX Products**).

- (k) At all relevant times, **Halifax** was operating as an OTC derivative Issuer and was therefore subject to the requirements of ASIC Class Order 12/752 which required **Halifax**, inter alia, to have Net Tangible Assets (**NTA**), as defined by the Class Order, of at least the greater of:
  - (i) \$1,000,000; or
  - (ii) 10% of average revenue of the licensee.
- (l) At all relevant times, **Halifax** acted as a financial intermediary but was not a market participant on the Australian Stock Exchange (**ASX**), meaning that it could not place trades directly for its clients and was not subject to the **ASX** market rules, including prudential and supervisory requirements.
- (m) From 1 July 2015, **Halifax's** Australian services were provided through the following trading platforms:
  - (i) Interactive Brokers (**IB**) (a third-party platform), also known as Trader Workstation.
  - (ii) Saxo Bank (**Saxo**) (a third-party platform) until 30 June 2016.
  - (iii) MetaTrader4 (**MT4**) (an in-house virtual trading platform), also known as Halifax Pro, from February 2016.
  - (iv) MetaTrader5 (**MT5**) (an in-house virtual trading platform), also known as Halifax Plus, from August 2016.
- (n) Halifax was:
  - (i) For the period 1 July 2015 to 27 July 2016, a public company limited by shares.
  - (ii) For the period 28 July 2016 to 30 June 2018, a proprietary company limited by shares.
- (o) Pursuant to ss 989B (1) (2) and (3) the **Act**, required to prepare, and to lodge with ASIC, a profit and loss statement and balance sheet, together with an Auditor's report, for FY2016, FY2017 and FY2018.
- (p) From around 2007 until September 2016, **Halifax's** accountants were Stature ARW Accounting (**Stature**) or one of its predecessor firms. **Stature** liaised with **Bentleys** (and between 2010 to 2013 with Mr Evett) in relation to **Halifax Audits**.
- (q) After September 2016, some **Stature** staff transferred employment to the accounting firm Moore Stephens. The same staff continued to provide all



of **Halifax's** accounting requirements in their roles at Moore Stephens and continued to liaise with **Bentleys** in relation to the **Halifax Audits**.

## **Sub-Section 1292(1)(d) – its ambit and the task to be performed**

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### **The ambit of ss 1292(1)(d)**

18. Sub-paragraph (d)(i) of ss 1292(1) confers power on CADB *if it is satisfied on an application...for a person who is registered as an auditor to be dealt with under this section, that...the person... has failed...to carry out or perform adequately and properly...the duties of an auditor.*
19. By contrast, sub-paragraph (d)(ii) of ss 1292(1) refers to *any duties or functions required by an Australian law to be carried out or performed by a registered company auditor.*
20. Both sub-paragraphs apply only to auditors registered under the **Act**. In its decision in *Hill*<sup>2</sup> the Board referred to its earlier decision in *Fernandez* that discussed the relevant authorities and expressed the view that the preferable construction to be placed on sub-paragraph (d)(i) was one that included both the statutory duties and the general law duties of an auditor.
21. Sub-paragraphs (i) and (ii) of ss 1292(1)(d) therefore create a legislatively underpinned obligation for all **RCAs** to carry out **any** audit duties, common law or statutory, or any functions they may be required to perform pursuant to an Australian law, in or outside Australia, to an appropriate competency standard that reflects compliance with current Australian Auditing Standards and proper professional practice, or risk having their registration cancelled or suspended by CADB.

### **The task to be performed by the Panel**

22. The task to be performed by a Panel when considering an application under ss 1292(1)(d) of the **Act** has been considered in several cases before the Board, as well as judicially.
23. In the Board's decision in *Walker* our task was explained in the following terms.<sup>3</sup>

*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 s 1292 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 s 1292. The question*

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<sup>2</sup> Hill Decision of the Board July 2015

<sup>3</sup> Walker Decision of the Board December 2008

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 by 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 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.*

24. This matter was discussed by the High Court in *Albarran v Members of the Companies Auditors and Liquidators Board* in which the plurality stated:<sup>4</sup>

[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 applicant, 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".'*

[19] *Section 203 of the ASIC Act, in dealing with the composition of the Board, requires that it include members appointed by the Minister from panels nominated by professional accountancy bodies. The section also now requires the appointment of 'business members' from among persons the Minister is satisfied are suitable as representatives of the business community by reason of qualifications, knowledge or experience in fields including business or commerce, the administration of companies, financial markets, and financial products and financial services.*

[20] *Against that background, in **Dean-Willcocks**, Tamberlin J went on to observe that par (d)(ii) of s 1292(2):*

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<sup>4</sup> (2007) 231 CLR 350; [2007] HCA 23

*‘... is designed to enable a board representative of the commercial and accounting communities to consider whether the function has been adequately and properly carried out. To assess this, it is permissible, in my view, to have regard to the standards operative in the relevant sphere of activity.’*

[21] *That reasoning of Tamberlin J should be accepted as indicative that the function performed by the Board in the present cases was not the ascertainment or enforcement of any existing right or liability in respect of an offence and the punishment for an offence. So, also, should the conclusion expressed by the Full Court in the judgment here under appeal. Their Honours said:*

*‘The function of the Board is not, as was submitted, to find (as an exercise of deciding present rights and obligations in the above sense) whether an offence has been committed and, if so, to inflict a punishment therefor. It is, as we have said, to assess whether someone should continue to occupy a statutory position involving skill and probity, in circumstances where (not merely because) the Board is satisfied that the person has failed in the performance of his or her professional duties in the past. Messrs Gould and Albarran say that punishment or a penal or harmful consequence is finally inflicted on the person consequent upon the finding of the committal of an offence prescribed by law. That is not what s 1292(2) says the function of the Board is. It is not, in substance, what the Board does.’*

[22] *This construction of paragraph (d) of s1292(2) is not qualified or displaced by any considerations flowing from the final words in that paragraph “or is otherwise not a fit and proper person to remain registered as a liquidator.*

[23] *In **Hughes and Vale Pty Ltd v State of New South Wales No 2**, Dixon CJ, McTiernan and Webb JJ, after saying the expression fit and proper person was familiar as comprising ‘traditional words’ when used with reference to offices and vocations, added that the very purpose of the expression was to give the widest scope for judgement and indeed for rejection; thus ‘fit’ involved honesty knowledge and ability. That passage was relied upon by Hill J when construing an earlier provision drawn in the same terms as ss 1292(2) of the Corporations Act.*

[24] *Counsel for the Attorney General in the present appeals correctly submitted that the words ‘adequately and properly’ import notions of judgment by reference to professional standards rather than pure questions of law and that the concluding expression containing the words ‘otherwise not a fit and proper person’ expands or adds to what precedes it but does not draw in a discrete subject matter.*

*... (citations omitted)*

25. Finally, the decisions of Campbell J in *Re Vouris; Epromotions Australia Pty Ltd v Relectronic-Remech Pty Ltd* (in liq); Branson J in *Goodman v Australian Securities and Investments Commission* and Tamberlin J in *Dean-Willcocks v Companies Auditors and Liquidators Disciplinary Board*<sup>5</sup> also provide guidance on the role performed by **CADB**. Those decisions stand for the propositions that:
- (a) Ss 1292(1)(d)(ii) requires assessment of the level and standard of performance of ‘duties or functions.’
  - (b) The level and standard of performance of the duty or function needs to be tested against a relevant benchmark. The benchmark is professional standards.
  - (c) The level of performance called for is that of ‘adequacy’; the standard is that the duty or function must be performed ‘properly’.
  - (d) In making its assessment, the Board is entitled to have regard to published codes or standards of the professional bodies. The accepted professional standards may be found by the Board to be set by, or alternatively reflected in published standards or codes.
  - (e) The assessment will also involve having an intelligent understanding of the purposes which the provisions of the Corporations Act were trying to achieve, and what proper professional practice required be done to enable those purposes to be achieved.

## **The Relevant Benchmark**

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26. In support of the contentions advanced, the allegations particularised by ASIC in its Concise Outline refer to various provisions in the Auditing Standards, Accounting Standards and Assurance Standards, as well as provisions of and regulations made under the **Act**.
27. Based on the authorities discussed above, it is uncontroversial to propose that the requirements of the Auditing and Assurance Standards, relevant provisions and regulations under the Corporations legislation and relevant pronouncements by the Accounting Professional and Ethical Standards Board in force from time to time will inform the general professional standard to be met by an **RCA**. Evidence relevant to an auditor’s compliance or otherwise with specific aspects of this framework will therefore be instructive.
28. Further, the Auditing Standards are principles based and designed to be applied by an auditor through the exercise of professional judgement and the appropriately diligent application of professional scepticism<sup>6</sup>. The Panel’s assessment of whether there has been proper and adequate performance of duties will also therefore involve an element of qualitative evaluation.

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<sup>5</sup> Citations: (2003) 177 FLR 289; (2004) 50 ACSR 1; (2006) 59 ACSR 698 respectively

<sup>6</sup> See **Professional Scepticism** for Panel’s views on the concept generally and its application in an audit

29. The framework referred to in paragraph 27 is of central relevance to evaluating the level and standard of performance by Mr Evett of his audit duties and functions, although is not circumscriptive. Relevant matters for this Panel's consideration with respect to the facts we find to be reasonably established include whether or the extent to which those facts demonstrate:
- (a) Any respects in which the audits were not performed in compliance with specific relevant applicable legislative/regulatory requirements and framework, including the Auditing Standards.
  - (b) Whether Mr Evett had performed his audit duties in accordance with relevant Auditing and Assurance Standards Board (AUASB) guidelines, pronouncements and/or bulletins published from time to time.
  - (c) Whether the entity's reporting in its financial statements was compliant with relevant AASB requirements.
  - (d) Whether each of the audit engagements was performed in accordance with the representations made in the **Engagement Letters** and the **Audit Reports** for each of the relevant years.
30. The matters discussed in paragraphs 27 - 29 comprise **The Relevant Benchmark** to which we have referred subsequently in this decision in the context of our determination of each contention.

### **Professional Scepticism and Professional Judgement**

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31. The question of whether appropriate professional scepticism was applied by Mr Evett and his audit team in the **Halifax Audits** was raised by ASIC's pleadings with respect to numerous allegations the subject of the contentions. Similarly, what the evidence reveals about the professional judgement applied by Mr Evett when discharging his functions and duties as an auditor is also a consideration common to our evaluation of the level and standard of his performance of the **Halifax Audits**.
32. The Auditing Standards at the time clearly and unequivocally proscribed the need for and importance of the application of professional scepticism and professional judgement when performing an audit. These concepts embody key tenets of the professional skill an auditor is expected to bring to bear when performing an audit to an appropriate professional standard. As such they deserve special focus even though they are incorporated in the Auditing Standards and so within **The Relevant Benchmark**.
33. ASA 200 – entitled *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Australian Auditing Standards* was introduced in 2010.
34. Since 2010 the following definitions of professional scepticism and professional judgement have been consistent. They are as follows:

*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.*

*Professional judgement means the application of relevant training, knowledge and experience, within the context provided by auditing, accounting and ethical standards, in making informed decisions about the courses of action that are appropriate in the circumstances of the audit engagement.*

35. Since 2010 ASA 200 has included the requirement for an auditor in Australia to:
- (a) Understand the entire text of an Auditing Standard, including its application and other explanatory material, to understand its objectives and to apply its requirements properly.<sup>7</sup>
  - (b) Not represent compliance with Australian Auditing Standards in the auditor's report unless the auditor has complied with the requirements of this Auditing Standard and all other Australian Auditing Standards relevant to the audit.<sup>8</sup>
  - (c) Plan and perform an audit with professional scepticism, recognising that circumstances may exist that cause a financial report to be materially misstated.<sup>9</sup>
36. The explanatory material included as part of ASA 200 provides detailed guidance on what is involved in the proper exercise of professional scepticism and professional judgment. The current compilation, which is in the same terms as the compilation which applied over the period of the **Halifax Audits**, provides 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.*
- *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.*

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<sup>7</sup> ASA 200.19

<sup>8</sup> ASA 200.20

<sup>9</sup> ASA 200.15

- *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 that 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.*
- A25. *Professional judgement is essential to the proper conduct of an audit. This is because interpretation of relevant ethical requirements and the Australian Auditing Standards and the informed decisions required throughout the audit cannot be made without the application of relevant knowledge and experience to the facts and circumstances. Professional judgement is necessary in particular regarding decisions about:*
- *Materiality and audit risk.*
  - *The nature, timing, and extent of audit procedures used to meet the requirements of the Australian Auditing Standards and gather audit evidence.*
  - *Evaluating whether sufficient appropriate audit evidence has been obtained, and whether more needs to be done to achieve the objectives of the Australian Auditing Standards and thereby, the overall objectives of the auditor.*
  - *The evaluation of management's judgements in applying the entity's applicable financial reporting framework.*
  - *The drawing of conclusions based on the audit evidence obtained, for example, assessing the*

*reasonableness of the estimates made by management in preparing the financial report.*

- A26. *The distinguishing feature of the professional judgement expected of an auditor is that it is exercised by an auditor whose training, knowledge and experience have assisted in developing the necessary competencies to achieve reasonable judgements.*
- A27. *The exercise of professional judgement in any particular case is based on the facts and circumstances that are known by the auditor. Consultation on difficult or contentious matters during the course of the audit, both within the engagement team and between the engagement team and others at the appropriate level within or outside the firm, such as that required by ASA 220, assist the auditor in making informed and reasonable judgements.*
- A28. *Professional judgement can be evaluated based on whether the judgement reached reflects a competent application of auditing and accounting principles and is appropriate in the light of, and consistent with, the facts and circumstances that were known to the auditor up to the date of the auditor's report.*
- A29. *Professional judgement needs to be exercised throughout the audit. It also needs to be appropriately documented. In this regard, the auditor is required to prepare audit documentation sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the significant professional judgements made in reaching conclusions on significant matters arising during the audit. Professional judgement is not to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the engagement or sufficient appropriate audit evidence.*
37. As well as the guidance contained within ASA 200 there was also an AUASB Bulletin issued in August 2012 - *Professional Scepticism in an Audit of a Financial Report* (AUASB Bulletin), which underscored the central importance of the consistent application of professional scepticism to the performance of a high quality audit and how that could be achieved. Although this guidance is now some years old, the AUASB Bulletin remains available on the AUASB website and has not at the date of this decision been superseded by further guidance from the AUASB. The AUASB Bulletin continues to supplement ASA 200 as a relevant resource for auditors in Australia on the application of professional scepticism in an audit.
38. By way of context, the AUASB Bulletin noted that recent audit inspection programs conducted by ASIC had raised concerns about whether professional scepticism was being applied properly in auditing practice and noted that ASIC's findings had provoked questions about whether auditors respond appropriately to unreliable audit evidence, whether they seek to corroborate evidence rather than challenge it and whether audit working papers adequately



demonstrate a record of how professional scepticism has been applied. The AUASB Bulletin states that the need for professional scepticism in an audit:

*...cannot be overemphasised. Scepticism is an essential attitude that enhances the auditor's ability to exercise professional judgement in identifying and responding to conditions that may indicate possible misstatement. Professional scepticism includes a critical assessment of audit evidence. It also means remaining alert for evidence that contradicts other audit evidence or that brings into question the reliability of information obtained from management and those charged with governance. The consistent application of professional scepticism is imperative for auditors to draw appropriate conclusions in the conduct of their work. **The AUASB takes this opportunity to emphasise to both auditors and others, the important and fundamental role that professional scepticism has to play in audits of financial reports.***

39. The AUASB Bulletin over a further five pages provides an in-depth perspective on what should be involved in applying appropriate professional scepticism. Some of the key themes regarding professional scepticism covered by the AUASB Bulletin include that:
- (a) It is fundamentally a mindset, largely applied by being alert, particularly to conditions that may indicate error or fraud and for circumstances that suggest the need for audit procedures in addition to those required by the Auditing Standards.
  - (b) It is inseparably linked to the fundamental ethical principles of objectivity and auditor independence and an inescapable element of professional judgement. Without professional scepticism, the auditor does not challenge or remain alert to inconsistencies and circumstances that indicate actual or potential misstatements or fraud.
  - (c) It includes a critical assessment of audit evidence which comprises the information that supports and corroborates management's assertions and any information that contradicts such assertions. In this context, the AUASB Bulletin states that applying professional scepticism would involve questioning and considering the sufficiency and appropriateness of the audit evidence obtained in the light of the known circumstances. Where there is doubt, the Auditing Standards require that the auditor further investigate and determine what modifications or additions to audit procedures are necessary to resolve the matter.
  - (d) It is particularly important when considering the risks of material misstatement due to fraud. The AUASB Bulletin notes that ASA 240 places special emphasis on professional scepticism and requires the auditor to investigate further where conditions identified during the audit cause the auditor to believe that a document may not be authentic or may have been modified. It further notes the specific reference in ASA 240 to professional scepticism requiring an ongoing questioning of whether information and audit evidence obtained by the auditor suggests that a

material misstatement due to fraud may exist, including considering the reliability of information to be used as audit evidence and the controls over its preparation.

- (e) In terms of the requirement in ASA 200.15 to plan and perform the audit with professional scepticism, the AUASB Bulletin highlights that areas of focus for the auditor include (but are not limited to):
  - (i) Accepting the engagement – integrity of owners, management, and directors.
  - (ii) Identifying and assessing risks of misstatement - initial risk assessment procedures and revisions to initial assessments and planned audit procedures resulting from audit findings.
  - (iii) Designing the nature, timing, and extent of audit procedures, for example when considering areas of higher risk; planning and performing substantive analytical procedures - evaluating the reliability of data, investigating fluctuations or relationships that are inconsistent with expectations, and:
  - (iv) Forming and expressing an opinion - concluding whether reasonable assurance has been obtained, deciding on the right form of opinion, and evaluating whether fair presentation has been achieved.
  - (v) Evaluating the reasonableness of significant assumptions used by management for accounting estimates, going concern assessments, related party relationships, consideration of laws and regulations and the use of specialists.
  - (vi) Discussions with management and those charged with governance, client staff and the audit team and the documentation of key points of those discussions as required by the Auditing Standards. Key areas where audit documentation should reflect that professional scepticism has been appropriately applied include: discussions among the engagement team; significant decisions regarding the susceptibility of the financial statements to material misstatement; identified non-compliance with laws or regulations; the basis for the auditor's conclusions on accounting estimates and any indicators of possible management bias; identified information that is inconsistent with the auditor's final conclusion regarding a significant matter, including how the inconsistency was addressed; the basis of the auditor's conclusions on the reasonableness of areas of subjective judgements; the use of experts; and communications with client management and their staff.
- (f) Finally, the AUASB Bulletin focused on the importance of the **Engagement Partner's** role in communicating the importance of applying appropriate professional scepticism in the performance of an audit and underscored the importance of quality as an essential focus in the

performance of audit engagements to all members of an audit engagement team.

40. The above information is an appropriate source of guidance for this Panel when engaging in its task of evaluating Mr Evett's level of performance of his functions and duties in the **Halifax Audits**. Mr Evett should have been aware of and familiar with what is set out above and with respect to areas of particular importance in the audits, it should have been evident from the records on the **Audit Files** how professional scepticism and professional judgement had been applied in determining actions taken.

## Mr Evett's role in the Halifax Audits

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41. As we have noted, Mr Evett was the **Bentleys** director who, for the **Halifax Audits**, was the **Lead Auditor, Engagement Partner** and **Lead Assurance Practitioner**. He had fulfilled these roles with respect to the **Halifax** audits since August 2010, including prior to joining **Bentleys** as a director.
42. The relevant statutory duty was imposed on the Mr Evett, as **Lead Auditor** in the **Halifax Audits**, by ss 989CA (2) of the **Act**, which provides:
- (2) If an audit firm, or an audit company, conducts an audit of a profit and loss statement and balance sheet for the purposes of this Subdivision, the lead auditor for the audit or review must ensure that:*
- (a) the audit is conducted in accordance with the Auditing Standards; and*
- (b) the audit report on the profit and loss statement, and balance sheet, includes any statements or disclosures required by the Auditing Standards.*
43. The Auditing Standards in turn placed duties on Mr Evett, in his role as **Engagement Partner** in the **Halifax** Audits. Paragraphs 15-17 of ASA 220 (Nov 2013 and Dec 2015 compilations) imposed the following duties on Mr Evett:

### *Direction, Supervision and Performance*

15. *The engagement partner shall take responsibility for:*

*(a) The direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements, and applicable legal and regulatory requirements; and*

*(b) The auditor's report being appropriate in the circumstances.*

### *Reviews*

16. *The engagement partner shall take responsibility for reviews being performed in accordance with the firm's review policies and procedures.*

17. *On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and*

*discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued.*

44. At the relevant times, Regulation 7.8.13 *Corporations Regulations (Cth) 2001* provided:

(1) *For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor's report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must be lodged with ASIC in the prescribed form.*

(2) *For subparagraph 989B(3)(b)(ii) or paragraph 989B(3)(c) of the Act, an auditor's report lodged with a true and fair profit and loss statement and balance sheet in respect of a financial year must contain a statement of the auditor's opinion on the following matters:*

(a) *the effectiveness of internal controls used by a financial services licensee to comply with:*

(i) *Divisions 2, 3, 4, 5 and 6 of Part 7.8 of the Act; and*

(ii) *Division 7 of Part 7.8 of the Act other than section 991A;*

(b) *whether each account required by sections 981B and 982B of the Act to be maintained by the financial services licensee has been operated and controlled in accordance with those sections;*

(c) *whether all necessary records, information and explanations were received from the financial services licensee.<sup>10</sup>*

45. The effect of the above regulations was to require the *Report on Internal Controls and Required Accounts* to be included in the **Halifax** audit reports for each of the relevant years. The ASIC prescribed form *FS71 Auditor's Report for AFS Licensee* required Mr Evett to certify that he had conducted the work on the *Report on Internal Controls and Required Accounts* in accordance with the Auditing and Assurance Standards Board's Standards.

