

**A Report on  
Enforceable Undertakings  
Accepted by ASIC  
from  
1998 to 2008**

**Carol Taing**

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## I INTRODUCTION

On 1 July 1998, ASIC's power to accept enforceable undertakings ("EU") came into force. Shortly after, in conjunction with the announcement of one of its first accepted enforceable undertakings, ASIC stated that the EU power 'has enabled ASIC to obtain an effective remedy without having to resort to costly or protracted litigation'.<sup>1</sup> In the two years following the introduction of the EU power, ASIC embarked enthusiastically into making the most of its new power. In 2000, it accepted 61 undertakings – its largest number of EUs in a single year since the introduction of the power. However, since 2000, the number of EUs accepted by ASIC began to rapidly decline. In the last two years – 2007 and 2008, ASIC has accepted just 7 and 6 enforceable undertakings, respectively.<sup>2</sup>

This essay will provide a report on the trends and types of enforceable undertakings accepted by ASIC in the last 10 years (since its introduction), including focusing on the use of enforceable undertakings as part of its role in corporate governance in Australia.

ASIC takes its role in corporate governance in Australia very seriously. In 2002, both the then Chairman and Commissioner of ASIC spoke publicly about the importance of corporate governance and ASIC's role. ASIC's role in corporate governance includes the monitoring of boards and directors, the part regulation of the auditing industry<sup>3</sup> and the scrutinising of financial reporting and other disclosure regimes of corporate entities. As part of these responsibilities, ASIC has been involved in some fairly high profile crackdowns on illegal behaviour – for example, the civil penalty proceedings and the subsequent banning of directors from HIH and OneTel. This report will highlight the use of enforceable undertakings by ASIC as part of its role in corporate governance.

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<sup>1</sup> See ASIC Media Release 98/237 (issued on 14 August 1998), 11 Aug 98 (EU#008547288).

<sup>2</sup> Please note this report refers to the ASIC Enforceable Undertaking Register, **as at 30 October 2008**.

<sup>3</sup> ASIC partly regulates the auditing industry through its role in registering and commencing disciplinary proceedings for conduct. It is noted, however, that audit standards and performance are generally self-regulated.

## II THE EU POWER AND ASIC POLICY

### *A The Enforceable Undertaking Power*

Sections 93AA and 93A of the *Australian Securities & Investments Commission Act 2001* (Cth) (“the ASIC Act”) provide ASIC with its power to accept enforceable undertakings. Section 93AA allows ASIC to accept undertakings given by a company or an individual in connection with a matter in which ASIC has a function or power under the ASIC Act.

Section 11 of the ASIC Act states that ASIC has the general administration of the ASIC Act, and such functions and powers as are conferred on it by or under the corporations legislation (other than the excluded provisions).<sup>4</sup> In addition, Division 2 of Pt 2 of the ASIC Act contains extensive provisions regulating unconscionable conduct and consumer protection in the provision of financial services. Section 12A(1) states that ASIC has the functions and powers that are conferred on it by or under Division 2 of Part 2 of the ASIC Act and by or under other Acts, such as:

- the *Insurance Contracts Act 1984*;
- the *Superannuation (Resolution of Complaints) Act 1993*;
- the *Retirement Savings Accounts Act 1997*;
- the *Superannuation Industry (Supervision) Act 1993*.

Thus, s 93AA of the ASIC Act provides ASIC with very broad scope upon which to accept an enforceable undertaking.

Under s 93A of the ASIC Act, ASIC can also accept an enforceable undertaking by a responsible entity of a registered scheme in connection with a matter concerning the registered scheme, and in relation to which ASIC has a function or power under the corporations legislation.<sup>5</sup> ASIC has used this power on numerous occasions – see Figure 1 (page 7 of this essay) for a breakdown of enforceable undertakings concerning managed investment schemes. Enforceable undertakings concerning registered schemes will not be a focus in this essay.

Enforceable undertakings are undertakings that can be provided to ASIC by individuals or corporations. They are voluntary in the sense that ASIC does not have the power under s 93A or s 93AA to compel a person to enter into an enforceable undertaking. The opposite applies – a person cannot compel ASIC to accept an enforceable undertaking.<sup>6</sup>

Once accepted by ASIC, these undertakings are potentially enforceable in a court.<sup>7</sup>

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<sup>4</sup> See s 11, ASIC Act.

<sup>5</sup> Note that s 5(1) of the ASIC Act, defines corporations legislation as meaning the ASIC Act and the *Corporations Act 2001* (Cth).

<sup>6</sup> See Clause 1.5 of the Regulatory Guide.

<sup>7</sup> While s 93AA and s 93A of the *ASIC Act 2001* (Cth) provide powers to the court, such as in directing compliance with an undertaking in situations of breach, a court can nevertheless refuse to uphold an EU, thus the author has used the words ‘potentially enforceable’.

## *B ASIC's Policy on the Acceptance of Enforceable Undertakings*

ASIC states that EUs are generally accepted by it as an alternative to civil or administrative action where there has been a contravention of the legislation that ASIC administers.<sup>8</sup> Regulatory Guide 100 (Enforceable Undertakings) (“Regulatory Guide”) states that ASIC may accept an enforceable undertaking instead of seeking a civil order from a court (e.g. an award of damages or compensation, or an injunction) or taking administrative action (e.g. cancelling a licence) or referring a matter to another administrative body.<sup>9</sup>

However, Clause 2.2 of the Regulatory Guide states that ASIC will only consider using an enforceable negotiated settlement (i.e. through the use of an EU) if it considers it to provide a more effective regulatory outcome than non-negotiated administrative or civil sanctions.<sup>10</sup> Clause 2.8 provides a list of factors that ASIC considers as critical in the evaluation of whether an enforceable undertaking offers a more effective regulatory outcome. These factors include: the position of consumers and investors whose interests have been or may be harmed by the suspected conduct, the effect of the regulated person’s future conduct and the population as a whole, and the community benefit in achieving as quick and as cost-effective a regulatory outcome as possible.<sup>11</sup>

ASIC considers an effective regulatory outcome as one that promotes the integrity of (and public confidence in) the financial markets and corporate governance, if it specifically deters the person from future conduct that is the subject of the undertaking, promotes general deterrence, and provides an ongoing benefit by way of improved compliance programs.<sup>12</sup>

In Clause 2.16, ASIC states, however, that it will not accept an enforceable undertaking in cases of deliberate misconduct or fraud.

## *C Withdrawals and Variations of Enforceable Undertakings*

Under s 93A(2) and s 93AA(2) of the ASIC Act, a promisor under an EU may withdraw or vary an enforceable undertaking – however only with ASIC’s consent in writing. Between the years 1998 to 2008, ASIC consented to just 2 withdrawals and 9 variations. These are fairly small figures considering ASIC has accepted a total of 281 EUs in the last ten years.

ASIC has withdrawn two EUs to date – one on the 19 December 2002 and the other on 22 May 2008. In Clause 3.