46. Those standards include the Assurance Standards as well as the Auditing Standards. The Assurance Standards (ASAE) required Mr Evett to ensure that the **Halifax Audits** complied with relevant ethical requirements and to plan and perform audit procedures to obtain reasonable assurance about whether throughout the period, in all material aspects, specified internal controls operated effectively and the required accounts [as referred to in Corporations regulation 7.8.13(2)(b)] were operated and controlled as required.

47. The ASAEs also set standards that applied to Mr Evett in his capacity as **Lead Assurance Practitioner**. Paragraph 33 of ASAE 3000 (Jun 14) imposed the following responsibilities on Mr Evett:

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<sup>10</sup> ss 989B of the Act is modified by the operation of reg 7.8.12A, made under ss 992C(1)(c)

### *Responsibilities of the Lead Assurance Practitioner*

*The lead assurance practitioner shall take responsibility for the overall quality on the engagement. This includes responsibility for:*

- (a) Appropriate procedures being performed regarding the acceptance and continuance of client relationships and engagements.*
- (b) The engagement being planned and performed (including appropriate direction and supervision) to comply with professional standards and applicable legal and regulatory requirements.*
- (c) Reviews being performed in accordance with the firm's review policies and procedures, and reviewing the engagement documentation on or before the date of the assurance report.*
- (d) Appropriate engagement documentation being maintained to provide evidence of achievement of the assurance practitioner's objectives, and that the engagement was performed in accordance with relevant ASAEs and relevant legal and regulatory requirements, and:*
- (e) Appropriate consultation being undertaken by the engagement team on difficult or contentious matters.*

48. Having regard to the responsibilities outlined above that Mr Evett assumed as **Engagement Partner, Lead Auditor and Lead Assurance Practitioner** in the **Halifax Audits**, we are satisfied that, to the extent there were matters that were not performed properly by **Bentleys** in the **Halifax Audits** and/or not performed in accordance with the Auditing Standards, or the Assurance Standards or the legislation referred to, that these matters would reflect instances of Mr Evett failing to satisfy **The Relevant Benchmark** when performing his duties within the meaning of ss1292(1)(d) and we are satisfied therefore that we have jurisdiction in this matter.

### **Overview of Contentions**

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49. ASIC advanced allegations under the umbrella of 13 contentions in support of its application for an order cancelling Mr Evett's registration as a company auditor.
50. Contentions 1, 5 and 9 alleged Mr Evett failed to perform the duties of an **RCA** under ss1292(1)(d)(ii) of the **Act** with respect to the **Halifax Audits**.
51. Contentions 2, 3, 4, 6, 7, 8, 10, 11 and 12 alleged Mr Evett failed to perform the duties of an **RCA** under ss1292(1)(d)(i) of the **Act** with respect to the **Halifax Audits**.
52. Contention 13 alleged Mr Evett was not a fit and proper person to remain registered as a company auditor.

53. We now turn to a consideration of each of the contentions.

## **Contentions 1 - 4 2016 Audit Engagement**

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54. Contentions 1 – 4 were based on the audit by **Bentleys** of the 2016 **Halifax** financial report (**2016 Audit**). We now turn to consider the facts alleged in support of those contentions and the relevant legislative/regulatory framework, to make our findings.

55. On 22 August 2016, Mr Barnett, a Director of **Halifax**, signed and returned to **Bentleys** an engagement letter setting out terms of the engagement of **Bentleys** to perform, amongst other matters, the **2016 Audit (2016 Audit Engagement Letter)**. The **2016 Audit Engagement Letter** stated, under the heading 'Scope':

*We will conduct our audit in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the financial report is free from material misstatement. Our procedures include examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.*

56. On 27 October 2016, Mr Evett signed the FY16 Audit Report with respect to the 2016 **Halifax** financial report that was prepared pursuant to the **2016 Audit Engagement Letter (FY16 Audit Report)**. The **FY 16 Audit Report** expressed the opinion that the 2016 **Halifax** financial report was in accordance with the **Act**, including:

- (a) Giving a true and fair view of the consolidated entity's financial position as of 30 June 2016 and of its performance for the year ended on that date, and:
- (b) Complying with Australian Accounting Standards and the Corporations Regulations 2001.

57. On the same date Mr Evett also signed ASIC Form FS71 and initialled each page of Form FS70 which had been signed by a director of **Halifax** and was attached to the 2016 **Halifax** financial report.

58. Under the heading '*Auditor's Responsibility*', the **FY16 Audit Report** stated:

*Our responsibility is to express an opinion on the financial report based on 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.*

59. The Overall Materiality level for the 2016 Audit was calculated to be \$1.1m. The Performance Materiality level was calculated to be \$825,000 and Clearly Trivial level was calculated to be \$110,000.

### **Assessment of the nature of the Halifax business 2016 Audit**

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60. ASIC alleged that **Bentleys** did not carry out a proper assessment of the nature of the **Halifax** business operations having regard to the obligations set out in the Auditing Standards, in particular ASA 315 (Nov 2013 compilation).
61. In overview, the focus of ASA 315 was (and continues to be) the scope of the auditor's obligation to obtain an understanding of the entity and its environment, including the entity's internal controls. The nature of this obligation is dynamic and should involve gathering, updating, and analysing information throughout the performance of an audit.
62. While the detail of the requirements of ASA 315 has evolved since the **2016 Audit**, the underlying premise has not. The auditor's understanding of the business being audited is key to the integrity of the audit process. It informs the frame of reference for the audit planning and the professional judgements that will be required of the auditor, including the exercise of appropriate professional scepticism. It also impacts the manner of performance of many other aspects of the audit including:
- (a) Assessing the risk of material misstatement in the financial report.
  - (b) Determining materiality in accordance with ASA 320.
  - (c) Considering the appropriateness of the selection and application of accounting policies, and the adequacy of financial report disclosures.
  - (d) Identifying areas where special audit consideration may be necessary, for example, related party transactions, the appropriateness of management's use of the going concern assumption or considering the business purpose of transactions.
  - (e) Developing expectations for use when performing analytical procedures.

- (f) Responding to the assessed risks of material misstatement, including designing and performing further audit procedures to obtain sufficient appropriate audit evidence.
- (g) Evaluating the sufficiency and appropriateness of audit evidence obtained, such as the appropriateness of assumptions and of management's oral and written representations.

63. ASIC's Concise Outline referred specifically to Paragraphs 11, 18 and 25 of ASA 315. Those provisions were as follows:

*The Entity and Its Environment*

11. *The auditor shall obtain an understanding of the following:*

- (a) *Relevant industry, regulatory, and other external factors and the applicable financial reporting framework. (Ref: Para. A24-A29)*
- (b) *The nature of the entity, including:*
  - (i) *Its operations.*
  - (ii) *Its ownership and governance structures.*
  - (iii) *The types of investments that the entity is making and plans to make, including investments in special-purpose entities, and:*
  - (iv) *The way that the entity is structured and how it is financed to enable the auditor to understand the classes of transactions, account balances, and disclosures to be expected in the financial report. (Ref: Para. A30-A34)*
- (c) *The entity's selection and application of accounting policies, including the reasons for changes thereto. The auditor shall evaluate whether the entity's accounting policies are appropriate for its business and consistent with the applicable financial reporting framework and accounting policies used in the relevant industry. (Ref: Para. A35)*
- (d) *The entity's objectives and strategies, and those related business risks that may result in risks of material misstatement. (Ref: Para. A36-A42)*
- (e) *The measurement and review of the entity's financial performance. (Ref: Para. A43-A48)*

64. Paragraph 18 of ASA 315 provided:

18. *The auditor shall obtain an understanding of the information system, including the related business processes, relevant to financial reporting, including the following areas:*

- (a) *The classes of transactions in the entity's operations that are significant to the financial report.*



- (b) *The procedures, within both information technology (IT) and manual systems, by which those transactions are initiated, recorded, processed, corrected as necessary, transferred to the general ledger and reported in the financial report.*
- (c) *The related accounting records, supporting information and specific accounts in the financial report that are used to initiate, record, process and report transactions; this includes the correction of incorrect information and how information is transferred to the general ledger. The records may be in either manual or electronic form.*
- (d) *How the information system captures events and conditions, other than transactions, that are significant to the financial report.*
- (e) *The financial reporting process used to prepare the entity's financial report, including significant accounting estimates and disclosures, and:*
- (f) *Controls surrounding journal entries, including non-standard journal entries used to record non-recurring, unusual transactions or adjustments.*

65. Paragraph 25 of ASA 315 provided:

*25. The Auditor shall assess the risks of material misstatement at:*

- (a) *The Financial Report Level, and:*
- (b) *The assertion level for classes of transactions, account balances and disclosures.*

*To provide a basis for designing and performing further audit procedures.*

66. Paragraph 26 of ASA 315 went on to circumscribe the process for identifying and assessing the risks. It provided as follows:

*26. For this purpose, the auditor shall:*

- (a) *Identify risks throughout the process of obtaining an understanding of the entity and its environment, including relevant controls that relate to the risks, and by considering the classes of transactions, account balances, and disclosures in the financial report.*
- (b) *Assess the identified risks and evaluate whether they relate more pervasively to the financial report as a whole and potentially affect many assertions.*
- (c) *Relate the identified risks to what can go wrong at the assertion level, taking account of relevant controls that the auditor intends to test, and:*
- (d) *Consider the likelihood of misstatement, including the possibility of multiple misstatements, and whether the potential misstatement is of a magnitude that could result in a material misstatement.*

67. As already set out in paragraph 17 above, it was not in issue that **Halifax** held an AFSL and provided broking and investments services for financial products and from 1 July 2015, **Halifax's** Australian services were provided through the **IB, Saxo, MT4 and MT5** trading platforms.
68. ASIC's Concise Outline provided particulars of **Halifax's** Product Disclosure Statements (**PDSs**). These **PDSs** were publicly available on **Halifax's** website, although were not referred to or retained on the **2016 Audit File**.
69. The **PDSs** that were current on 30 June 2016 were:
- (a) Contracts For Difference PDS (**CFD PDS**) dated 15 January 2016; and
  - (b) Margin Foreign Exchange PDS (**FX PDS**) dated 4 February 2016.
70. The then current **Halifax** platforms referred to in paragraph 67 were described in the **FX PDS**, which included the following table by way of summary:

Trading Platform	Platform Counterparty	Hedging Policy	Client Monies	Commission Arrangements (see section 18.1)
Halifax Pro	<i>LMAX Limited</i> <a href="http://www.lmax.com">www.lmax.com</a>	We may decide not to hedge, or hedge less than 100% of, our exposure to your Transaction.	Non Trust Account Platform	Spread Platform
Halifaxonline	<i>Saxo Capital Markets</i> <a href="http://www.au.saxomarkets.com">www.au.saxomarkets.com</a>	We essentially hedge 100% of our exposure to your Transaction.	Trust Account Platform	Spread Platform
Trader Work Station	<i>Interactive Brokers</i> <a href="http://www.interactivebrokers.com">www.interactivebrokers.com</a>	We essentially hedge 100% of our exposure to your Transaction.	Trust Account Platform	Commission Platform
GAIN MetaTrader	<i>GAIN Capital</i> <a href="http://www.gain.com">www.gain.com</a> / <a href="http://www.forex.com">www.forex.com</a>	We essentially hedge 100% of our exposure to your Transaction.	Non Trust Account Platform	Spread Platform

71. **Saxo** (Halifaxonline) and **IB** (Trader Workstation) were trust account platforms and client funds deposited were segregated from **Halifax's** other assets.
72. The **MT4 (Halifax Pro)** platform had been introduced in January 2016. As noted in the **FX PDS** it was not a trust account platform meaning there was no segregation of client funds received via this channel. Via the **MT4** platform, **Halifax** received deposits from clients and issued, as principal, a variety of predominately derivative (and/or held for trading) financial products. In contrast to the other three platforms, there were no hedging positions automatically issued on behalf of **Halifax**. Relevantly from an audit perspective, this altered the financial risk profile of the **Halifax** business from when it was introduced halfway through FY16.
73. ASIC's Concise Outline also referred to a number of audit working papers (AWPs) with respect to **Halifax's** business and its operating environment.
74. AWP 2-100 - *General Planning Memo* recorded:

*'The Entity and Its Environment*

**Halifax** Investment Services Pty Ltd is a for profit entity which provides brokering services. Their primary operations are located in Sydney, however they also service in most major capital cities.

...

*Business operations and nature of revenue sources:*

*provision of brokering services”*

*Brief history of the entity;*

**Halifax** was established in 2000 and operates in Australia. **Halifax** primarily provides broking services to retail, wholesale and institutional clients. Online broking services are provided through third party providers executing through online trading platforms with financial products covering foreign currencies, Australian equities, international equities, CFDs, metals and futures.

*Geographic dispersion and industry segmentation:*

*Sydney is the head office. Representatives around Australia (in most capital cities)*

...

*New products and services*

*No new changes are noted.’*

75. AWP 2-106 Audit team discussion recorded:

*‘Revenue – Mainly from Interest and Commissions (Not a high risk, agree to statements).’*

76. AWP 3-150 Revenue – system notes included the following comments:

*‘Background*

**Halifax** Investment Services (“HIS”) main services line is to provide a platform for trading. Per discussion with [REDACTED], the platform is 3rd party owned but operates under the HIS umbrella – I do however note for the next financial year (2017) that HIS have migrated to a new platform which is in-house i.e., no longer 3rd party.

*As at 30/06/2016, the trading platforms are:*

*IB*

*SAXO*

*GAIN*

*FXCM*

...

*KEY PERSONNEL:*

*Stature Financial Group/ Moore Stephens NSW (SFG)*

██████████  
**REVENUE STREAMS:**

*Interest received*

*Commissions received.*

**PROCESS:**

*Operations:*

*Client registers with the platform – IB, SAXO, GAIN, FXCM etc.*

*Client trades via the platform and pays a commission on each trade made*

*Commissions received are directly receipted into the main operating account*

*Commissions received are cleared/receipted when transactions clear the platform's clearing account.*

*Accounting:*

*SFG reconciles the bank statement monthly and codes the transactions accordingly*

**CONTROLS:**

*Apart from ██████████ for reporting purposes, only SFG have access to Xero (it is linked to live feed of bank a/c)*

*Bank is reconciled monthly by 3rd party (SFG) – accuracy, classification, completeness*

*All transactions are received via EFT – occurrence / completeness*

*Only ██████████ can approve payments*

*The accounts are reviewed monthly at every board of directors meeting – reviewed against budgets/forecast.'*

77. The AWP's extracted above do not demonstrate that **Bentleys** was aware of the changes to the nature of **Halifax's** business operations brought about by the introduction of the **MT4** platform in January 2016. The transcript of the evidence provided by Mr Evett to ASIC in the examination conducted under s 19 ASIC Act (**s19 Evidence**) confirmed that Mr Evett was not aware of this change. As we have noted, it was a change that had a significant impact on the financial risk profile of **Halifax** and was a matter that in the Panel's view would have been readily identifiable had sufficient inquiry pursuant to the obligation in paragraph 11 ASA 315 been undertaken by **Bentleys**. Under "products and services" in AWP 2-100 it was noted "No new changes are noted" and in AWP 2-106 "revenue mainly from interest and commissions (not a high risk - agree to statements) and there was no mention at all of the **MT4** platform in the **2016 Audit File**.
78. Neither was there any record, in the **2016 Audit File** of the detail of each of the other trading platforms used by **Halifax**, how they each operated or any of the controls in place to ensure that balances were appropriately recorded, for example. We would expect to have seen this recorded in the AWP's given the

scope of the obligation in ASA 315 to obtain an understanding of the entity and the obligation to apply **Professional Scepticism and Professional Judgement** in accordance with the requirements of the Auditing Standards we have already discussed.

79. Similarly, the application of professional scepticism and professional judgement in accordance with the guidance in the Auditing Standards<sup>11</sup> by the audit team would in our view have demanded enquiries be made in order to confirm how the various arms of the **Halifax** operations worked and how each interacted with the other as well as the basis of the relationships between **Halifax** and its customers, its counterparties and the providers of its trading platforms, to the extent those providers differed from the counterparties. Yet, there were no agreements with counterparties, platform providers or clients retained on the **2016 Audit File** and nor did any of the audit papers record the review of such documentation as part of the **2016 Audit**.
80. In relation to open positions and client funds (that some investigation would have revealed in the case of the **MT4** platform were being used for trading on **Halifax's** account) there were just two brief references in the **2016 Audit File**. The first was in the AFSL program where under step 5 it was recorded that "*No client money held.*" The second was the AFSL Compliance Checklist in which it was noted under condition 12 "*N/A Does not hold client money.*" These conclusions were incorrect given the existence of the **MT4** platform from January 2016. They were also inconsistent with some of other terms and conditions disclosed by the **PDSs** the consideration of which did not apparently occur as part of the **2016 Audit**.
81. There was no evidence on the **2016 Audit File** that a range of other risks that in our view it would be reasonable to expect to see had been considered were considered when planning the audit approach. For example, there were the risks associated with the customer balances common to all the trading platforms together with the additional risks regarding the **MT4** platform because transactions on that platform were not fully hedged.
82. In our view these matters amounted to significant shortcomings in the **2016 Audit**, not only because they were evidence that the requirements of ASA 315 referred to by ASIC and set out above<sup>12</sup> had not been met, but because they were evidence that the requirements of ASA 200<sup>13</sup> had also not been met. The result was a serious systemic impact on the integrity of the planning for and design of testing procedures in the **2016 Audit** because it proceeded on insufficient and inaccurate information.
83. For the above reasons we are satisfied, based on the evidence we have referred to, a proper assessment of the nature of the **Halifax** business operations did not occur in the **2016 Audit**, having regard to the obligations set out in ASA 315 as well as ASA 200.

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<sup>11</sup> See outline of provisions in paragraphs 36-38

<sup>12</sup> See paragraphs 63-67

<sup>13</sup> See discussion Professional Scepticism and Professional Judgement

## Risk assessment

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84. The next allegation with respect to Contentions 1 - 4 was that the risk assessment undertaken in the **2016 Audit** to design and perform audit procedures capable of providing reasonable assurance that the financial report as a whole was free from material misstatement as required by paragraph 5 of ASA 200 (Nov 2013) ASA 200, was not adequate.

85. At the relevant time, paragraph 5 of ASA 200 provided as follows:

*As the basis for the auditor's opinion, Australian Auditing Standards require the auditor to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error. Reasonable assurance is a high level of assurance. It is obtained when the auditor has obtained sufficient appropriate audit evidence to reduce audit risk (that is, the risk that the auditor expresses an inappropriate opinion when the financial report is materially misstated) to an acceptably low level. However, reasonable assurance is not an absolute level of assurance, because there are inherent limitations of an audit which result in most of the audit evidence on which the auditor draws conclusions and bases the auditor's opinion being persuasive rather than conclusive.*

86. The requirements of paragraphs 5 and 6 and 8 of ASA 330 (26 October 2009 compilation) (ASA 330) form part of the basis for the reasonable assurance required by paragraph 5 of ASA 200.

87. Paragraphs 5 and 6 of ASA 330 required the **FY2016 Audit** to be designed and implemented in a manner that would be sufficient to address the assessed risks of material misstatement at the financial report level and were responsive to the assessed risks of material misstatement at the assertion level. Paragraph 8 of ASA 330 required the auditor to design and perform tests of controls to obtain sufficient appropriate audit evidence as to the operating effectiveness of relevant controls if the auditor's assessment of risks of material misstatement at the assertion level included an expectation that controls were operating effectively.

88. The **2016 Audit File** sets out a summary of the auditor's risk assessment in AWP 200-1 General Planning Memo as follows:

*Risk of fraud in revenue recognition*

*When identifying and assessing the risk of material misstatement due to fraud, the auditor shall, based on a presumption that there are risks of fraud in revenue recognition, evaluate which types of revenue, revenue transactions or assertions give rise to such risk.*

*Based on our understanding of the entity, the revenue streams of the entity include commissions; management fees.*

*I have considered the risks of fraud in revenue recognition and have identified that there may be a material misstatement resulting from overstatement of revenues through premature revenue recognition or*

recording fictitious revenues. Accordingly, these risks of fraud in revenue are included key risk area in the planning memorandum and CaseWare 'Identified Audit Risks'.

*Assessing the Risks of Material Misstatement*

Based on our understanding of the entity and its environment, our assessment of fraud risk, our discussions with management and audit procedures performed in previous audit engagements, experience, I have identified and assessed the risks of material misstatement as follows:

Key risk area (Assertion level for classes of transactions, account balances, and disclosures)	Significant Audit Risk? (ASA 315.28)	Reason for risk:	Impact on audit procedures:
› Revenue – cut-off	Yes	› Presumed risk unless rebutted according to ASA 240.47	› To indicate further audit procedures to mitigate identified risk
› AFSL	Yes	› Non-compliance with AFSL requirements could result in loss of licence.	› Review to ensure compliance.
› Receivable Assets	Yes	› Receivable assets are highly material in value.	› Agree all material receivable asset amounts to external supporting documentation.

Areas which are considered a significant audit risk require special audit consideration. For these risks, I have evaluated the design of the entity's related controls, including relevant control activities, and determine whether they have been implemented. This assessment is embedded in the risk area of the CaseWare file.

Audit procedures responsive to the assessed risk of material misstatement:

Overall responses to address the assessed risk of material misstatement at the financial report level:		
›	<b><u>Inherent risk</u></b>	Low
›	<b><u>Control risk</u></b>	High
›	<b><u>Overall risk</u></b>	Low

The assessment given to the risk of material misstatement at the assertion level for each class of transactions, account balance, and disclosure has been considered in the CaseWare file – Area Risk Assessment.

Based on the level of risks assessed above, the following scope of audit work is intended:

> <b>Test of controls</b>	> None
> <b>Substantive analytical procedures</b>	> Expenses/Payroll

89. AWP 2-140 *Consideration of Fraud (Risk Assessment)* sets out at questions 10 – 12 the assessment of the risk of fraud in revenue recognition in the **2016 Audit** as follows:

Procedure	Assert	Result	By	Ref
10. Ensure that when identifying and assessing the risks of material misstatement due to fraud, we make the presumption that there are risks of fraud in revenue recognition. Evaluate which types of revenue, revenue transactions or assertions may give rise to such risks.	C A	Completed No issues noted.	DC 23/08/2016	
11. If we have concluded that the presumption of fraud risk related to revenue recognition is not applicable in the circumstances of the engagement, include the reasons for that conclusion.		Not Applicable The presumption of fraud risk related to revenue recognition is not applicable.	DC 23/08/2016	
12. When assessing the risk of fraud in revenue recognition, consider the following: <ul style="list-style-type: none"> <li>• the fictitious supply of goods/services;</li> <li>• supplying goods to customers prior to scheduled delivery dates;</li> <li>• sales being recorded for goods shipped to third party warehouses;</li> <li>• supply of incomplete products or services;</li> <li>• supplies of goods/services with related parties;</li> <li>• failure to defer revenue that is subject to future performance requirements; and</li> <li>• recording large supplies of goods/services near year end.</li> </ul>	E A	Completed No issues noted.	DC 23/08/2016	

90. There was no further consideration documented in the **2016 Audit File** as to why the presumed risk of fraud in revenue recognition was *not applicable*.
91. AWP 3-200 *Risk Questionnaire* identified the Australian Financial Service Licence, Financial Assets and Revenue Recognition as the three identified areas of significant risk.
92. AWP *FSA Worksheet* allocated either a low or medium risk rating to all areas of the financial report.
93. In testing the design and implementation of controls in the revenue process AW3-155 *Revenue Walkthrough* recorded that a walk-through of a single revenue transaction was performed in the **2016 Audit** by selecting a single item from the general ledger and reconciling it to a bank statement.
94. The **s19 evidence** was as follows:
- (a) Mr Evett was not aware that there were amounts being deducted from the commission revenue being banked by **Halifax**.



- (b) Mr Evett relied on the accounting performed by **Moore**s on behalf of **Halifax**.
  - (c) Mr Evett was not aware that the commissions income from the **IB Platform** went to another Interactive Brokers account, nor that **IB** was paying expenses out of the **IB** allocated trust account and transferring the surplus to the general NAB account of **Halifax**.
  - (d) Mr Evett was only aware of the moneys going into the NAB account from **IB**.
  - (e) Mr Evett acknowledged that the audit planning undertaken under his stewardship as **Engagement partner** and **Lead Assurance Partner** for the 2016, 2017 and 2018 **Halifax Audits** did not involve auditing the **IB** allocated account to ascertain whether expenses were being paid out of it, because all three audits had proceeded on the incorrect assumption that revenue from the **IB** allocated account was paid directly into the NAB general account based on the information from **Moore**s and from **Halifax** that was relied on.
  - (f) In response to ASIC's question as to whether Mr Evett had verified the information that had been relied on in the **Halifax Audits**, Mr Evett responded that a sample verification from the ledger to the NAB bank account had been performed, but the audits did not agree anything to the source of **IB**. Mr Evett could not explain why there was no audit planning done to check whether or not expenses were paid out of the **IB** allocated client trust account, other than by responding that he understood that the income coming across, less the commissions and expenses were then paid out of the normal trading account.
  - (g) Finally, the **s19 evidence** records that Mr Evett, because he had not performed such a check, could not agree with the proposition that internal controls check over the client trust accounts would have uncovered this issue.
95. As we have set out above, AWP 200-1 noted that all the key risk areas identified by the auditor, namely revenue cut-off, AFSL and receivable assets, were considered significant, and it was specifically noted that they required special audit consideration. AWP 200-1 further noted that the auditor evaluated the design of the entity's related controls, including relevant control activities, and determined whether they had been implemented and recorded that this assessment was embedded in the risk area of the CaseWare file.
96. However we note from the contents of the second table from AWP 200 extracted in paragraph 88 above that although the control risk was noted as high and it was further noted that the assessment given to the risk of material misstatement at the assertion level for each class of transactions, account balance, and disclosure had been considered, that the final table in AWP 200 (extracted in paragraph 88 above), recorded '*none*' next to '*test of controls*' as the scope of the audit work to be done.

97. There was evidence that a walk-through of a single revenue transaction was recorded as performed as the response to the testing and implementation of controls in the revenue process in AWP 3-155 *Revenue Walkthrough*. There was no evidence on the **2016 Audit File** that any checks had been performed of the internal controls in place with respect to client trust accounts.
98. Having regard to the scale and complexity of the **Halifax** business a single walk through of one transaction in the whole revenue process was not a sufficient basis within the context of the facts set out herein, for the auditor to assert there was sufficient appropriate audit evidence as to the operating effectiveness of relevant controls within that process.
99. Further, if checks of the internal controls had been performed, there should have been a record on the **2016 Audit File** of those checks. Paragraph 8 of ASA 230 (Nov 2013 compilation) (ASA230), provided:
- 8. *The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:*
    - (a) *The nature, timing, and extent of the audit procedures performed to comply with the Australian Auditing Standards and applicable legal and regulatory requirements.*
    - (b) *The results of the audit procedures performed, and the audit evidence obtained, and:*
    - (c) *Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions.*
100. The **s19 Transcript** lends further weight to the conclusion that the audit procedures planned and performed could not be regarded as capable of providing reasonable assurance that the financial report as a whole was free from material misstatement as was required by paragraph 5 of ASA 200.
101. We refer to and repeat our comments on the auditor's obligation to exercise **Professional Scepticism and Professional Judgement** when performing an audit. The facts evidenced by the AWPs we have referred to as well as Mr Evett's **s19 evidence** do not provide a basis for concluding that he or any members of the **Bentleys** audit team exercised either appropriate professional scepticism or professional judgement when conducting the risk assessment for the **2016 Audit**. There were inconsistencies on the face of the audit records, there was no evidence that matters had been investigated, followed up or assessed with a critical eye and the audit evidence retained was not sufficient to satisfy the requirements of the **Auditing Standards**.
102. We are satisfied that the risk assessment undertaken in **FY16 Audit** was not performed in a manner that could satisfy the requirements of paragraph 5 of ASA 200, including because the auditor's risk assessment had failed to identify the introduction by **Halifax** of the **MT4** Platform in 2016 and therefore failed to identify the risk implications of the financial instruments **Halifax** had begun to trade on its own account.

## Risk response

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103. The next set of allegations made by ASIC in support of Contentions 1- 4 related to the sufficiency of the risk response in the **2016 Audit** with respect to the following areas:
- (a) Client funds.
  - (b) Cash and cash equivalents.
  - (c) Revenue.
  - (d) Expenses.
  - (e) Consolidation.
104. It was alleged variously with respect to the areas referred to in (a)-(e) above that the risk response in the **2016 Audit** did not satisfy the requirements of the relevant compilations of the various **Auditing Standards**, including:
- (a) ASA 500 Paragraph 6 which required the auditor to design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.
  - (b) ASA 500 paragraph 7 which required the auditor, when designing and performing audit procedures, to consider the relevance and reliability of the information to be used as audit evidence.
  - (c) ASA 330 paragraph 26 which required the auditor to conclude whether sufficient appropriate audit evidence has been obtained and in forming an opinion, to consider all relevant audit evidence, regardless of whether it appears to corroborate or to contradict the assertions in the financial report.
  - (d) ASA 330 Paragraphs 5 and 6 of required the **2016 Audit** to be designed and implemented in a manner that would be sufficient to address the assessed risks of material misstatement at the financial report level and were responsive to the assessed risks of material misstatement at the assertion level.
  - (e) Paragraph 15 ASA 200 (Nov 2013 compilation) ASA 200 which provided:  
*'The auditor shall plan and perform an audit with professional scepticism recognising that circumstances may exist that cause the financial report to be materially misstated.'*
  - (f) Paragraph 8 ASA 230 referred to in paragraph 99 above.
105. We deal with each of the sub-allegations as follows.

## Client funds

106. AWP 2-106 Audit team discussion states:

*Trade and receivables - Agree to statements, test deposits and subsequent receipts (also need to ensure they are meeting AFSL capital adequacy requirements)*

*Trade and other payables – Agree to statements, test redemptions and unrecorded liabilities (also need to ensure they are meeting AFSL capital adequacy requirements)*

...

*Audit strategy/approach:*

*Substantive - main testing around client receivables and payables (note that **Halifax** trades through a custodian and does not handle client monies directly).*

...

*Need to obtain confirmation from the custodian.*

107. On 18 August 2016, **Bentleys** had received a copy of a report prepared by Deloitte dated 16 May 2016 (**Report**). The subject of the **Report** was **Halifax's** Net Tangible Asset Returns (**NTA Returns**) provided to ASIC in December 2014, January 2015, and February 2015.
108. The **Report** stated '*Key transactions adopted by **Halifax** did not reflect what we would typically expect to see for a broker entity. Typically, client monies held (segregated cash at bank and deposits with the counterparties) should have an equal and offsetting liability amount.*'
109. Part 2 of the **Report**:
- (a) Noted that the surplus of client assets over client liabilities represented commissions and interest earned by **Halifax** but recommended that this surplus be reported separately.
  - (b) Included a table headed '*Revised NTA Workings*' in which the total client assets equalled the total client liabilities. This reconciliation was valid only if **Halifax** was effectively hedging all its transactions. As we have noted, this ceased to be the case with the introduction of the **MT4** platform in January 2016.
110. The reconciliation relied upon for the **FY16 Audit** was AWP C.100 *Deposits held with Counterparties*. AWP C.100 referred to the **MT4** platform as a third-party platform although the **FX PDS**, had identified it as an in-house virtual platform.
111. As in the **Report**, the reconciliation recorded in AWP C.100 was based on the premise that platform assets (referred to as '*Collateral Value Balance*') and platform liabilities ('*Close Out Value Balance*') ought to equate. However, as the **FX PDS** identified, the **MT4** platform was different from the other platforms, because **Halifax** did not always enter a hedging transaction and the client

positions did not flow through to a third party. On the **MT4** platform **Halifax** therefore received deposits from clients and held open positions (equities and various derivatives) with those clients meaning that the **MT4** platform assets and liabilities did not necessarily match because changes in the value of client open positions would be marked to market and would differ from changes in the value of assets held.

112. The failure by **Halifax** to properly segregate or track assets held from client deposits from other **Halifax** assets could have led to misclassification and should have been identified in the **2016 Audit** planning as it had significant potential implications, particularly from a risk perspective.
113. There is no evidence on the **2016 Audit file** that **Bentleys** recognised that platform assets would not necessarily equal platform liabilities because of the existence of the **MT4** platform. AWP C.100 noted House Deposits in the amount of \$1,260,220 as the reconciling item [calculated as Total Deposits with Third Party Providers - \$213.0m less liabilities - Client Funds payable \$211.7m]. The amount, '*Total Deposits with Third Party Providers*', was described as an asset. However, it included not only the amounts due to **Saxo** and **IB** (third party providers for which there ought to be matching deposit assets and client liabilities), but also the **MT4** platform balance. As there was no third-party provider for the **MT4** platform, the amount attributable to that platform was a liability owed by **Halifax** to its clients. Similarly, an amount described as '*Client Funds Payable*' (a liability) was, in fact, the sum of the client receivables and bank accounts listed and were, in fact, assets in the books of **Halifax**.
114. Mr Evett's **s19 evidence** about AWP C.100 was as follows:

*MR PURDON: - - - So my question, in simple terms, is if Halifax clients have invested \$6 million into Halifax Pro, why doesn't the \$6 million show up in the liabilities of Halifax?*

*MR EVETT: Privilege. I - I can't - can't explain that.*

*MR PURDON: Right. Do you see below that there's kind of:*

*This amount is comprised of house deposits, client funds receivable, client bank accounts.*

*There's three lines there.*

*MR EVETT: Mm'hm.*

*MR PURDON: Do you know what house deposits were?*

*MR EVETT: Privilege. No, I don't know what that was.*

*MR PURDON: Right.*

*MR EVETT: So go back to C.01.*

MR PURDON: Right. Can you explain to me why it appears that you - the audit team were aware that the liabilities were \$213 million. Is that correct?

MR EVETT: Privilege. Yeah, based on the schedule they put here under Client.

MR PURDON: Wouldn't you have expected there to be some explanation as to why there's only \$211 million in the balance sheet if there was \$213 million invested by clients? That one of your team would have said, "These things don't match. Here's why they don't match."

MR EVETT: Privilege. I would have, yes, I would have expected an explanation as to what the differential was.

115. The accuracy of **Halifax's** transaction records on which the reconciliation performed in the **FY16 Audit** was based was reliant on the existence and integrity of systems capturing, recording, and reporting on high volumes of transactions. Other than a brief note at AWP C.11 *Deposits held with Counterparties Memo* describing the daily provision of information by the platforms to the **Halifax** Treasury team (but not indicating whether the process was subjected to any audit testing), there was no evidence on the **2016 Audit File** with respect to the testing of the operating effectiveness of **Halifax's** systems or the systems of their service providers for recording balances associated with trading activity.
116. There was no audit evidence and nor does there appear to have been a basis for relying upon the output from these systems in accepting the amounts recorded as the components of *Client Funds Payable* on AWP C.100. We would expect to have seen evidence of testing performed on these systems as well as a request for reports from the various trading platform providers.
117. Based on the matters disclosed by the audit records set out above and Mr Evett's **s19 evidence**, we are satisfied that in the **2016 Audit, Bentleys** with respect to the accuracy of the amounts that were recorded in the **2016 Halifax Financial Report** as *Client Funds Payable* and *House Deposits* did not adequately:
  - (a) Design and perform audit procedures that were appropriate to obtain sufficient appropriate audit evidence as was required by paragraph 6 ASA 500.<sup>14</sup>
  - (b) Consider the relevance and reliability of the information used as audit evidence as was required by paragraph 7 ASA 500.<sup>15</sup>
  - (c) Conclude that sufficient appropriate audit evidence had been obtained as was required by paragraph 26 of ASA 330.<sup>16</sup>

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<sup>14</sup> set out in sub-paragraph 104(a)

<sup>15</sup> set out in sub-paragraph 104(b)

<sup>16</sup> set out in sub-paragraph 104(c)

118. That the above requirements of the Auditing Standards were not satisfied by the audit work performed in the **2016 Audit** was significant. Amongst other matters they resulted in the reconciliation recorded in AWP.C.100 showing there was a surplus of assets over liabilities, when in fact, there was a deficit of assets vis a vis the platform liabilities that resulted in reported liabilities being understated in the accounts by \$1,493,010 and net assets at 30 June 2016 being overstated by \$2,753,230. This evidence also demonstrates that the audit team was not applying appropriate professional scepticism to critically evaluate information provided by third parties before using it as a basis for audit procedures. Likewise, none of the elements of professional judgement set out in ASA 200<sup>17</sup> are evidenced as having been brought to bear in the process of reconciliation recorded in the **2016 Audit File**.

### Cash and Cash Equivalents

119. AWP B.01 *Leadsheet – Cash and Cash Equivalents* noted AUD bank account balances, segregated into ‘*Cash-Client Bank Accounts*’ and other accounts referred to as ‘*Cash and Cash Equivalents*’, cross-checked to bank statements.
120. The audit record of foreign currency bank account testing is found in AWP B.20 *Foreign exchange reconciliation*. It records testing that consisted of cross-checking account balances to reports from NAB, Bankwest and ANZ. On the AWP B.01 leadsheet, there is one ledger account, 11291 entitled ‘*Foreign Balances Held*’ which records a total sum that reconciles to the total sum of the accounts noted in AWP B.20.
121. The entry for account 11291 in the general ledger is consistent with all foreign currency bank accounts having been combined into one ledger account. This was updated by one manual journal entry for foreign currency bank accounts in FY16, dated 30 June 2016. The other side of this journal entry recorded a liability account for the same amount, representing the amount due to clients. This method of recording in the general ledger meant that the transactions that had occurred in the foreign currency accounts during FY16 were not directly/specifically reflected in that ledger. The closing balance on ledger account 11291 was noted as \$1,685,454.10. However, the sum of \$1,953,947 was recorded as the closing balance on the AWP B.01 leadsheet.
122. The audit record of journal entry testing for FY16 was AWP A.36 *General Journal test – June 2016*. All journal entries that appear in the schedule were marked ‘*Reviewed, no issues noted*’. The **2016 Audit File** does not record any evidence they were traced to supporting evidence.
123. Included in the record of testing is journal 62841 which posts the foreign bank account balances. The journal is:

Dr Foreign Balances held	\$1,685.454.10
Cr Foreign Balances held	\$1,685.454.10

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<sup>17</sup> set out in paragraph 36

124. There is no narrative to explain this journal and no indication of what the underlying transactions were that had taken place in FY16 and how or if they were reflected in the general ledger. Those entries, along with all other entries that appear in the schedule of AWP A.36 were marked “R” - *Reviewed, no issues noted*”.
125. The audit program at AWP A.03 **ASA Program - Journal Entries and Other Adjustments** at point 1(b) on understanding the controls surrounding journal entries states:

*‘Journals are prepared and reviewed by the external accountants  
– Stature/Moore Stephens.’*

The fact that the accounting was not performed in-house does not relieve the auditor of their responsibility to seek sufficient appropriate audit evidence to support transactions. **Moore Stephens** was a service provider to **Halifax** and the work they performed formed part of **Halifax’s** accounting system.

126. There is no evidence on the **2016 Audit File** regarding what transactions were being processed through **Halifax’s** foreign currency bank accounts nor whether they were material and no other evidence that this was considered as part of the **2016 Audit**. Further, there was no evidence that investigation or testing of the processes for handling the foreign currency transactions had occurred or whether all accounts had been included and the transactions in them properly accounted for nor enquiries made as to how these transactions were reflected in the **2016 Halifax Financial Report**.
127. There is also no evidence on the **2016 Audit File** that the audit implications of transactions on the other client trust accounts operated by **Halifax** were considered in the **2016 Audit**.
128. For example, there was evidence on the **2016 Audit File** that there had been withdrawals from some client trust accounts during FY16 to purchase hedging positions against client trades on the **MT4** platform and as of 30 June 2016, **Halifax** still had funds invested in various hedging accounts held at a counterparty called LMAX.
129. Mr Evett’s **s19 evidence** about these hedging accounts was as follows:

*MR PURDON: Yeah. So the barcode is **HIS.0037.0001.0009**. So this is a statement of account with LMAX Exchange by Halifax Investment Services as at June 16 which shows that Halifax held \$US199,975 as at June 16.*

*MR EVETT: Mm'hm.*

*MR PURDON: And if you turn over the page, the barcode is **HIS.0037.0001.0010**. It's another account that Halifax held with LMAX in which they held \$A210,355.86 with them.*

*MR EVETT: Yep.*



*MR PURDON: Now, these appear to be assets of Halifax as at June 16, but they don't appear on the balance sheet. Do you know why?*

*MR EVETT: Privilege. No, I don't know why they weren't on the balance sheet.*

*MR PURDON: Right. Did you know LMAX was a hedging - a firm that Halifax used to hedge certain things on MT4?*

*MR EVETT: Privilege. No, I didn't know that.*

*MR PURDON: Right. So you weren't aware that Halifax was taking money out of the client trust account to employ hedgers [sic] to protect their positions for the MT4 trading?*

*MR EVETT: Privilege. Yeah, you know, so I was aware that there was some hedging that - that that was in.*

*MR PURDON: Well, did you ask them, "What were your hedging positions at June 16?"*

*MR EVETT: Privilege. I don't - I don't think we did.*

130. Based on the facts and matters set out above we are satisfied that the allegation that **Bentleys** failed to adequately design and perform audit procedures that were appropriate to obtain sufficient appropriate audit evidence regarding the classification of the relevant foreign currency bank account transactions as was required to satisfy paragraph 6 ASA 500 is established.
131. We are also satisfied that the fact that there was no audit evidence to support the journal entry that brought all the foreign currency account transactions into the ledger demonstrates that an appropriate level of professional scepticism had not been exercised in the **2016 Audit**, as was required by paragraph 15 ASA 200.
132. We would expect to have seen evidence in the **FY16 Audit File** that the processes for handling the foreign currency transactions were referred to in the financial report and that there had been testing performed to ascertain whether all foreign currency accounts had been included and the transactions in them correctly accounted for. The fact that the entries in the General Ledger had not been investigated and no evidentiary support sought for the manual journal entries demonstrates in our view a lack of appropriate professional scepticism, and a lack of professional judgement having been applied in the performance of this audit.

## **Revenue**

133. AWP V.10 *Risk Response Program - Revenue* assessed the risk at the assertion level for Completeness, Existence, Accuracy and Valuation as 'low' and no Tests of Controls were performed.

134. In Section 3 of AWP V.10 – concerning the performance of audit procedures related to revenue recognition in response to the presumption that revenue recognition is a fraud risk, it was recorded: *‘Material misstatement due to fraud risk was assessed as low; however, audit has remained always sceptical during the course of the audit.’*
135. Section 7 of AWP V.10 required the auditor to ensure that sales had been recorded in the proper period or deferred to subsequent periods in accordance with the entity's revenue recognition policy, based on:
- (a) Cut-off work completed during the testing of accounts receivable.
  - (b) Discussions with management regarding the adequacy of cut-off procedures.
  - (c) Results of the analytical procedures performed.
  - (d) Supporting documentation.
136. In relation to Section 7, AWP V.10 stated:
- ‘Halifax provides a trading platform for users - as such, their main source of revenue is through the commissions earned (sic) on every trade actioned by the customer. Given such transactions occur on a real-time basis via the platform, the commissions are therefore received on a real-time basis through what is effectively EFT - therefore, given the nature of the business, revenue is only recognised when receipted into the bank. As such there is low risk in relation to cut-off.’*
137. The AWP V.20 – *Revenue Testing WP* comprises a Microsoft Excel spreadsheet which contains the following worksheets:
- (a) Account selection <V-20>;
  - (b) Interest GL <V-20.1>; and
  - (c) Comm rev GL <V-20.2>.
138. The purpose of AWP V20 appears to have been to document the selection of individual transactions for further testing. To assist that exercise, a full printout of the general ledgers for the interest revenue and commission were replicated in the worksheets.
139. A number of transactions under “*Commissions Revenue*” in the general ledger were described as *‘Halifax – Retained Earnings’*. The amounts totalled \$580,000. The AWP V.20 indicates that none of these transactions were selected for further testing even though they were unusual insofar as they were not characteristic of Halifax’s usual income sources.
140. AWP V.25 *Test of Detail*, recorded, for a sample of 16 transactions recognised as revenue, a reconciliation with the bank statements.

141. None of the testing that was recorded in the **2016 Audit file** regarding revenue involved **Bentleys** agreeing any of the selected revenue transactions to any supporting source documentation to ensure that revenue was accounted for in accordance with the requirements of paragraphs 9, 10 and 20 of AAS 118 – Revenue (Dec 2013). This would have been particularly relevant in relation to the revenue earned from the **MT4** platform, given this was an in-house virtual platform in its first year of operation, had **Bentleys** been aware of the different characteristics of that platform.
142. Based on the record provided by the AWP, we are satisfied that the allegations that the requirements of Paragraphs 5 and 6 of ASA 330, paragraph 6 of ASA 500 and paragraph 15 of ASA 200 were not met in the **2016 Audit** with respect to the revenue risk response, are established. We would expect to have seen evidence of more rigorous procedures to satisfy the requirements of paragraphs 5 and 6 of ASA 330. In terms of Paragraph 6 ASA 500, the procedures performed were not appropriate to obtain sufficient audit evidence because they did not operate to identify for further testing, those transactions which were unusual in the context of the audit being performed and would not therefore be capable of satisfying the objective of that standard which was to obtain sufficient appropriate audit evidence. Nor did the audit record evidence an understanding of how the **Halifax** systems generated transactions. We would expect to have seen as part of the audit record an outline or explanation of the process including what controls were in place to ensure transactions were correctly recorded in the general ledger. In our view this should have included a record on the audit file of details of specific walk-throughs of a sample of transactions of various types traced back to the general ledger, and where relevant, to bank account statements.
143. Finally, we refer to our discussion regarding **Professional Scepticism and Professional Judgement**. The audit evidence we have identified provides no indication that professional scepticism was being appropriately applied. For example, there was no apparent identification of some expenses which, on their face appeared uncharacteristic for the type of business **Halifax** was conducting and, in our view, this is a matter that would have been identified had the auditor been appropriately diligent in applying professional scepticism to his review of the revenue items. Likewise, the fact that the revenue testing performed did not involve verifying any of the selected revenue transactions to supporting source documentation shows in our view a lack of appropriate professional scepticism. Independent verification and corroboration of information received from the entity the subject of the audit is a key element of demonstrating appropriate professional scepticism has been applied in an audit. Further the audit working papers provide no record of a critical assessment of the revenue items having been performed and in our view the auditor's obligation to keep a record that adequately demonstrates that professional scepticism was applied should mean there was some evidence on the record of how such an evaluation was undertaken. To record in AWP V.10 '*auditor has remained always sceptical during the course of the audit.*' does not achieve this and was not sufficient.
144. Despite the importance of Mr Evett's leadership role and his obligation as **Engagement Partner** to communicate to the audit team members the

importance of applying appropriate professional scepticism to all audit tasks, there is no audit file record that Mr Evett engaged with the audit team about this issue. In our view given the importance of that responsibility we would expect to have seen evidence that this had occurred retained on the audit file.

## Expenses

145. AWP W.20 *Expenses testing WP* recorded the allocation of items to be tested. Selection was by reference to the size of the expense item.
146. AWP W.25 *Test of detail* (headed V.25) sets out the detailed testing. The method is reproduced below.

<b>Client:</b>	Halifax Investment Services
<b>YE:</b>	30/06/2016
<b>Objective:</b>	To ensure that expenses are not materially misstated
<b>Key assertions:</b>	Accuracy, occurrence, classification
<b>Key risks:</b>	1. that expenses are materially misstated due to error or omission
<b>Audit risk:</b>	Low-medium: 1. Payments are reviewed and authorised by dual signatories 2. Monthly accounts are reviewed by the board 3. there is segregation of duties between accounts and payments 4. no issues noted from prior year in relation to material errors or omissions - no change in finance staff
<b>Audit method:</b>	1. Determine sample size - refer to [W-15] 2. Select transactions to test - refer to [W-20] 3. Perform substantive testing per the following: a) obtain supporting documentation and agree: i) Amount ii) GST iii) Correct classification iv) Supplier validity b) agree to bank statement

147. Fourteen items – eleven consultancy and three others, were selected from the expense account in the General Ledger, agreed to the bank statement, to supporting documentation and to the ‘*summary of consultancy transactions.*’
148. For eight of the fourteen items tested, under the heading ‘*Per Supporting Documentation*’, it was recorded in AWP W.25:

*Per our system note, Stature Financial Group is responsible for calculating and reconciling the commissions paid to Victoria and Queensland. On this note I have performed the following procedures:*

*Obtain a summary of payments for commissions paid (to VIC/QLD) made during the year.*

*Agree total for the month to monthly summary of commissions received from platforms.*

149. As we have noted, Stature Financial Group was a service provider to **Halifax**. Their work did not provide evidence of the contractual basis pursuant to which commissions were paid. There was no audit evidence that **Bentleys** undertook any steps to validate the commission amounts paid, or which supported the calculations made by Stature Financial Group.

150. For three of the fourteen items tested, under 'Per Bank Statement' AWP W.25 recorded:

*I have comfort over the occurrence and accuracy of information because of our understanding of the control environment, that is:*

- 1. external accountant codes the movement in P&L straight through the bank statement and is therefore required to adhere to substantiation procedures as they are subject to statutory/regulatory requirement.*
- 2. bank statement is reconciled periodically.*
- 3. only 1 signatory/authority to the bank account who is also the same person who is charged with governance (Director).*

*No further work performed.*

151. There is no audit file documentation which explains whether the checks identified were in fact undertaken nor whether any of the payments were traced and verified to third party documentation. The evidence suggests that the audit team did not critically assess or question procedures they were told by Stature were undertaken. This should have been done.

152. The conclusion recorded by **Bentleys** was: *Per our testing performed above, expenses appear not to be materially misstated.*

153. Based on the matters disclosed by the audit file records set out above, we are satisfied as was alleged that **Bentleys'** risk response in relation to expenses in the **2016 Audit**, was not adequate and the audit procedures performed were not appropriate to obtain sufficient appropriate audit evidence within the meaning of ASA 500.6<sup>18</sup> For example, the testing did not address whether expenses had been properly accounted for, as only the operating bank account was subject to audit, and there were other bank accounts being posted by summary journal entry. Further, the stated understanding of the control environment was not validated as part of the audit procedures and there was

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<sup>18</sup> Set out in sub-paragraph 104(a)

no evidence obtained by the auditor regarding the contractual basis for payment of commissions to the various platform operators.

## Consolidation

154. Note 19 of the FY16 Financial Report recorded that **Halifax** held a 100% ownership interest in both **Halifax** New Zealand Limited (**Halifax NZ**) and **Halifax** America, LLC (**Halifax America**). It further explained that the share capital of those subsidiaries consisted solely of ordinary shares held directly by the Group.
155. A copy of the financial statements of **Halifax NZ** for the year ended 31 March 2016 were retained on the **2016 Audit File**. Note 14 of the **Halifax NZ** financial report indicated that **Halifax** owned 140 out of a total of 200 ordinary shares in **Halifax NZ** (i.e., a 70% interest).
156. **Halifax America** was a Limited Liability Company (LLC). An LLC is a US corporate structure whereby the owners are not personally liable for the company's debts and liabilities and where shares are not usually issued. As of 30 June 2016, the limited liability agreement, in effect at that time, prescribed that **Halifax** had a 67% interest which would have entitled it to remove the manager and elect a successor manager. Therefore, it controlled the subsidiary. There is no evidence on the **2016 Audit File** that **Bentleys** had reviewed the limited liability agreement, nor was a copy retained as part of the audit record.
157. *AWP US Trial Balance* (US-103) recorded that the equity of **Halifax America** was not fully controlled by **Halifax**. It recorded US\$2,204 of the equity was assigned to Devon Brady and US\$269,267 was assigned to **Halifax**.
158. Mr Evett's **s19 evidence** was as follows:

*MR PURDON: So do you know what percentage of Halifax New Zealand Ltd that Halifax owned?*

*MR EVETT: Privilege. Just based on what we disclosed in the accounts, it's 100.*

*MR PURDON: 100 per cent, right. Did you get a copy of the Halifax New Zealand accounts every year?*

*MR EVETT: Privilege. I think we did.*

*MR PURDON: So if you go to tab 32 - so these are off your CaseWare system, these accounts.*

*MR EVETT: Okay.*

*MR PURDON: So the barcode is HIS.0003.0009.0952.*

*MR EVETT: Yep.*

*MR PURDON: And you'll see they're financial statements for Halifax New Zealand Ltd for the year ended 31 March 2016.*

*MR EVETT: Mm'hm.*

*MR PURDON: So have a look at note 14. You'll see that the issued and paid-up capital are 200 ordinary shares. Do you see that, Mr Evett?*

*MR EVETT: Privilege. Yes.*

*MR PURDON: And you'll see down the bottom, Ordinary Shares. It says:*

*On 18 November 2014, Halifax Investment Services converted their 100 limited rights shares in the company to ordinary shares and obtained 40 ordinary shares from the ██████████ Family Trust as consideration of the agreement to provide 1.2 million in subordinated debt.*

*So Halifax owned 140 shares out of the 200, so it owned 70 per cent of the New Zealand company. Were you aware of that?*

*MR EVETT: Privilege. Yeah, based on this.*

*MR PURDON: So I don't know whether you answered my question.*

*MR EVETT: Sorry.*

*MR PURDON: Were you aware at June 16 that Halifax only owned 70 per cent of Halifax New Zealand Ltd?*

*MR EVETT: Privilege. I - I wasn't aware. I don't recall, other than what was disclosed in the accounts.*

*MR PURDON: And would you agree with me that if Halifax only owned 70 per cent, then the consolidation worksheets should show a minority interest on the balance sheet, shouldn't it?*

*MR EVETT: Privilege. Not necessarily though. It depends who has control.*

*MR PURDON: Well, Halifax has control, they own 70 per cent?*

*MR EVETT: 70 per cent (indistinct) sorry.*

*MR PURDON: But on a consolidation you've got to account for the minority interest, don't you?*

*MR EVETT: Yeah sorry, privilege. Yes.*

*MR PURDON: So the accounts should show on their face a minority interest in the equity section, shouldn't it?*

*MR EVETT: Privilege. On face value, yes.*

*MR PURDON: Right. And the accounts should show in the notes that it only owned 70 per cent rather than 100 per cent. Do you know how much it owned of the US company?*

*MR EVETT: Privilege. Not off - not off the top of my head.*

*MR PURDON: You know what the accounts say though, don't you?*

*MR EVETT: Accounts - privilege - yes, accounts say a hundred.*

*MR PURDON: Do you know what sort of entity the US entity was as at June 16?*

*MR EVETT: Privilege. I think it was an LLC.*

*MR PURDON: And do you know what that means?*

*MR EVETT: A limited liability company.*

*MR PURDON: Do you know whether or not that limited liability company had issued shares or not?*

*MR EVETT: Privilege. No, I'm not - not aware.*

*MR PURDON: Do you know if it's possible for limited liability companies not to issue shares?*

*MR EVETT: Privilege. No, I wasn't.*

*MR PURDON: Were you aware that there had been no shares issued in the American company?*

*MR EVETT: Privilege. No, I wasn't aware.*

*MR PURDON: Were you aware that Halifax had a 66 per cent interest in the equity of LLC and someone else owned the other 34 per cent?*

*MR EVETT: Privilege. I - no, not without-*

*MR PURDON: As at June 16, I'm talking about.*

*MR EVETT: Oh - privilege - I - I don't know that at all.*

*MR WITHERS: Sure.*

*MR PURDON: Are you aware that if that was true, the case that they only had a 66 per cent interest, again there should be a minority interest on the balance sheet?*

*MR EVETT: Privilege. If that was the case, that's probably-*



MR PURDON: Right. And again the note should say the interest is 66 per cent, shouldn't it?

MR EVETT: Sure

MR PURDON: Wouldn't that be kind of auditing 101, to check how much - what the percentage of the shareholding was?

MR EVETT: Privilege. Yeah, it would be - it would be something that you would do.

159. Based on the evidentiary record provided by the AWP's and the **s19 evidence** referred to above, we are satisfied that the allegation that the risk response with respect to consolidation was not sufficient to meet the requirements of ASA 500.6<sup>19</sup>, 330.26<sup>20</sup> and 200.15.<sup>21</sup>
160. That evidence shows that **Halifax** had failed to account for the minority interests in **Halifax NZ** and **Halifax America** and this accounting treatment was not consistent with paragraph 22 of AASB 10 *Consolidated Financial Statements* (Jan 15) which provided that 'a parent shall present non-controlling interests in the consolidated financial statement of financial position within equity, separately from the equity of the owners of the parent'.
161. **Halifax** had also failed to follow Note 1a of the accounting policy note in the FY16 Financial Statements which states:
- Non-controlling interests, being the equity in a subsidiary not attributable, directly or indirectly, to a parent, are shown separately within the equity section of the consolidated statement of financial position and statements showing profit or loss and other comprehensive income. The non-controlling interests in the net assets comprise their interests at the date of the original business combination and their share of changes in equity since that date.*
162. There is no evidence recorded in the **2016 Audit File** to indicate that **Bentleys** identified the interest held by minorities in **Halifax NZ** or **Halifax America**, nor that it understood that **Halifax America**, being an LLC, had not issued any ordinary shares. Had any audit procedures been performed, or indeed the **Halifax** New Zealand financial statements, which were retained on the file, been read by the auditor these inconsistencies may have been identified and appropriate audit procedures undertaken.

## Panel Findings Contentions 1 - 4

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### Contention 1

163. Contention One alleged that Mr Evett failed to perform the duties or functions required by an Australian law to be carried out or performed by an **RCA**

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<sup>19</sup> see sub-paragraph 104(a)

<sup>20</sup> see sub-paragraph 104(c)

<sup>21</sup> see paragraph 35(c)

because he failed, as **Lead Auditor**, to ensure that the **2016 Audit** was conducted in accordance with the applicable Auditing Standards, as required by s 989CA (2) of the **Act**.

164. We refer to our findings about and comments on the various respects in which the **2016 Audit** was not performed in accordance with the relevant Auditing Standards and other applicable legislation and standards as we have set out in the discussion above<sup>22</sup> (**2016 Audit Findings**).
165. As we have noted, it was not in issue that Mr Evett was the **Lead Auditor** in each of the **Halifax Audits** and we are satisfied that ss 989CA (2) of the **Act** imposed the duty on him to ensure that the **2016 Audit** was conducted in accordance with the Auditing Standards.
166. Based on the **2016 Audit Findings**<sup>23</sup> we are satisfied that Mr Evett's performance of his function and duties as **Lead Auditor** in the **2016 Audit** does not reflect a level and standard of performance either of that function or of his audit duties that was sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties and functions of an auditor within the meaning of ss1292(1)(d)(ii) of the **Act**.

### Panel Finding

167. We are satisfied that Contention One is established.

### Contention 2

168. Contention 2 alleged that Mr Evett, failed to carry out adequately and properly the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act** because he failed, as **Engagement Partner**, to ensure, in accordance with ASA 220.15 that:
  - (a) The direction, supervision, and performance of the **2016 Audit** complied with the Auditing Standards.
  - (b) The FY16 Audit Report was appropriate in the circumstances.
169. As we have noted, it was not in issue that Mr Evett was the **Engagement Partner** in each of the relevant **Halifax Audits** and we are satisfied the Auditing Standards placed the responsibility on him for the matters outlined in ASA 220.15.
170. Based on the **2016 Audit Findings**<sup>24</sup> we are satisfied that Mr Evett's performance of his duties as **Engagement Partner** in the **2016 Audit** does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we

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<sup>22</sup> See paragraphs 62, 72, 77, 78-83, 95, 96, 98-102, 112, 113, 115-118, 124-128, 130-132, 141-144, 149,151,153,156, 159-162

<sup>23</sup> *ibid*

<sup>24</sup> (n 22)

have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### **Panel Finding**

171. We are satisfied that Contention Two is established.

### **Contention 3**

172. Contention 3 was that as the **Engagement Partner**, Mr Evett did not properly review the **FY16 Audit** documentation to be satisfied that sufficient appropriate audit evidence had been obtained to support the conclusions reached and for the **FY16 Audit Report** to be issued.

173. At the relevant time Paragraphs 16, 17 and 18 of ASA 220 (Nov 13) provided as follows:

*16. The engagement partner shall take responsibility for reviews being performed in accordance with the firm's review policies and procedures.*

*17. On or before the date of the auditor's report, the engagement partner shall, through a review of the audit documentation and discussion with the engagement team, be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor's report to be issued.*

*18. The Engagement Partner shall:*

*(a) Take responsibility for the engagement team undertaking appropriate consultation on difficult or contentious matters.*

*(b) Be satisfied that members of the engagement team have undertaken appropriate consultation during the course of the engagement, both within the engagement team and between the engagement team and others at the appropriate level within or outside the firm.*

*(c) Be satisfied that the nature and scope of, and conclusions resulting from, such consultations are agreed with the party consulted, and:*

*(d) Determine that conclusions resulting from such consultations have been implemented.*

174. The elements of the review envisaged by the above paragraphs of ASA 220 place a significant responsibility on the **Engagement Partner** in any audit. To discharge that responsibility properly, our view is that Mr Evett would have needed to ensure:

(a) He had a high level of familiarity with the detail both of the 2016 **Halifax** Financial Report and the nature of its business operations. This knowledge would enable him to properly check and verify that the audit planning undertaken was appropriate for the risk profile of the business

and provided a proper foundation for the design of testing and procedures in the audit.

- (b) He had a detailed understanding of the testing, the rationale for it and the conclusions recorded in the key AWP's. This would have enabled him to properly conduct discussions with the **Bentleys** audit team, as envisaged by ASA 220.17, about the substantive matters identified in the audit working papers so that there was a proper foundation in place for him to exercise his professional judgement to form a view about whether there was sufficient audit evidence on which to base his audit opinion.
- (c) That his discussions with the audit team members covered the specific matters identified in sub-paragraphs (a) and (b) of ASA 220.18, namely identifying the extent to which the **Bentleys** audit team had identified difficult or contentious issues in the audit and whether appropriate consultation with the **Halifax** business team had taken place during the audit both on these issues and generally, as well as between the **Bentleys** audit team members.
- (d) That he had conducted relevant discussions with the **Halifax** business team with a view to satisfying the requirement in ASA 220.18(c) and to the extent that involved implementation of any conclusions, that that had occurred for the purpose of ASA 220.18(d). The sub-paragraphs underscore the need for collaboration between the parties in an audit engagement and in our view communication with the audited entity should be ongoing in an audit, with a concluding discussion before the final audit opinion whether there are any matters that require implementation by the audited party.

175. The relevant evidence we are satisfied is established is as follows:

- (a) AWP 2-100 *General Planning Memo* identified a familiarity threat insofar as Mr Evett had undertaken the role as auditor of **Halifax** since 2005. It recorded: 'Greg [Bell] will review the audit work performed during the audit.' Concluding: 'The Engagement Partner is not involved in the performance of detailed audit work and furthermore, due to reviews performed by Greg Bell ... familiarity threat has been mitigated.'
- (b) Mr Evett's said in his **s19 evidence** that his methodology for checking an audit was to 'check more so the planning side of documents, make sure they were in there and then look at any particular areas that required my judgement on or that I needed to have a look at, or if there were any particular areas that the team said, "Can you have a look at this."'
- (c) Mr Evett said it was not his practice to review every work paper on an audit file, rather he would look at the planning documents and then would review predominantly:

*The balance sheet items and the P and L items, the lead sheets and then any other - if any other balances that I determined that I'd have a look at.*

- (d) The audit working paper index for the **2016 Audit** records that Mr Bell worked on 124 AWP's on 18 October 2016, 48 AWP's on 20 October 2016 and 12 AWP's on 30 October 2016. However, the 2016 '*Bill Report*' records that, during the audit, Mr Bell spent only 2.00 hours on '*Audit Review*' which was performed on 21 October 2016.
- (e) According to the **2016 Audit File**, Mr Bell, on 26 October 2016, completed AWP 5-300 QC Program – Quality Control Manager Review which described itself as a '*checklist containing references to those requirements which are generally required on all engagements regardless of size or complexity*'. It also noted: '*Users are reminded that responding positively to the statements in this checklist does not constitute sufficient appropriate evidence of compliance with the requirements of the auditing standards. The audit documentation within the engagement file must provide the evidence*' and '*Appropriate [sic] audit work has been undertaken to conclude on the financial statements.*' There is no evidence on the **2016 Audit File** that Mr Evett reviewed this AWP.
- (f) AWP 5-310 on the **2016 Audit File** QC Program – Engagement Partner Quality Control was a checklist designed to assist the **Engagement Partner** to fulfil their role. In his **s19 evidence**, Mr Evett acknowledged his responsibility as **Engagement Partner** to complete this document and said he would normally have completed it.
- (g) The '*Working Paper Index*' for the **2016 Audit** records that Mr Evett worked on 1 AWP on 17 October 2016, 50 AWP's on 20 October 2016 and 1 AWP on 30 October 2016.
- (h) The 2016 '*Bill Report*' for the **2016 Audit** records that Mr Evett:
  - (i) spent 0.33 hours on 17 October 2016 with the comment '*Review*'.
  - (ii) spent 1.17 hours on 20 October 2016 with the comment '*Review*'.

176. The record on the **2016 Audit File** is therefore that:

- (a) Mr Bell spent 2 hours in total reviewing the work performed by **Bentleys** in the **2016 Audit** to address the familiarity threat identified by reason of Mr Evett's involvement with **Halifax** over the previous 10+ years.
- (b) Mr Evett spent 90 minutes reviewing 50 AWP's.

177. The AWP's reviewed by Mr Evett included the audit working papers we have already discussed in the context of the allegations advanced with respect to contentions 1 and 2, namely:

- (a) 2-100 General Planning Memo.
- (b) 2-104 Audit team discussion.
- (c) 2-140 ASA Program – Consideration of Fraud (Risk Assessment).

- (d) 3-200 Risk Questionnaire – Financial Report.
  - (e) FSA Financial Statement Areas.
  - (f) B.01 Leadsheet – Cash and Cash Equivalents.
  - (g) V.10 Risk Response Program Revenue.
178. However, Mr Evett did not identify any issues with respect to these or any of the AWP's when carrying out his review as **Engagement Partner** in the **2016 Audit**. Nor apparently, did Mr Bell's review result in any further audit actions being required notwithstanding that the facts and evidence we have discussed and that form the basis of our findings in relation to Contentions 1 and 2 comprise specific instances of the Auditing Standards having not been complied with in the **2016 Audit**.
179. The evidence we have identified demonstrates in our view that the review of the audit working papers conducted by Mr Evett in his role as **Engagement Partner** for the **2016 Audit**, was not sufficient to meet the requirements of Paragraphs 16, 17 and 18 of ASA 220 (Nov 13). It did not demonstrate that Mr Evett had undertaken a diligent process that involved any of the steps we have outlined in paragraph 176 above. Indeed, the evidence we have summarised supports the view that Mr Evett's review was cursory and that he was either not aware of the obligations he had assumed as **Engagement Partner** or did not understand their significance or how to carry them out properly. Moreover, this evidence demonstrates seriously deficient professional judgement. Mr Evett's review failed to identify any of the issues the subject of our findings regarding the **2016 Audit**. These findings evidenced that there were significant shortcomings in how the audit had been performed by the **Bentleys** audit team which had a significant impact on the outcome of the **2016 Audit**. These findings speak for themselves as to the lack of appropriateness and sub-standard quality of Mr Evett's discharge of his review responsibility as **Engagement Partner**.
180. Based on the facts we have found are established and for the reasons we have set out<sup>25</sup> we are satisfied that the **Engagement Partner** review conducted by Mr Evett in the **2016 Audit** was not performed in accordance with the relevant Auditing Standards and does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### Panel Finding

181. We are satisfied that Contention Three is established.

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<sup>25</sup> See paragraphs 173-179

## Contention 4

182. Contention Four alleged that Mr Evett failed to carry out adequately and properly the duties of an auditor, because as **Lead Assurance Practitioner** in the **2016 Audit**, he failed to ensure, as was required by ASAE 3000, that in relation to the Report on Internal Controls and Required Accounts for FY16:
- (a) The engagement was performed to comply with professional standards.
  - (b) A proper review of the engagement documentation, in particular AWP's AFSL.02 *AFSL Program* and AFSL.05 *AFSL Compliance Checklist*, was performed.
183. As we have already noted<sup>26</sup>, the AFSL held by **Halifax**, required the **Halifax Auditor's** report to include a *Report on Internal Controls and Required Accounts* for each of the relevant years.
184. The ASIC prescribed form *FS71 Auditor's Report for AFS Licensee* required Mr Evett to certify that he had conducted the work on the *Report on Internal Controls and Required Accounts* in accordance with the Auditing and Assurance Board's standards including ASAE 3000.33<sup>27</sup> (FS71 Certification). Essentially, it required Mr Evett as the **Lead Assurance Practitioner** to be responsible for obtaining reasonable assurance about whether throughout the period, in all material respects, specified internal controls operated effectively and the required accounts [as referred to in Corporations Regulation 7.8.13(2)(b)] were operated and controlled as required. Under ASAE 3000.33 paragraphs (a)-(e) he was also responsible for ensuring that:
- (a) Appropriate procedures were performed regarding the acceptance and continuance of client relationships.
  - (b) The engagement was planned and performed with appropriate direction and supervision to comply with professional standards and applicable legal and regulatory requirements.
  - (c) Reviews were performed in accordance with the firm's review policies and procedures.
  - (d) A review of the engagement documentation was undertaken on or before the date of the assurance report.
  - (e) Appropriate engagement documentation was maintained to provide evidence of achievement of the assurance practitioner's objectives, and that the engagement was performed in accordance with the relevant Assurance and Auditing Standards and relevant legal and regulatory requirements.

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<sup>26</sup> See paragraphs 17(e), 45

<sup>27</sup> See paragraph 47

- (f) Appropriate consultation was undertaken by the engagement team on difficult or contentious matters.

**(Assurance Engagement Work)**

185. We are satisfied that the following evidence was established:

- (a) Mr Evett made the FS71 Certification in the **2016 Audit Report**.
- (b) In his **s19 evidence**, Mr Evett acknowledged the **FY16 Engagement Letter** does not contain any reference to the **Assurance Engagement Work** as was required by the ASAE 3000.33.<sup>28</sup>
- (c) AWP AFSL.02 *AFSL Program* which was on the **2016 Audit File** was the audit work program for the **Assurance Engagement Work**. That document recorded in its introductory guidance:

*To complete the AFSL audit work programme, you may need to refer to Divisions 2-7 of Part 7.8 of the Corporations Act 2001. A copy of these divisions of the Act as of 15 September 2003 is attached at the end of this work programme.*

We note the reference to the 2003 version of the relevant provisions of the **Act** were long out of date by the time of the **2016 Audit**, a matter conceded by Mr Evett in his **s19 evidence**.

- (d) Step 2 of AWP AFSL.02 was to update the statutory audit engagement letter to reflect the audit of the AFSL as an '*Other Audit Related Service*' and to detail the requirements of the AFSL audit and the information that would be required from the client to perform the **Assurance Engagement Work**. The notation recorded next to this step was '*Fifth year audit*'.
- (e) Step 5 of AWP AFSL.02 *AFSL Program* is extracted in full below together with the auditor's responses as they were noted in the final right-hand column:

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<sup>28</sup> *ibid*



	<p>In FS70:</p> <ul style="list-style-type: none"> <li>• Paragraph 6 relates to the handling of client money as an agent of the client.</li> <li>• Paragraph 7 relates to the handling of client property as an agent of the client</li> <li>• Paragraph 8 relates to receiving loans from clients as an agent of the client.</li> </ul> <p>Review paragraphs 6, 7, and 8 of the FS70 in conjunction with the requirements of Divisions 2 and 3 of Part 7.8 of the <b>Act</b> and from the knowledge gained during the financial statements audit (e.g. testing of internal controls relating to these Act requirements (see work step 17), review of Board minutes, breach registers, discussions with management etc), conclude as to whether anything has come to the audit team's attention that the statements at paragraphs 6, 7 and 8 in FS70 are not true.</p> <p><b>Note</b> that this applies only to the period for which the client had its AFSL (for the first year of operation).</p>	<p>None</p> <p>None</p> <p>None</p> <p>No client money held</p>
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- (f) In its Concise Outline, ASIC identified that the references in step 5 above to paragraphs 6, 7 and 8 did not correlate with the FS70 form lodged by **Halifax** in 2016, although correlated with the Form FS70 that was lodged by **Halifax** in 2012. Mr Evett conceded in his **s19 evidence** that the guidance in step 5 of AWP AFSL.02 had not been updated by **Bentleys** as it should have been to reflect the changes in the FS70 form that had occurred.
- (g) AWP AFSL.05 *AFSL Compliance Checklist*, notes under condition 12, '*N/A Does not hold client's money*', despite also noting under condition 10 that **Halifax** was holding more than \$4.5m cash on behalf of clients.
- (h) In relation to AWP AFSL.05 Mr Evett's **s19 evidence** was that based on the **2016 Audit File** record, **Bentleys** had not performed any procedures directed to establishing the effectiveness of the internal controls on the client money trust accounts as was required by reason of the **Halifax** AFSL, a key aspect of the **Assurance Engagement Work** for which Mr Evett was responsible in the **2016 Audit**.
- (i) Mr Evett's further relevant **s19 evidence** was that he could not point to any documents on the **2016 Audit File**, nor could he recall whether there

was any testing performed on controls with respect to the expenditure of money from the client trust accounts operated by **Halifax**, another key aspect of the **Assurance Engagement Work** for which Mr Evett was responsible in the **2016 Audit**.

186. It follows from the above evidence that the **2016 Audit File** did not contain engagement documentation that provided a record of the basis for the assurance report that would be sufficient and appropriate to enable an experienced assurance practitioner, having no previous connection with the engagement, to understand significant matters arising during the engagement, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions as was required by ASAE 3000.79 (Jun 2014) not only because the engagement documentation was not updated as it should have been but because the evidence establishes that the necessary work had not been performed in significant respects.
187. These facts demonstrate that Mr Evett did not discharge his responsibility as **Lead Assurance Practitioner** pursuant to the requirements of ASAE 3000 when he performed the **Assurance Engagement Work** in the **2016 Audit**. The consequences were significant. For example if he had identified that the control testing with respect to the expenditure of money from the client trust accounts operated by **Halifax** had not been performed, it should have resulted in that testing being performed revealing the fact that client trust account funds were being used by **Halifax** to hedge positions as well as for other operational expenditure by **Halifax** which would have resulted either in material changes to the 2016 **Halifax** Financial Report, or the need for an adverse audit opinion.
188. The fact that the conclusion by **Bentleys** in AWPAFSL.02 that there was no client money held was not identified by Mr Evett as being incorrect given his responsibility as **Lead Assurance Practitioner** deserves specific comment. That conclusion was reached despite the FY16 Financial Report disclosing more than \$4.8 million held in client bank accounts and even though the accounting policies detailed in Notes to the **FY16 Halifax Financial Report** stated:

*Client funds*

*Client funds are represented by cash at bank – client deposits, client deposits with external counterparties and client liabilities. Under the product disclosure statements ('PDSs') and each client service agreement ('CSA'), certain important differences to the contractual relationship between the company and a client arise depending on whether the client chooses to transact through a 'Trust Account Platform' or a 'Non-Trust Account Platform.' In particular, for Products acquired through a Non-Trust Account Platform all amounts of money received by the company in respect of contracts for difference and margin FX products (collectively, the 'Products') (including amounts of margin) are owned beneficially by the company. The client's rights in respect of such amounts are limited to their contractual rights in respect of the Product in accordance with the CSA and as described in the PDSs. That is, such amounts will be owned absolutely by the*

*company, with corresponding obligations owed to the client in respect of the Product, in accordance with the CSA.*

189. Besides there being no explanation in the **2016 Audit File** as to the basis of the conclusion by **Bentleys** that there were no client monies held by **Halifax**, this provides another example of a basic fact evident in the detail of the **2016 Halifax Financial Statements** that was completely overlooked by the audit team at **Bentleys** as well as by Mr Evett, despite his role as **Lead Assurance Practitioner** and **Engagement Partner**.
190. Mr Evett's **s19 evidence** was that he had reviewed the relevant audit working papers and overlooked these issues. He agreed that **Halifax** was holding client moneys and that he had no reason to dispute the correctness of the audit record. The fact that he undertook this exercise and failed to identify that no control testing or testing of the required accounts had occurred or that client moneys were held by **Halifax**, demonstrates in our view a serious failure by Mr Evett to properly carry out his duties and functions in the **2016 Audit**.
191. Based on the evidence we have found established and for the reasons we have set out<sup>29</sup> we are satisfied that Mr Evett as **Lead Assurance Practitioner** in the **2016 Audit**, did not ensure that the **Engagement Assurance Work** performed by **Bentleys** met the requirements of ASAE 3000 (Jun 2014). Such conduct does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard discussed in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### **Panel Finding**

192. We are satisfied that Contention Four is established.

### **Contentions 5 - 8 2017 Audit Engagement**

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193. Contentions 5 – 8 were based on the audit by **Bentleys** of the 2017 **Halifax** financial report (**2017 Audit**). We now turn to consider the facts alleged in support of those contentions and the relevant legislative/regulatory framework, to make our findings.
194. As he had done in 2016, Mr Barnett, a director of **Halifax**, signed and returned to **Bentleys** an engagement letter dated 14 September 2017 that set out terms of the engagement of **Bentleys** to perform an audit of the 2017 **Halifax** Financial Report (the **2017 Engagement Letter**).
195. The statement under 'scope' in the **2017 Engagement Letter** was more detailed than the corresponding statement in the **2016 Engagement Letter**. It was as follows:

*We will conduct our audit in accordance with the Australian Auditing Standards to provide reasonable assurance as to whether the financial report is free from material misstatement.*

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<sup>29</sup> See paragraphs 184-190

*Those standards require that we comply with ethical requirements. As part of an audit in accordance with Australian Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. Our procedures include examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial report, and the evaluation of accounting policies and significant accounting estimates.*

*Our AFSL procedures will include examination of compliance with specified provisions of Part 7.8 and with sections 981B and 982B of the Corporations Act 2001. Compliance with specific AFSL conditions relating to financial requirements, including internal procedures used by the Licensee to comply with the financial requirements under the Licence and projections for the cash needs requirements of the AFSL will be reviewed. Those procedures will be limited primarily to inquiries of Licensee management, review of minutes and related documents, review of correspondence with regulatory authorities and observation of the operation of internal compliance controls.*

196. On 30 October 2017, Mr Evett signed the FY17 Audit Report for **Halifax** that was prepared pursuant to the **2017 Engagement Letter (FY17 Audit Report)** which expressed the opinion that the 2017 **Halifax** Financial Report was in accordance with the **Act**, including:

- (a) Giving a true and fair view of the consolidated entity's financial position as of 30 June 2017 and of its performance for the year ended on that date.
- (b) Complying with Australian Accounting Standards to the extent described in Note 1 and the Corporations Regulations 2001.

197. In signing the **FY17 Audit Report**, Mr Evett also attested that the financial report complied with International Financial Reporting Standards as disclosed in Note 1.

198. Under the heading '*Basis of Opinion*', the **FY17 Audit Report** stated:

*We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities are further described in the Auditor's Responsibilities for the Audit of the Financial Report section of our report.*

...

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

199. The statements included under the heading *Auditor's Responsibilities for the Audit of the Financial Report*, had also been revised since the **2016 Audit**. The **FY17 Audit Report** stated:

*Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that*

*includes our opinion. Reasonable assurance is a high level of assurance, but it is not a guarantee that an audit concluded in accordance with Australian Auditing Standards will always detect a material misstatement when it exists.*

...

*As part of an audit in accordance with the Australian Auditing Standards, we exercise professional judgement and maintain professional scepticism throughout the audit. We also:*

*Identify and assess the risks of material misstatement of the financial report, whether due to fraud or error, design and perform audit procedures responsive to the risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion...*

*Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion of the effectiveness of the Consolidated Entity's internal control.*

*Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosure made by the directors.*

...

*Evaluate the overall presentation, structure and content of the financial report, including the disclosures, and whether the financial report represents the underlying transactions and events in a manner that achieves fair presentation.*

200. On 30 October 2017, Mr Evett signed Form FS71 and initialled each page of Form FS70 which had been signed by a director of **Halifax** on that day and attached the 2017 **Halifax** Financial Report.
201. The Overall Materiality level for the **2017 Audit** was calculated to be \$2,454,812. The Performance Materiality level was calculated to be \$1,841,109 and Clearly Trivial level was calculated to be \$245,481.

### **Assessment of the nature of the Halifax business**

202. AWP2-100 which was the General Planning Memo for the **2017 Audit** did not note any new changes to products and services by **Halifax**. Mr Evett's **s19 evidence** was that he recalled there had been a new product in that year and it should have been noted in this audit working paper. He also remembered that the **Saxo** platform had ceased during the relevant financial year and acknowledged this should have been noted in AWP2-100.
203. AWP 3-150 was the *Revenue system notes* record. Its contents show that the audit team at **Bentleys** was now aware of the introduction of the **MT4** platform (Halifax Pro) and the **MT5** platform (Halifax Plus) noting 'new income sources are for the platforms MT4 and MT5'.

204. As in the **2016 Audit**, and in similar respects, **Bentleys'** understanding of **Halifax** business as recorded in the **2017 Audit File** was not consistent with the business as described in the Halifax PDSs current as of 30 June 2017 and which were available on its website. These PDSs were:

- (a) CFD PDS dated 28 July 2016; and
- (b) FX PDS dated 28 July 2016.

205. The platforms were described in the CFD PDS dated 28 July 2016 as follows:

Trading Platform	Platform Counterparty	Hedging Policy
Halifax Pro and Halifax Plus	LMAX Limited <a href="http://www.lmax.com">www.lmax.com</a> Interactive Brokers <a href="http://www.interactivebrokers.com">www.interactivebrokers.com</a> FXCM <a href="http://www.fxcm.com">www.fxcm.com</a>	We may decide not to hedge, or hedge less than 100% of, our exposure to your CFD Transaction.
Trader Work Station	Interactive Brokers <a href="http://www.interactivebrokers.com">www.interactivebrokers.com</a>	We essentially hedge 100% of our exposure to your CFD Transaction.
FX2 Dealbook	GAIN Capital <a href="http://www.gain.com">www.gain.com</a> / <a href="http://www.forex.com">www.forex.com</a>	We essentially hedge 100% of our exposure to your CFD Transaction.
GAIN MetaTrader4	GAIN Capital <a href="http://www.gain.com">www.gain.com</a> / <a href="http://www.forex.com">www.forex.com</a>	We essentially hedge 100% of our exposure to your CFD Transaction.

206. However, even though the disclosure in the CFD PDS clearly identified the hedging policy in relation to the **MT4 and MT5** platforms, **Bentleys** apparently continued to be unaware that **Halifax** was sometimes trading on its own account on these platforms. There is no reference in either of the above audit working papers nor any of the other audit working papers on the 2017 Caseware File (**2017 Audit File**) that indicates **Bentleys** was so aware and Mr Evett's **s19 evidence** was also consistent with this situation.

207. Based on the above matters, ASIC alleged that in the **2017 Audit Bentleys** did not carry out a proper assessment of the nature of the **Halifax** business operations having regard to the obligations set out in the Auditing Standards, in particular paragraphs 11,18 and 25 of the Dec 2015 version of ASA 315 which were in the same terms as the previous compilation that we have set out in paragraphs 63-66 hereof.

208. The planning and investigation performed by Mr Evett and his audit team at **Bentleys** for the **2017 Audit** failed to reveal the implications of the introduction of the **MT4** platform in the prior year. A key audit issue that significantly impacted the financial risk profile of the **Halifax** business. That this misconception carried over to the **2017 Audit**, even though the existence of two new platforms had been identified in the **2017 Audit File**, supports the view that no relevant action or inquiry was instigated by the audit team as part of their audit planning to clarify or confirm their understanding of the basis of the new trading platforms or what impact they had on either the scope of the **Halifax**

business or the audit planning for 2017. Yet, as in 2016, the relevant FX PDS that would have provided relevant information and alerted **Bentleys** to the fact that both new platforms differed from their assumption that **Halifax** did not conduct trading on its own account was available on the **Halifax** website.

209. The above facts, together with the **2016 Audit Findings**<sup>30</sup> support the view that there were serious systemic issues affecting the performance of the **Bentleys** audit team led by Mr Evett that existed in 2016 and remained unaddressed by the commencement of the **2017 Audit**.
210. We refer to our factual findings in paragraphs 203 - 209 above and we also refer to and repeat our comments in paragraphs:
- (a) 61 – 62 as to the importance of audit planning to the integrity and quality of the audit process, and:
  - (b) in paragraphs 77- 81 to the extent they highlight details we would expect to have seen recorded as a result of the audit investigation undertaken regarding the **Halifax** business in the **2017 Audit**.
211. For the above reasons we are satisfied, based on the evidence we have referred to, that a proper assessment of the nature of the **Halifax** business did not occur in the **2017 Audit**, having regard to the obligations set out in ASA315<sup>31</sup>.

### **Risk Assessment 2017 Audit**

212. The next allegation advanced in support of Contentions 5 - 8 was the same as that advanced with respect to Contentions 1 - 4 i.e., that the risk assessment undertaken in the **2017 Audit** for the design and performance of audit procedures capable of providing reasonable assurance that the financial report as a whole was free from material misstatement, was not adequate.
213. The relevant compilations of ASA 200 and ASA 330 were December 2015 and their substantive terms remained as we have already described.
214. ASIC alleged that because of their failure to understand the business operations of **Halifax**, **Bentleys** failed to appropriately assess the risks in the **2017 Audit**.
215. As for the **2016 Audit** we would have expected to see a focus in the audit risk assessment undertaken on the assets, liabilities, revenues, and expenses derived by Halifax and their clients in derivatives to satisfy the relevant requirements. In addition, financial reporting, and a level of reliance on systems and controls that was appropriate were matters that should have been identified as relevant for the audit risk assessment.
216. The audit documentation on the **2016 Audit File** that we have summarised in paragraphs 88 - 93 hereof appeared in substantively identical terms on the

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<sup>30</sup> (n22)

<sup>31</sup> See paragraphs 63, 64, 65, 66

**2017 Audit File** and we refer to and repeat our comments in relation to those records in paragraphs 95-99 hereof.

217. In addition, there was reference made to the following statements/matters recorded by **Bentleys** in the **2017 Audit File**:
- (a) AWP 2-105 Planning Meeting Agenda: *'Based upon our understanding of the entity, refer to risk questionnaire + risk report + general planning memo'*.
  - (b) AWP 3-200 Risk Questionnaire identifies the Australian Financial Service Licence, Financial Assets and Revenue recognition as three areas of significant risk.
  - (c) AWP FSA Worksheet - Financial Statement Areas allocates either low or medium risk ratings to all areas of the financial report.
218. As we found with respect to the **2016 Audit**, there is no audit evidence that **Bentleys** had considered how each of the different strands of the business worked/interacted or the terms and conditions of the relationships between Halifax and its customers, counterparties or where relevant, the providers of its trading platforms. This was a complexity that needed to be addressed when planning the audit approach as differences in terms and conditions affected the risks to which Halifax was exposed under the different platforms and would therefore have affected the design of testing to be performed to obtain reasonable assurance that the financial report was free from material misstatement as required by paragraph 5 ASA 200 (Nov 2013).
219. It is notable that the 2017 **Halifax** Financial Report did not disclose profits or losses from trading. This should have raised an audit flag had the auditor been competent and aware of the full scope of the nature of the **Halifax** business.
220. As in the **2016 Audit**, the AWP 3-152 *Revenue Walkthrough* recorded that the engagement team performed a walkthrough of a single revenue transaction that involved selecting a single revenue item from the general ledger and reconciling it with a bank statement.
221. In his **s19 evidence** relating to the **2017 Audit**, Mr Evett confirmed that just one revenue transaction was selected and agreed from the ledger to the bank account and he conceded that this was not adequate and that the source of the transaction should have been verified as part of the process.
222. We refer to and repeat our comments in paragraph 97 and 98 hereof.
223. ASIC asserted that if a traditional walkthrough of the revenue process (i.e., from initiation to completion) for each of the **Halifax** platforms had been undertaken, it would have been evident that **Bentleys'** understanding that commissions received were directly receipted into the main operating account (as evidenced by AWP 3-150) was incorrect.
224. Treasury staff within **Halifax** maintained an Excel spreadsheet called '*IB Comms*' which recorded the monthly **IB** and **MT4** (Halifax Pro) transactions for



each calendar year. For FY2017, this spreadsheet recorded amounts drawn down by the directors from the trust accounts to the main operating account. These payments were referred to as “*prepaid revenue*” or “*revenue in advance*”. These payments exceeded the gross revenue earned from all **Halifax platforms (2017 IB Comms Spreadsheet)**. This spreadsheet did not form part of the **2017 Audit File** and there is no evidence that it was provided or shown to **Bentleys** or Mr Evett, nor that they sought to elicit such information from **Halifax**.

225. On 30 June 2017, the amount recorded in the **2017 IB Comms Spreadsheet** as ‘*prepaid Revenue*’ or ‘*revenue in advance*’ was \$3,407,778.55.

226. Information extracted from the June 2017 worksheet of the **2017 IB Comms Spreadsheet** was shown to Mr Evett. His **s19 evidence** was:

*MR PURDON: So even if you look at this, you can see that they've earned 296, they've paid bills of 362, but then they've also taken 500,000 and put that in the NAB account, and you would - that would be reported as revenue, wouldn't it, the 500,000?*

*MR EVETT: Privilege. The 500 was shown as commissions.*

*MR PURDON: So the accounts would show for that month they made \$500,000.*

*MR EVETT: Mm.*

*MR PURDON: Whereas the true position is they made a loss of 600,000 for the month.*

*MR EVETT: Mm. Yep.*

*MR PURDON: And, in fact, they'd been doing that for a while and it had been built up to an overall loss of 3.4 million for the year.*

*MR EVETT: Mm.*

*MR PURDON: So I take it you hadn't seen this report at the time?*

*MR EVETT: Privilege. No.*

*MR PURDON: And you were unaware that they were taking money they weren't - sorry, I shouldn't say they weren't entitled to - they were taking money out of the client trust accounts to pay bills?*

*MR EVETT: Privilege. Yeah, we were unaware.*

*MR WITHERS: Sorry, does this document show the money coming from the trust account?*

*MR PURDON: I can show you - - -*

*MR WITHERS: I take it - - -*

*MR PURDON: They come from the trust account, go to the NAB account, where they're shown as revenue.*

*MR WITHERS: Mm.*

*MR PURDON: And over the - so that on the last page there is an analysis of the revenue for Halifax Pro/Halifax Plus as to how they came up with the final figures, but there's also a list of bills that are paid that represent the 360,000 which came out of the client trust account.*

*MR WITHERS: So MT4 revenue on those two entries, that's the 500,000 you're talking about, is it?*

*MR PURDON: No, the 500,000 is just cash they took out of the client trust account. From what we can see, it had no relation to what they actually made.*

*MR WITHERS: Mm. No, they've picked a figure.*

*MR PURDON: I think it's the amount of money they needed in the general account to pay their bills.*

*MR WITHERS: I see. Right.*

*MR PURDON: My assumption. There's no - from what I can see, there's obviously no relation between the revenue and the money they've withdrawn to pay to the general account.*

*MR WITHERS: Yep.*

*MR PURDON: So that can be seen by the fact that they're three and a half million dollars - what's the term - in advance.*

*MR WITHERS: Right.*

*MR PURDON: So if you'd been aware of this, would that have changed your financial statements, do you think, your audit approach?*

*MR EVETT: Oh - privilege - yes, if I had been aware of it. Definitely. Definitely.*

*MR PURDON: All right. But it's not - you could hardly say that it's hidden though, is it? You've got access to the general ledger, that's correct?*

*MR EVETT: Privilege. Yeah.*

*MR PURDON: You could have looked at the trust account and saw what was happening in there?*

*MR EVETT: Well - privilege - we could have. I'm not sure whether we - whether we did.*

*MR PURDON: I don't know, if you did and saw these amounts come out, wouldn't you have raised a flag?*

*MR EVETT: Privilege. If we had, we probably would have raised it - - -*

*MR PURDON: Right. So I think we can take it that you didn't look at the trust accounts. Is that correct? When I say "you", I mean Bentleys?*

*MR EVETT: Privilege. I don't - I don't think so.*

*MR PURDON: All right. And you'd agree with me if you'd done a revenue walk-through from the point of origin, you would have uncovered this as well, that in fact the revenue - not all the revenue went to the general account?*

*MR EVETT: Privilege. Privilege. If we'd done a more, you know, a more detailed walk-through, yeah.*

227. The process of expenses being offset against revenue was not permitted under paragraph 32 of Accounting Standard AASB 101 (Jan 15). It resulted in both revenue and expenses being materially understated in the 2017 **Halifax** Financial Report. The fact that relevant information was not identified as part of **Bentleys'** risk assessment that led to the identification of these payments is a further example in our view of the cursory nature of the risk assessment that was undertaken in the **2017 Audit**, that led in turn to insufficient and inappropriate testing being designed and carried out in the **2017 Audit**.
228. We are satisfied based on the above matters that the assessment of risk undertaken in the **2017 Audit** was not adequate insofar as:
- (a) The design and implementation of the overall audit response did not sufficiently address the assessed risks of material misstatement at the financial report level, as was required by ASA 330.5 (Dec 15).
  - (b) The design and performance of further audit procedures were not based on and responsive to the assessed risks of material misstatement at the assertion level as required by ASA 330.6 (Dec 15).
  - (c) There were no tests of controls to obtain sufficient appropriate audit evidence as to their operating effectiveness, as required by ASA 330.8 (Dec 15).

## **Risk response**

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229. The next set of allegations made by ASIC in support of Contentions 5-8 were the same as those made regarding the sufficiency of the risk response in the **2016 Audit**. It was alleged variously with respect to the areas of client funds, cash and cash equivalents, revenue, expenses and consolidation that the risk response in the **2017 Audit** did not satisfy the requirements of various Auditing Standards and we refer to and repeat paragraph 104 hereof noting that the

relevant Auditing Standards referred to, although in the case of some now appearing in a later compilation, were in the same terms.

230. The relevant AWP and **s19 evidence** for the identified risk response areas was as follows.

### Client funds

231. The reconciliation which **Bentleys** relied upon for the **FY17 Audit** was *AWP C30 Deposits House*. As in the **2016 Audit**, (see AWP C.100 discussed in paragraphs 110 -112 hereof). It is evident from AWP C30 that in the **2017 Audit**, **Bentleys** continued to base the reconciliation on the premise that platform assets (referred to in AWP30 as “*Collateral Value Balance*”) and platform liabilities (“*Close Out Value Balance*”) ought to equate. However, as already established, it was evident from the CFD PDS, that the **MT4 and MT5** trading platforms differed from the other trading platforms, insofar as **Halifax** did not always enter a hedging transaction and the client positions did not flow through to a third party meaning on both these platforms in FY2017, the platform assets and liabilities would not necessarily match.
232. ASIC alleged that there was accordingly no need for such a reconciliation. We accept that this was the case, given it was performed on an incorrect premise.
233. AWP C.30 records the following statement:

*‘During the year, per ██████████ [sic], Halifax had moved to an in-house trading platform versus prior year where the platform was 3rd party.*

*In prior [sic] year, commissions and interest income due were automatically direct credited to Halifax's bank account. In current year, all commissions earned are held in a clearing account in the in-house trading platform.*

*██████████ (directors) will give the authority to clear commissions/interest earned into the Halifax bank account that will form a part of the beneficiaries' year-end balance.*

*Therefore there will be commissions/interest earned as at 30 June 2017 that haven't been transferred out. As such, the difference between the Fiduciary Assets and monies owing back to HIS clients will be the movement in income take up not yet transferred out into HIS bank account.’*

234. There is no evidence on the **2017 Audit file** that **Bentleys** verified that a clearing account as described in AWP C.30 existed or performed any investigation or analysis of the owner of that account, the nature of the funds held in the account, the balance of that account as of 30 June 2017, or what transactions had occurred on that account during FY17.
235. Further, had audit investigation brought to **Bentleys’** attention, as it should have, the evidence we have referred to regarding the **2017 IB Comms Spreadsheet**, that funds from the **MT4** client accounts had been improperly withdrawn, they would have been aware that the conclusion that ‘*the difference*

*between the Fiduciary Assets and monies owing back to HIS clients will be the movement in income take up not yet transferred out into HIS bank account' was misconceived.*

236. AWP N.20 *Assets and Liabilities Reconciliation* records the liabilities section of the reconciliation as made up of assets, comprising bank accounts and the "Close out value". These figures are cross referenced to the receivables and cash and cash equivalents lead sheets. They total \$181,621,216.11, which equates to the total in the assets section of the reconciliation.
237. AWP N.20 concludes that:
- 'Per our understanding of the entity, Halifax holds monies in trust for its customers re online trading platform. Therefore per our expectation, the balance held in cash and cash equivalents indicated by N.20(b) below agrees back to total client liabilities N.20(c) below held per this reconciliation – refer to references below.*
- Results – all balances agree to supporting documentation.'*
238. AWP N.20 is further evidence of **Bentley's** fundamental lack of understanding of what had occurred in **2017** with respect to the transactions on the **MT4** and **MT5** trading platforms.
239. AWP C.30 and AWP C.35 20170630 Collateral report contain the audit work on the 'Collateral Value Balance'. The 'Collateral Value Balance' formed 98% of the amount recorded as 'Trade and other receivables' in AWP C.00 Leadsheet – Trade and Other Receivables (summary).
240. AWP C 30.5 (on page 7) recorded the split of the collateral balances across the platforms and was cross referenced to AWP C.35. The excel workbooks on the **2017 Audit File** are extensively cross referenced within themselves and to each other, but not to any supporting audit evidence. There is no audit work recorded on the **2017 Audit File** on the **Halifax** systems from which these figures are extracted.
241. AWP C.30.1 (on page 3) shows at line 7 the client liability for the **MT4** platform being reduced by 56%. There is no explanation for this adjustment or for the other adjustments on that page to further reduce the client liability.
242. Mr Evett's **s19 evidence** about AWP c.30.1 was that he was unaware of why the liability recorded for the **MT4** platform was reduced from \$13.6 million to \$5.8 million and he could not recall seeing it before it was shown to him during the **s19 examination**. This reduction was referred to in the audit working papers as "the contingent liability rate" and its effect was to reduce the liability in the **Halifax** financial report for the client funds held on the **MT4** platform. Mr Evett agreed in his **s19 evidence** that this adjustment was material and would have had the effect in general terms of increasing **Halifax** profits by a corresponding amount.

243. The source of the calculation reducing by 56% Halifax's liability for client funds on the **MT4** platform which appeared in the Moore Stephens equity report included in AWPC30 was contained in a report from Ferrier Hodgson to **Halifax** dated 13 September 2016. This report analysed the total aggregated investor profit and loss for each trading platform and used this data to calculate a client *win ratio* for each **Halifax** trading platform. The *win ratio* was an estimate of the percentage of transactions in which the client was successful, it represented the expectation that **MT4** clients would eventually lose 56% of all funds invested via the **MT4** platform.
244. The report included the following table:

Table 2: Halifax Pro Platform investor trading performance

	2016
Number of Transactions	43,656
Win ratio	44.32%
Profit and Loss (\$)	(722,782)

245. The *win ratio* of 44.32% set out in Table 2 was the basis of the reduction of 55.68% applied to the total **MT4** liabilities owed to clients at the end of FY17.
246. In his **s19 evidence**, Mr Evett said he was not aware of the existence of the contingent liability analysis that had been prepared by **Ferrier Hodgson** for **Halifax** and he could not explain why no audit testing was done even though the relevant spreadsheet was on the **2017 Audit File** and there was a tick on each page that he acknowledged represented that the pages had been checked by **Bentleys**.
247. Mr Evett also gave the following evidence:

*MR PURDON: Would you agree with me it looks like this adjustment of \$7 million to MT4 has basically completely flown under Bentley's <sic> radar in regard to the audit?*

*MR EVETT: Privilege. Based on what we're seeing here, um, yes.*

*MR PURDON: And the same with the withdrawal of expenses from the trust accounts, that's completely flown under the radar?*

*MR EVETT: Privilege. Yes.*

*MR EVETT: Privilege. Positive.*

248. Even though **Bentleys** may not have been provided with the Ferrier Hodgson report, the reduction in the **MT4** platform client liabilities is a matter that should have been evident from the data from **Halifax** that was noted as having been reviewed in the **2017 Audit** and yet this reduction of **MT4** client liabilities was apparently completely overlooked and so was subject to no audit testing or analysis.

249. Paragraph 11 of AASB 132 – *Financial Instruments: Presentation* (Dec 13) defined a financial liability as:

Any liability that is a contractual obligation:

- (a) to deliver cash or another financial asset to another entity; or
- (b) to exchange financial assets or financial liabilities with another entity under conditions that are potentially unfavourable to the entity.

250. The two components of the **MT4** client liabilities were the client funds held on deposit with **Halifax** and the value of the open derivative positions. These were both financial liabilities within the above definition and as such fell within the scope of AASB 139 – *Financial Instruments: Recognition and Measurement* (Jun 14). The **MT4** client account balance was effectively funds held on deposit repayable on call with no interest and should have been measured at the amortised cost using the effective interest method which would have resulted in the amount being recorded in the financial report at cost with no amortisation. The open derivative positions held by clients should have been measured at fair value. The application of these Accounting Standards would therefore have resulted in no reduction to the **MT4** platform liability. However, the **Bentleys** audit team led by Mr Evett failed to realise that the requirements of AASB 139 had not been met and **Halifax** was not asked to amend the **FY17 Financial Report** resulting in an understatement of liabilities of over \$7.296 million.

251. There were further errors in the **2017 Halifax Financial Report** that it was alleged by ASIC resulted in an overstatement of net assets of a further \$1.6 million. On the basis of the Accounting Member's analysis of this evidence, we are satisfied this allegation is also established. In total therefore assets were overstated in the **2017 Halifax Financial Report** by \$8.896m.

252. Had this been identified by the **2017 Audit**, as it should have been, **Halifax** would not have satisfied the NTA (Net Tangible Assets) requirements of ASIC Class Order 12/752 in effect in 2017. Without satisfying that requirement, **Halifax** could not lawfully have entered a transaction with any person to whom it provided financial services that could have given rise to further liabilities, contingent liabilities or other financial obligations being incurred by **Halifax**. Given the nature of the **Halifax** business operation this would have meant **Halifax** would have had to effectively cease trading until it could demonstrate it met the NTA requirements of ASIC Class Order 12/752. The impact therefore of the issues identified by ASIC with respect to the treatment of client funds in the **2017 Halifax Financial Report**, had they been identified was serious and the consequences very significant.

253. However, these matters remained undetected by **Bentleys** in the **2017 Audit**.

254. As we have discussed in relation to the risk response in the **2016 Audit**, the accuracy of **Halifax's** transaction records relied on the existence and integrity of systems capturing, recording, and reporting on high volumes of transactions, yet once again there was nothing documented on the **2017 Audit File** that suggested there was any testing of the operating effectiveness of **Halifax's**

systems or the systems of its service providers for recording balances associated with trading activity.

255. We would expect to have seen evidence of testing performed on these systems as well as a request for reports from the various trading platform providers as without such audit evidence, Mr Evett as Engagement Partner, would not have had a sufficient basis to determine whether transactions had been properly recorded, evaluated, and reported.
256. Had any such testing been performed in the **2017 Audit**, it is difficult not to conclude that it would have resulted in the identification of the overstatement of assets in the 2017 **Halifax** financial report. As it was, the evidence we have considered is consistent with the **Bentleys** audit team performing, once again a 'tick the box exercise' that lacked rigour, and did not demonstrate the application of professional scepticism, or the exercise of professional judgement, to any degree as was required by ASA 200.15 and 200.16.
257. Based on the matters we have identified we are satisfied that in the **2017 Audit, Bentleys**, in relation to the accuracy of Client Funds Payable and House Deposits amounts in the **2017 Halifax Financial Report** failed to:
- (a) Design and perform audit procedures that were appropriate to obtain sufficient appropriate audit evidence as was required by ASA 500.6.
  - (b) Consider the relevance and reliability of the information used as audit evidence as was required by paragraph ASA 500.7.
  - (c) Conclude appropriately that sufficient appropriate audit evidence had been obtained as was required by paragraph 26 of ASA 330.26.
  - (d) Apply professional scepticism to an adequate professional standard or in accordance with ASA 200.15.

### **Cash and cash equivalents**

258. AUD bank accounts are agreed to bank statements on AWP B.01 *Leadsheet – Cash and Cash Equivalents*.
259. **Bentleys** foreign currency bank testing is recorded in AWP B.30 Foreign exchange reconciliation. It noted '*1. Apply RBA rates to convert the foreign balances to AUD. 3. Comparing our calculations with the GL balances*'.
260. On AWP B.01, there is one ledger account, 11291 entitled '*Foreign Balances Held*' which agrees to the total of the accounts on AWP B.30.
261. An examination of account 11291 in the General Ledger reveals that, as was the case in the **2016 Audit**, all foreign currency bank accounts were combined into one ledger account, which was updated by manual journal entry to the General Ledger with the same result that all transactions that had occurred in the foreign currency accounts during FY17 were not directly reflected in the General Ledger.



262. There are two relevant journal entries in FY17, one on 31 July 2016 and one on 30 June 2017.
263. Journal entry testing for the **2017 Audit** was recorded in the audit working papers in schedule AWP A.04 *General Journal test – June 2016[sic]*. **Bentleys** reviewed the Journal Report from 1 July 2016 to 30 June 2017 and selected 13 entries for testing. All the journal entries were marked ‘*Reviewed, no issues noted*’. None of the entries were recorded as traced to supporting evidence.
264. The audit program at AWP A.03 ASA Program - *Journal Entries and Other Adjustments* at point 1 on understanding the controls surrounding the journal entries recorded several times, ‘*The accounting is prepared by 3<sup>rd</sup> party – refer to GJ Memo*’. There is no ‘*GJ Memo*’ record on the **2017 Audit file**.
265. As was the case in the **2016 Audit**, there is no evidence on the **2017 Audit File** about what transactions were being processed through **Halifax’s** foreign currency bank accounts, nor whether they were material and there was no other evidence that this matter was considered as part of the **2017 Audit**.
266. Further, there was no evidence that there was any consideration and/or investigation and/or testing performed in the **2017 Audit** relating to:
- (a) The processes for handling the foreign currency transactions.
  - (b) Whether all accounts had been included and the transactions in them properly accounted for.
  - (c) What transactions were being processed through **Halifax’s** foreign currency accounts and whether they were material.
  - (d) How these transactions were reflected in the **2017 Halifax Financial Report**.
  - (e) The audit implications of transactions on the other client trust accounts operated by **Halifax**.
267. ASIC alleged that these matters demonstrated that **Bentleys** failed to:
- (a) Adequately design and perform audit procedures that were appropriate for the purpose of obtaining sufficient appropriate audit evidence in relation to the classification of the transactions that went through the foreign currency bank accounts in the relevant year, as was required by paragraph 6 ASA 500 (Dec 15).
  - (b) Exercise appropriate professional scepticism as was required by paragraph 15 ASA 200 (Dec 15) because there was no audit evidence that supported the journal entry that brought the foreign currency bank accounts into the books.
268. We refer to and repeat our comments and findings in paragraphs 130 -132 hereof. We are satisfied this allegation is established.

## Revenue

269. In AWP V.10 *Risk Response Program for Revenue*, the **Bentleys** audit team assessed the risk at the assertion level for Completeness, Existence, Accuracy and Valuation as medium and concluded that no Tests of Controls were to be performed. Section 7 of this audit working paper outlined a method for confirming for audit purposes that sales had been recorded within the proper period or deferred to subsequent periods in accordance with the entity's revenue recognition policy, based on:

- (a) Cut-off work completed during the testing of accounts receivable.
- (b) discussions with management regarding the adequacy of cut-off procedures.
- (c) Results of the analytical procedures performed.
- (d) Supporting documentation.

270. The **2017 Audit File** noted in relation to Section 7:

*'Halifax provides a trading platform for users - as such, their main source of revenue is through the commissions earned on every trade actioned by the customer. Given such transactions occur on a real-time basis via the platform, the commissions are therefore received on a real-time basis through what is effectively EFT - therefore, given the nature of the business, revenue is only recognised when receipted into the bank. As such there is low risk in relation to cut-off.'*

271. AWP V30 – *Commission Revenue Transactions* contained a printout of the general ledger for the Commissions Revenue account apparently for the purpose of recording the selection of individual commission revenue transactions for further testing.

272. Some features of the entries that were evident from that document included: that a significant number of transactions were in round amounts, some transactions were described as *revenue advance* and there was no commissions income from the **IB** platform booked after 12 September 2016 despite that platform showing over \$130m of client funds invested on 30 June 2017.

273. In his **s19 evidence** Mr Evett agreed that he expected the **Bentleys** audit staff would have reviewed the revenue ledger for any unusual entries. The further transcript on this issue was as follows:

*MR PURDON: Right. Would you think that round amounts like 100,000 and 155, 150,000, 90,000 and 100,000 in respect of commissions revenue would be odd in the sense that they're such round amounts, and I would have thought commissions, being a percentage of a random figure, would normally not be a round amount.*

MR EVETT: Privilege. In hindsight, yes.

MR PURDON: Right. And down the bottom you'll see on 15 March, MT4 revenue advance; 5 April, MT4 advance revenue; 28 April, MT4 revenue; on 11 May, MT4 revenue advance. Do you think maybe where the word "advance" is used they say, "Well, is it an advance of revenue, or is it actual revenue?"

MR EVETT: Privilege. I mean I - I can't speak for them, but I would have thought that you would at least ask the question.

MR PURDON: Right. And at all times you were aware that there was at least \$100 million invested in Interactive Brokers during that financial year?

MR EVETT: Privilege. Not at - I wouldn't know about all times, only at the end.

MR PURDON: Well, at the end there was \$170 million.

MR EVETT: Mm'hm.

MR PURDON: Right. So if you look at this ledger, which purportedly shows income received from sources, including Interactive Brokers.

MR EVETT: Yeah.

MR PURDON: So there's a bit from Interactive Brokers at the start of the year, 5 July.

MR EVETT: Mm'hm.

MR PURDON: And there's a bit of 10 August, and then no more.

MR EVETT: Yeah.

MR PURDON: So for an investment that had over \$100 million, you've got \$40,000 worth of commissions for the year. Do you think someone should have picked that up and said, "Well, where are all the commissions from Interactive Brokers?"

MR EVETT: Privilege. I - yes, someone should have done - done some more work on that.

MR PURDON: Because what would happen is that they'd have found out that they've all been spent on something else in some other account, or at the very least they weren't coming directly to the NAB general account. Do you agree with that?

MR EVETT: Privileged. Yep. Do you mind if I just go - - -

MR PURDON: Sorry?

MR EVETT: Do you mind if I just have a break?

MR PURDON: Yeah. Let's have a break for a couple of minutes.

274. It should in our view go without saying, having regard to the requirements of the Auditing Standards, that as part of an audit of a financial report with respect to a business such as **Halifax**, an audit task would include a careful review of the entries in the commission revenue transactions extracted from the ledger to check that there were no unusual entries that required further investigation. Had that been done in the **2017 Audit**, and the matters we have referred to identified, it should have affected the '*low risk*' conclusion noted in AWP V10, which we note was already misconceived based as it was on the previous mistaken assumptions about the scope of the **Halifax** business operations that had persisted into the **2017 Audit**.
275. In AWP V.25 *Detailed testing*, a selected sample of 12 transactions from the revenue ledger, including 4 round amounts recognised as revenue were agreed to the bank statements but not to any supporting source documentation. Based on considering the non-GST revenue, the GST revenue and the GST on the GST revenue, **Bentleys** agreed these transactions to the amounts in the bank statement.
276. As noted, the '*testing*', so called in AWP.V25 did not involve verifying any of the 12 selected revenue transactions to any supporting source documentation. Had this been done, the fact that some sources of revenue were being offset by expenses prior to being entered on the ledger, or not entered on the ledger at all where expenses exceeded revenue - which was not permitted by paragraph 32 AASB 101 (Jan 2015), would also have been recognised.
277. In our view the testing performed should have involved verification having regard to the obligations to apply professional scepticism, and to obtain sufficient audit evidence as was required by ASA 200.17.

### Expenses

278. AWP W.20 *Leadsheet* recorded the allocation of items to be sampled across different expense types, biased towards *Consultancy*, which accounted for 75.54% of expenses.
279. AWP W.25 *Expense Testing* set out the detailed testing. The method is reproduced below.

Procedure:	1/ Agree to agreement / supporting re condition of use and or receipt of donation
	2/ Validate basis for recognition of revenue with reference to agreement and progress reports
	3/ Trace to bank statement

280. Below this in AWP W.25 procedure, there is a notation as follows:

*Per our system note, Stature Financial Group is responsible for calculating and reconciling the commissions paid to Victoria and Queensland. On this note I have performed the following procedures:*

- (a) Obtain a summary of payments for commissions paid (to VIC/QLD) made during the year.*
- (b) Agree total for the month to monthly summary of commissions received from platforms.*

The Consultancy transactions were therefore agreed to a 'Summary of consultancy transactions' and to the bank statement.

- 281. The conclusion recorded in AWP W.25 was '*Based on our procedures performed above, expenses are not materially misstated – balances appear reasonable*'.
- 282. In respect of *consultancy*, as in FY16, **Bentleys** relied on schedules prepared by the accountant Stature Financial Group on behalf of **Halifax**. There was no audit evidence that **Bentleys** undertook any steps to test the system for calculating the commissions that generated these schedules or to otherwise validate the calculations provided or test that consultancy expenses were not materially misstated. As we have noted, as a service provider to **Halifax** the work product of Stature Financial Group did not provide sufficient appropriate audit evidence of the contractual basis pursuant to which commissions were paid.
- 283. In our view this approach did not demonstrate that any professional scepticism was applied to evaluating this information in the **2017 Audit**.
- 284. Regarding the FY2017 foreign currency bank account transactions that were posted by summary journal entry, the testing carried out by **Bentleys** in the **2017 Audit**, did not, once again record verification with any source documentation. In our view this did not demonstrate that any professional scepticism was applied to evaluating these payments. It also demonstrates poor professional judgement.
- 285. We are satisfied that the evidence reasonably establishes that the audit procedures were not properly designed and performed within the meaning of ASA 500.6 (Dec 2015) to adequately address the question of whether all expenses had been accounted for.

## **Consolidation**

- 286. As was the case regarding the 2016 **Halifax** financial report, Note 19 of the FY17 Financial Report disclosed that **Halifax** held a 100% ownership interest in Halifax NZ.
- 287. Note 14 of AWP NZ-101 Halifax NZ Annual Report 2017 recorded that **Halifax** owned 140 of a total of 200 ordinary shares in Halifax NZ (i.e., a 70% interest).
- 288. The **2017 Audit File** does not provide any evidence that **Bentleys** recognised the 30% interest held by minorities in Halifax NZ.

289. During his s19 examination, Mr Evett was shown the financial statements of Halifax NZ for the financial year ended 31 March 2017 and his **s19 evidence** was as follows:

*MR PURDON: And the New Zealand accounts are at tab 30 and the barcode **HIS.0003.0009.5265**.*

*MR EVETT: Yep.*

*MR PURDON: And they have the same note as the previous year, basically that Halifax owns 140 ordinary shares over the 200 ordinary issues. So do you agree with me that that figure should be 70 per cent?*

*MR EVETT: Privilege. Yes.*

*MR PURDON: Right. And do you agree with me that in regards to the consolidation then, there should be a larger interest of 30 per cent shown on the balance sheet?*

*MR EVETT: Privilege. Yes.*

290. **Halifax** had failed to account for the non-controlling interests in Halifax NZ as was required by paragraph 22 of AASB 10 *Consolidated Financial Statements* (Dec 17) which stated that 'a parent shall present non-controlling interests in the consolidated financial statement of financial position within equity, separately from the equity of the owners of the parent.'
291. Note 1a of the accounting policy note included in the **2017 Halifax** Financial Report had also not been followed for the second year in a row. Once again the audit procedures applied by **Bentleys** failed to identify these obvious oversights even though the information was available within the financial report that **Bentleys** had been engaged to audit. In our view, if there had been even a basic framework of procedures in place at **Bentleys** that Mr Evett's audit team was expected to follow when performing audits, it is difficult to see how such a fundamental oversight could have occurred and then carry over to the successive year. At the least this is evidence of a seriously deficient audit compliance framework in place at **Bentleys**, a matter for which Mr Evett as **Engagement Partner** was responsible.
292. We are satisfied that Mr Evett did not have sufficient appropriate audit evidence on which to conclude that **Halifax** had complied with AASB 10.22 as was required by paragraph ASA 500.6 (Dec 2015).

## **Panel findings Contentions 5 - 8**

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### **Contention 5**

293. Contention Five was in the same terms as Contention One but relating to the **2017 Audit**, namely that Mr Evett failed to perform the duties or functions required by an Australian law to be carried out or performed by an **RCA** because he failed, as **Lead Auditor**, to ensure that the **2017 Audit** was

conducted in accordance with the applicable Auditing Standards, as required by s 989CA (2) of the **Act**.

294. We refer to our findings and comments on the various respects in which the **2017 Audit** was not performed in accordance with the relevant Auditing Standards and other applicable legislation and standards as we have set out in the discussion above<sup>32</sup> (**2017 Audit Findings**).
295. As we have noted, it was not in issue that Mr Evett was the **Lead Auditor** in each of the **Halifax Audits** and we are satisfied that ss 989CA (2) of the **Act** imposed the duty on him to ensure that the **2017 Audit** was conducted in accordance with the Auditing Standards.
296. Based on the **2017 Audit Findings**<sup>33</sup> we are satisfied that Mr Evett's performance of his function and duties as **Lead Auditor** in the **2016 Audit** does not reflect a level and standard of performance either of that function or of his audit duties that was sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties and functions of an auditor within the meaning of ss1292(1)(d)(ii) of the **Act**.

### Panel Finding

297. We are satisfied that Contention Five is established.

### Contention 6

298. Contention Six was in the same terms as Contention Two but relating to the **2017 Audit** - namely that Mr Evett, failed to carry out adequately and properly the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act** because he failed, as **Engagement Partner**, to ensure, in accordance with ASA 220.15 that both:
- (a) The direction, supervision, and performance of the **2017 Audit** complied with the Auditing Standards.
  - (b) The **2017 Audit Report** was appropriate in the circumstances.
299. As we have noted, it was not in issue that Mr Evett was the **Engagement Partner** in each of the relevant **Halifax Audits** and ASA 220.15 placed the responsibility on him for the matters outlined in paragraph 298.
300. Based on the **2017 Audit Findings**<sup>34</sup> we are satisfied that Mr Evett's performance of his duties as **Engagement Partner** in the **2017 Audit** does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we

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<sup>32</sup> See paragraphs: 203, 206, 208-211, 215, 216, 218-222, 227, 228, 234, 235, 238, 240, 241, 242, 246, 248-257, 261, 265, 266, 268, 274-277, 282-285, 290-292

<sup>33</sup> Ibid

<sup>34</sup> (n31)

have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

301. We are satisfied that Contention Six is established.

### **Contention 7**

302. Contention Seven was in the same terms as Contention 3, that as the **Engagement Partner**, Mr Evett did not properly review the **2017 Audit** documentation to be satisfied that sufficient appropriate audit evidence had been obtained to support the conclusions reached and for the **2017 Audit Report** to be issued.

303. We refer to paragraph 173 hereof which sets out the relevant paragraphs of ASA 220.

304. We refer to and repeat our comments in paragraph 174 which sets out our view on what would be required to discharge the **Engagement Partner** review envisaged by the relevant provisions of ASA 220.

305. The relevant facts we are satisfied are established, are as follows:

- (a) As in 2016, the *2-100 General Planning Memo* identified a familiarity threat insofar as Mr Evett had performed this audit engagement since 2005. To mitigate the threat, the memo records that *'Greg [Bell] will review the audit work performed during the audit.'* The conclusion states *'The Engagement Partner is not involved in the performance of detailed audit work and furthermore, due to reviews performed by Greg Bell...familiarity threat has been mitigated'*.
- (b) The 2017 Working Paper Index records that Mr Bell worked on 166 AWP's on 17 October 2017, 1 AWP on 23 October 2017, 4 AWP's on 24 October 2017 and 18 AWP's on 30 October 2017. The 2017 Bill Report records that Mr Bell spent 2.50 hours on Audit Review on 17 October 2017, 2.00 hours on 18 October 2017, 2.00 hours on 24 October 2017 and 2.5 hours on 30 October 2017.
- (c) According to the **2017 Audit file**, on 24 October 2017, Mr Bell completed AWP 5-300 *QC Program – Quality Control Manager Review* which describes itself as a checklist containing references to those requirements which are generally required on all engagements regardless of size or complexity. It also states that *'Users are reminded that responding positively to the statements in this checklist does not constitute sufficient appropriate evidence of compliance with the requirements of the auditing standards. The audit documentation within the engagement file must provide the evidence.'* Mr Bell completed the AWP and concluded *'No issues noted'*.
- (d) Mr Evett reviewed this AWP on 30 October 2017.



- (e) AWP 5-310 QC Program – Engagement Partner Quality Control described itself as a checklist designed to assist the **Engagement Partner** to fulfil their obligations under the Auditing Standards.
- (f) Mr Evett completed this AWP on 30 October 2017 and concluded by certifying ‘Nothing has come to my attention that would result in the issuance of a modified audit opinion.’
- (g) Within this AWP, Mr Evett marked as ‘Completed (QC)’ the following procedures, amongst others:

*As engagement partner I have taken responsibility for the overall quality on the audit engagement.*

*I have taken responsibility for the direction, supervision and performance of the audit engagement in compliance with Australian Auditing Standards, relevant ethical requirements and applicable legal and regulatory requirements, and I am satisfied that the auditor's report issued is appropriate in the circumstances.*

*On or before the date of the auditor's report, through the review of the audit documentation and discussion with the engagement team, I am satisfied that sufficient and appropriate audit evidence has been obtained to enable me to draw reasonable conclusions for the report to be issued.*

*I am satisfied that audit documentation contains: a. issues identified with respect to compliance with relevant ethical requirements and how they were resolved; b. conclusions on compliance with independence requirements that apply to the audit engagement, and any relevant discussions with the firm that support these conclusions; c. conclusions reached regarding the acceptance and continuance of client relationships and audit engagements; and d. the nature and scope of, and conclusions resulting from, consultations undertaken during the course of the audit engagement.*

*In order to obtain reasonable assurance that the financial report is not materially misstated, I have obtained sufficient appropriate audit evidence to reduce audit risk to an acceptably low level. This has enabled me to draw reasonable conclusions on which to base the auditor's opinion.*

- (h) The 2017 Audit Working Paper Index records that Mr Evett worked on 66 AWPs on 23 October 2017 and 17 AWPs on 30 October 2017.
- (i) The 2017 Bill Report records that Mr Evett spent:
  - (i) 1.25 hours on 23 October 2017 with the comment ‘File Review’.
  - (ii) 0.58 hours on 30 October 2017 with the comment ‘Signing Meeting Final Review’.

- (j) Mr Evett apparently spent a total of 109 minutes conducting a review of 83 AWP's, without raising any issues in relation to the **2017 Audit File**. The AWP's he reviewed include the following AWP's which are the subject of our findings with respect to ASIC's allegations in the **2017 Audit**:
- (i) 2-100 General Planning Memo.
  - (ii) 2-105 Planning Meeting Agenda.
  - (iii) 2-125 Minutes Review Summary.
  - (iv) 2-140 ASA Program – Consideration of Fraud (Risk Assessment).
  - (v) 3-200 Risk Questionnaire – Financial Report.
  - (vi) FSA Financial Statement Areas Worksheet.
  - (vii) A.03 ASA Program – Journal Entries and Other Adjustments.
  - (viii) A.04 General Journal Test – June 2016 [sic].
  - (ix) B.01 Leadsheet – Cash and Cash Equivalents.
  - (x) C.00 Leadsheet – Trade and Other Receivables.
  - (xi) C.10 Risk Response Program – Trade and Other Receivables.
  - (xii) V.10 Risk Response Program Revenue.
  - (xiii) V.25 Detailed Testing.
  - (xiv) W.25 Detailed Testing.
  - (xv) NZ-101 Halifax NZ Annual Report 2017.

306. Mr Evett did not identify any issues with respect to these or any of the AWP's when carrying out his review as **Engagement Partner** in the **2017 Audit**. Nor did Mr Bell's review result in any further audit actions being required notwithstanding the **2017 Audit Findings**.<sup>35</sup>

307. We refer to and repeat our comments in paragraph 179 hereof. For the same reasons expressed there our view is that the review of the audit working papers conducted by Mr Evett in his role as **Engagement Partner** for the **2017 Audit**, was not sufficient to meet the requirements of Paragraphs 16, 17 and 18 of ASA 220 (Nov 13).

308. Based on the facts we have found are established and for the reasons we have set out<sup>36</sup> we are satisfied that the **Engagement Partner** review conducted by Mr Evett in the **2017 Audit** was not performed in accordance with the relevant Auditing Standards and does not reflect a level and standard of performance of

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<sup>35</sup> (n31)

<sup>36</sup> See paragraphs 304-307

audit duties sufficient to meet the professional standard we have identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### Panel Finding

309. We are satisfied that Contention Seven is established.

### Contention 8

310. Contention Eight was in substantially the same terms as Contention Four - that Mr Evett failed to carry out adequately and properly the duties of an auditor, because as **Lead Assurance Practitioner** in the **2017 Audit**, he failed to ensure, as was required by ASAE 3000.33, that in relation to the Report on Internal Controls and Required Accounts for FY17:

- (a) The engagement was performed to comply with professional standards.
- (b) A proper review of the engagement documentation, in particular AWP AFSL.4 *Review of License Conditions Workpaper* was performed.

311. We refer to and repeat paragraphs 182 and 183 in which the context and the relevant requirements of ASAE 3000.33 (which had not changed since 2016) for the **Assurance Engagement Work** are discussed.

312. We are satisfied that the following evidence was established:

- (a) AWP AFSL 4 *Review of License Conditions Workpaper* was in the same terms as AWP AFSL.02 completed in the **2016 Audit** and had been completed with the same responses noted as those extracted in paragraph 185(e). As was also the case in the **2016 Audit**, the AWP attached a copy of relevant provisions of the **Act**, that had not been updated since September 2003 and contained a note '*no client money held*'.
- (b) The workpaper titled AFSL 7 *AFSL check notes*, under condition 11, '*N/A Does not hold client's money*', despite also noting under condition 10 Halifax was holding more than \$5.0m cash on behalf of clients.
- (c) Because of the conclusion that no client money was held - a matter that has been established as incorrect and that was inconsistent with statements in the 2017 **Halifax** Financial Report - no planning or testing of the internal controls was conducted as required by the **Act** nor any assessment of the accounts as was required by s 981B and s 982B of the **Act** was performed in the **2017 Audit**.
- (d) According to the **2017 Audit File**, Mr Evett did not review any documents in relation to the **Assurance Engagement work**.
- (e) Mr Evett's **s19 evidence** regarding the FS71 for 2017 was as follows:

*MR PURDON: So this is the audit report for the AFSL- - -*

*MR EVETT: Yep.*

*MR PURDON: - - - for 30 June 17. Is any of that your handwriting?*

*MR EVETT: No, other than the - - -*

*MR PURDON: Signature.*

*MR EVETT: Privilege. Sorry, the signature and the date.*

*MR PURDON: Right. Again, in regards to internal controls where the audit report mentions - - -*

*MR EVETT: Mm'hm.*

*MR PURDON: - - - what work is supposed to be done on the internal controls, are you happy to say that that's not right, that that work wasn't undertaken?*

*MR WITHERS: Which paragraph is it, sorry?*

*MR PURDON: Under Auditor's Responsibility, those two paragraphs.*

*MR WITHERS: Are you asking him whether these are accurate statements or not, both of them, in their entirety?*

*MR PURDON: Well, I'm asking whether he actually completed that work that's described in those two paragraphs. I.e.:*

*"We conducted our engagement in accordance with the Auditing and Assurance Standards Board Standards. Those standards require that we comply with the relevant and ethical requirements and plan and perform our procedures to obtain reasonable assurance, about whether in all material respects throughout the period the specified internal controls operated effectively and required accounts were operated and controlled as required.*

*MR EVETT: Privilege. Based on what we've done in the planning memo, we wouldn't have looked at - we didn't look at any - we wouldn't have looked at the controls.*

*MR PURDON: Right. So that work wasn't undertaken. Is that what you're saying now?*

*MR EVETT: Privilege. Based on what I can see in the file, no.*

*MR PURDON: And if the work had have been taken, it should be on the file, shouldn't it?*

MR EVETT: Privilege. Yes.

313. We refer to and repeat our comments in paragraphs 186 - 189 hereof as they are equally relevant to the facts established as to the **Assurance Engagement Work** in the **2017 Audit**.
314. Based on the evidence established and for the reasons we have set out, we are satisfied that Mr Evett, as **Lead Assurance Practitioner** in the **2017 Audit**, did not ensure that the **Engagement Assurance Work** performed in the **2017 Audit** met the requirements of ASAE 3000 (Jun 2014). Such conduct does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### Panel Finding

315. We are satisfied that Contention Eight is established.

### Contentions 9 - 12 2018 Audit Engagement

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316. Contentions 9 – 12 were based on the audit by **Bentleys** of the 2018 **Halifax** financial report (**2018 Audit**).
317. There is a similar factual sub-stratum underpinning substantially the same allegations about the performance of the **2018 Audit** as there was for the previous two audits. Because the context of these facts in the **2018 Audit** is also largely similar to the previous audits, we do not refer to it again and only note what is different from the previous two audits.
318. On that basis, we are satisfied that the following facts about the **2018 Audit** and its performance by **Bentleys**, are established:
- (a) There was no new engagement letter in relation to the **2018 Audit**. The 2017 Engagement Letter states that '*This letter will be effective for future years unless we agree to amend or replace it*'.
  - (b) Work did not commence on the **2018 Audit** until 23 October 2018, eight days before the FS70 and FS71 forms were due for lodgement with ASIC and the audited **Halifax** financial report due.
  - (c) On 31 October 2018, Mr Evett signed the **FY18 Audit Report** that expressed an unqualified audit opinion on similar terms to the previous two years that the 2018 **Halifax** Financial Report was in accordance with the **Act**.
  - (d) On 31 October 2018, Mr Evett signed Form FS71 which was lodged with ASIC, accompanied by Form FS70 which had been signed electronically by a director of **Halifax** on that day and attached the 2018 **Halifax** Financial Report.

- (e) The Overall Materiality level for the **2018 Audit** was calculated at \$2.4m. The Performance Materiality level was calculated at \$1.8m and Clearly Trivial level was calculated at \$240,000.
- (f) On 23 November 2018, **Halifax** was placed into Voluntary Administration.

### **Bentleys understanding of the nature or the business**

- (g) As in the **2016 and 2017 Audits**, and in similar respects, **Bentleys'** understanding of **Halifax** business as described in the **2018 Audit File** was not consistent with the business as described in the Halifax PDSs (these had been re-issued on 2<sup>nd</sup> April 2018 and were current on 30 June 2018). Even though the disclosure in the FX PDS clearly identified the hedging policy in relation to the **MT4 and MT5** platforms **Bentleys** continued to be unaware that **Halifax** was sometimes trading on its own account on these platforms. As in the two previous years the **2018 Audit File** contained no references to any audit planning or testing that would be expected were **Bentleys** aware that **Halifax** was trading on its own account.

### **Risk Assessment**

- (h) **Bentleys** failed to identify the need to plan and design appropriate audit procedures for testing in relation to balances with customers, expenses, reliance on systems and controls, financial reporting or any other risks identified by **Bentleys**.
- (i) Because the assumption was again made that there were no client moneys held, the relevance of the fact that the 2017 **Halifax** Financial Report did not include an amount for trading profit or losses remained unidentified by **Bentleys** and was not further investigated.
- (j) Unlike the previous years a '*revenue walkthrough*' was not considered necessary.
- (k) Treasury staff within **Halifax** continued to maintain the **IB Comms Spreadsheet**<sup>37</sup>. As of 30 June 2018, the amount recorded in the **IB Comms Spreadsheet** as '*prepaid revenue*' or '*revenue in advance*' had increased significantly to \$11,644,733.87 which exceeded the gross revenue earned from all the **Halifax** platforms.

### **Risk Response**

#### **Client funds**

- (l) The AWP's contained substantial adjustments reducing the value of client liabilities. The reconciliations relied on by **Bentleys** in the **2018 Audit** were provided by **Halifax** and prepared by Moore Stephens. There was a 56% adjustment (\$11.062 million) to the **MT4** platform client liability that was not explained or substantiated in the AWP's, even though the overall

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<sup>37</sup> See paragraph 224

materiality level that had been set was \$2.4 million. Further, as we have already noted, this was not permitted by the Accounting Standards. It resulted in an understatement of liabilities in the 2018 **Halifax** financial report, of \$11.062 million. Mr Evett's **s19 evidence** was that he was not aware that this adjustment had been made when he signed the audit report for June 2018. His **s19 evidence** was that he agreed that it appeared that no audit work was performed on this adjustment having regard to the **2018 Audit File** record.

- (m) There were errors in AWP C.102 C.103 that resulted in an overstatement of net assets to the extent of \$1.6 million.
- (n) There was no evidence of any audit procedures regarding the operating effectiveness of **Halifax's** systems or those of their service providers at the date Mr Evett signed the 2018 audit opinion for the 2018 **Halifax** Financial report.

### **Cash and cash equivalents**

- (o) As in the prior two years, all foreign currency bank account balances had been combined into one ledger account, which was updated by manual journal entry.
- (p) There is no journal entry testing on the **2018 Audit File**. In AWP A.02 *ASA Program Consideration of Fraud (Risk Response)* journal entry testing was marked '*not applicable*'.
- (q) There is no evidence on the **2018 Audit File** that the **Bentleys** audit team considered the audit implications of the transactions that went through the foreign currency bank accounts or the other client trust accounts.

### **Revenue**

- (r) In AWP V.10 *Risk Response Program for Revenue* **Bentleys** assessed the risk at the assertion level in **2018** as **medium** and concluded that no tests of controls were to be performed. There was a substantive procedure noted as required and the one selected was '*perform audit procedures related to revenue recognition in response to presumption that revenue recognition is a fraud risk, or document why revenue recognition is not a fraud risk*'.
- (s) The AWP's recorded that the procedure performed was to select a sample of revenue transactions to verify to supporting documentation and bank receipts for existence and accuracy. As in the prior two years the testing performed did not involve any of the ten selected revenue transactions being traced to any supporting source documentation with the result that it was not recognised in the **2018 Audit** that some sources of revenue were being offset by expenses prior to being entered in the general ledger (or not entered in cases where expenses exceeded revenue).

## Expenses

- (t) The testing method described in the **2018 Audit File** was 'Review expenses and consider need to vouch a sample to supporting documentation'. Regarding consultancy expenses the audit papers recorded 'rather than selecting a sample of invoices, we have reviewed the breakdown of the account and who the fees have been paid to. This has been considered appropriate as expenses tend to be consistent month on month. We will review the largest recipient and consider if the amounts paid are reasonable. This is considered appropriate'.
- (u) Bentleys reviewed 72% in value of consultancy expenses but did not review any contracts to substantiate the amounts paid and concluded '*reasonable assurance gained that expenses exist and are free from material misstatement*'.

## Consolidation

- (v) In relation to 'Consolidation' the factual circumstances were the same as the previous years.

## Engagement Partner review

- (w) Once again in 2018, Mr Bell's role was to review the 2018 audit work to mitigate the familiarity threat posed by Mr Evett. Mr Bell spent 11 hours reviewing 138 AWP's and concluded that there were no issues to be noted.
- (x) Mr Evett completed the relevant AWP checklist designed to assist him to fulfil his obligations as **Engagement Partner** on 31<sup>st</sup> October 2018 and concluded that he was satisfied an unmodified audit report could be issued. The record showed he spent 75 minutes reviewing 79 AWP's. There were some relatively minor '*partner review*' points noted and a request instigated for some documents to be obtained which suggest that Mr Evett was aware that the documentation on the **2018 Audit File** in relation to client assets and liabilities for the **IB** platform was insufficient to substantiate the audit opinion without further information from **Halifax**. Mr Evett nevertheless signed the **2018 Audit Report** on the same day as he made that request and without further assessment based on an evaluation of the additional material. The documents requested were not received until 22<sup>nd</sup> November 2018. We are satisfied there was insufficient appropriate audit evidence on the **2018 Audit File** to support the audit opinion on this issue when Mr Evett signed the audit opinion.

## Assurance Engagement Work 2018

- (y) AWP AFSL 4 *Review of License Conditions Workpaper* was in the same terms as the relevant AWP's completed in the previous audits and was completed with the same responses noted as those extracted in paragraph 184(e). As was also the case in the previous audits, the 2018 AWP attached a copy of relevant provisions of the **Act**, that had not been



updated since September 2003 and contained a note '*no client money held*'.

- (z) The workpaper entitled AFSL 7 AFSL check notes, under condition 12, '*N/A Does not hold clients money*', despite also recording under condition 3 that **Halifax** held \$4.89m cash on behalf of clients and even though **Bentley's** own audit work evidenced these amounts.
- (aa) Because of the conclusion that no client money was held no planning or testing of the internal controls as was required by the **Act** nor any assessment of the accounts as was required by s 981B and s 982B of the **Act** was performed in the **2018 Audit**.
- (bb) According to the **2018 Audit File**, Mr Evett did not review any documents in relation to the **Assurance Engagement work**.
- (cc) Mr Evett conceded in his **s19 evidence** that there was no testing of internal controls on the trust (**IB/Saxo**) accounts as part of the **Assurance Engagement Work** in the **2018 Audit**.

## Contention 9

- 319. Contention Nine was in the same terms as Contentions One and Five, but relating to the **2018 Audit**, namely that Mr Evett failed to perform the duties or functions required by an Australian law to be carried out or performed by an **RCA** because he failed, as **Lead Auditor**, to ensure that the **2018 Audit** was conducted in accordance with the applicable Auditing Standards, as required by s 989CA (2) of the **Act**.
- 320. We are satisfied that the matters set out in paragraph 318 demonstrate for the same reasons we have previously referred to in relation to the **2016 Audit Findings**<sup>38</sup> and the **2017 Audit Findings**<sup>39</sup> that the **2018 Audit** was not performed in accordance with the relevant Auditing Standards and other applicable legislation and standards (**2018 Audit Findings**).
- 321. It was not in issue that Mr Evett was the **Lead Auditor** in each of the **Halifax Audits** and we are satisfied that ss 989CA (2) of the **Act** imposed the duty on him to ensure that the **2018 Audit** was conducted in accordance with the Auditing Standards.
- 322. Based on the **2018 Audit Findings**,<sup>40</sup> we are satisfied that Mr Evett's performance of his function and duties as **Lead Auditor** in the **2018 Audit** does not reflect a level and standard of performance either of that function or of his audit duties, that was sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties and functions of an auditor within the meaning of ss1292(1)(d)(ii) of the **Act**.

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<sup>38</sup> (n22)

<sup>39</sup> (n31)

<sup>40</sup> See paragraph 320

## Panel Finding

323. We are satisfied that Contention Nine is established.

## Contention 10

324. Contention Ten was in the same terms as Contentions Two and Six but relating to the **2018 Audit** - that Mr Evett, failed to carry out adequately and properly the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act** because he failed, as **Engagement Partner**, to ensure in accordance with ASA 220.15:

(a) The direction, supervision, and performance of the **2018 Audit** complied with the Auditing Standards.

(b) The **FY18 Audit Report** was appropriate in the circumstances.

325. It was not in issue that Mr Evett was the **Engagement Partner** in each of the relevant **Halifax Audits** and we are satisfied that ASA 220.15 placed the responsibility on him for the matters outlined in paragraph 324.

326. We are also satisfied that the matters set out in paragraph 317 demonstrate for the same reasons we have previously referred to in the context of the **2016 Audit Findings**<sup>41</sup> and the **2017 Audit Findings**<sup>42</sup> that the **2018 Audit** was not performed in accordance with the relevant Auditing Standards and other applicable legislation and standards (**2018 Audit Findings**).

327. Based on the **2018 Audit Findings**, we are satisfied that Mr Evett's performance of his duties as **Engagement Partner** in the **2018 Audit** does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

## Panel Finding

328. We are satisfied that Contention Ten is established.

## Contention 11

329. Contention Eleven was in the same terms as Contentions three and seven, that as the **Engagement Partner**, Mr Evett did not properly review the **2018 Audit File** to be satisfied that sufficient appropriate audit evidence had been obtained to support the conclusions reached and for the **2018 Audit Report** to be issued.

330. We refer to paragraph 173 hereof which sets out the relevant paragraphs of ASA 220.

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<sup>41</sup> (n22)

<sup>42</sup> (n31)

331. We refer to and repeat our comments in paragraph 174 which sets out our view on what would be required to discharge the **Engagement Partner** review envisaged by the relevant provisions of ASA 220.
332. We refer to and repeat our comments in paragraph 179 hereof. For the same reasons expressed there our view is that the review of the AWP's conducted by Mr Evett as **Engagement Partner** for the **2018 Audit**, was not sufficient to meet the requirements of Paragraphs 16, 17 and 18 of ASA 220 (Nov 13). It did not demonstrate that Mr Evett had undertaken a diligent process that involved any of the steps we have outlined in paragraph 174. The evidence we have summarised supports the view that Mr Evett's review was cursory and that he was either not aware of the obligations he had assumed as **Engagement partner** or did not understand their significance or how to carry them out properly. Moreover, his review failed to identify any of the issues the subject of our findings regarding the **2018 Audit**. As in the previous two **Halifax** audits, many of these findings amount to significant oversights by the **Bentleys** audit team and had a significant impact on the appropriateness of the **2018 Audit** opinion. Mr Evett signed the **2018 Audit** opinion without sufficient appropriate audit evidence.
333. Based on the facts we have found are established and for the reasons we have set out<sup>43</sup> we are satisfied that the **Engagement Partner** review conducted by Mr Evett in the **2018 Audit** was not performed in accordance with the relevant Auditing Standards and does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### Panel Finding

334. We are satisfied that Contention Eleven is established.

### Contention 12

335. Contention Twelve was in substantially the same terms as Contentions four and eight - that as **Lead Assurance Practitioner** in the **2017 Audit**, Mr Evett failed to carry out adequately and properly the duties of an auditor, because, he failed to ensure, as was required by ASAE 3000.33, that in relation to the Report on Internal Controls and Required Accounts for FY17:
- (a) The engagement was performed to comply with professional standards, and:
  - (b) A proper review of the engagement documentation, in particular AWP AFSL.4 *Review of License Conditions Workpaper* was performed.

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<sup>43</sup> See sub-paragraphs-318(w), 318(x)

336. We refer to and repeat paragraphs 183 and 184 in which the context and the relevant requirements of ASAE 3000.33 (which had not changed since 2016) for the **Assurance Engagement Work** are discussed.
337. We refer to and repeat our comments in paragraphs 185-188 hereof as they are equally relevant to the facts established as to the **Assurance Engagement Work** in the **2017 Audit**. In addition the evidence in relation to the **2018 Audit** was that the **Assurance Engagement Work** was performed in a timeframe that was unreasonably short.
338. Based on the evidence established and the reasons we have set out, we are satisfied that Mr Evett, as **Lead Assurance Practitioner** in the **2017 Audit**, did not ensure that the **Engagement Assurance Work** performed by **Bentleys** met the requirements of ASAE 3000 (Jun 2014). Such conduct does not reflect a level and standard of performance of audit duties sufficient to meet the professional standard identified in **The Relevant Benchmark**. Accordingly, we have formed the view that Mr Evett has failed to carry out the duties of an auditor within the meaning of ss1292(1)(d)(i) of the **Act**.

### Panel Finding

339. We are satisfied that Contention Twelve is established.

### Contention 13

340. Contention 13 was that by reason of any one or a combination of the matters outlined in Contentions 1 to 12 Mr Evett is not a fit and proper person to remain registered as an auditor.
341. In support of this contention it was submitted that the matters of serious concern that demonstrating Mr Evett's lack of fitness and propriety were that:
- (a) The failures were numerous, repeated and resulted in material misstatements being recorded in the financial statements of **Halifax**.
  - (b) That in the FY17 and FY18 **Halifax** Financial Reports, the misstatements were so significant that, by reason of ASIC Class Order 12/752, **Halifax** would likely have been required to cease trading without an injection of further capital.
  - (c) ASIC was not aware of potential deficiencies in the internal controls of Halifax relating to the handling of client trust funds because the **Assurance Engagement Work** was not performed properly.
342. The pre-eminent Australian authority on the concept of 'fit and proper' is the High Court's decision in *Hughes and Vale*<sup>44</sup>. The expression is employed as a test for capacity to perform an office or role in widely differing contexts. In *Hughes and Vale*, it was said that '*Fit*' (or 'idoneus') with respect to an office involves honesty, knowledge and ability. Their Honours acknowledged the relevant assessment will depend on the office involved and the criteria are not

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<sup>44</sup> *Hughes and Vale v. The State of New South Wales* No 2 (1955) 93 CLR 127

certain or definite and involve a wide discretion.<sup>45</sup> With respect to registered company auditors there can be no doubt that a high standard of honesty, knowledge and ability applies. The law entrusts registered company auditors with important duties and responsibilities. To be fit and proper to remain registered a company auditor must be capable of demonstrating they have the requisite knowledge of the legislative and regulatory requirements that govern auditing in Australia and the ability to apply those requirements appropriately.

343. The findings we have made are matters of serious concern. They demonstrate a range of conduct by Mr Evett that fell well below the professional standard identified in **The Relevant Benchmark**. They show a persistent lack of ability on Mr Evett's part to apply proper professional judgement.
344. In *Davies v Australian Securities Commission*<sup>46</sup> it was noted that fitness and propriety provides a separate basis from the other matters in ss1292(1)(d) for the Board to cancel or suspend the registration of a company auditor and that a failure to adequately and properly carry out the duties of an auditor under section 1292(1)(d) of the **Act** will in the ordinary course mean that a person is not fit and proper to remain registered as an auditor.
345. Of the concluding expression in ss1292(1)(d) '*otherwise not a fit and proper person*' it was said by the plurality in *Albarran v Members of the Companies Auditors and Liquidators Board* that it '*expands or adds to what precedes it but does not draw in a discrete subject matter*.'<sup>47</sup>
346. The course of events over the three years of the **Halifax Audits** addressed in ASIC's Concise Outline shows Mr Evett's conduct was not the result of what might be described as a momentary lapse or isolated incident. Rather it was attributable in our view to a serious neglect on his part to perform his duties, especially the significant responsibilities of **Engagement Partner, Lead Auditor and the Lead Assurance Practitioner** in the three **Halifax Audits**, with very serious consequences. That Mr Evett did not carry out the responsibility of these roles properly calls into serious question his ability and knowledge with respect to the role of a registered company auditor and his 'fitness' under the test in *Hughes and Vale*. We consider that the matters established on each of Contentions 3, 4, 7, 8, 11 and 12 alone demonstrate that Mr Evett is not fit and proper to remain registered as a company auditor.

### Panel Finding

347. Based on the above authorities, we are satisfied that it is within our jurisdiction to find that Mr Evett is not fit and proper to remain registered as an auditor. Having regard to our several findings in relation to Contentions 1-12 we are satisfied that Mr Evett is not fit and proper to remain registered as a company auditor. We are also satisfied on each of Contentions 3, 4, 7, 8, 11 and 12 alone, that Mr Evett is not fit and proper to remain registered as a company auditor. Accordingly, we are satisfied that Contention 13 is established.

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<sup>45</sup> at page 157 per Dixon CJ, McTiernan and Webb JJ

<sup>46</sup> (1995) 131 ALR 295.

<sup>47</sup> see paragraph 24

## Sanction

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348. In our view, it is appropriate to make the order proposed by the parties.
349. We order that the registration of Mr Robert James Evett as an auditor be cancelled with immediate effect.

## Notice

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350. Within 14 days of the date hereof formal notice of this Decision will be given to Mr Evett under section 1296(1)(a) of the **Act**, a copy of that notice will be lodged with ASIC under section 1296(1)(b) and the Board will cause to be published in the Gazette a notice in writing setting out the Decision.

Maria McCrossin

Panel Chairperson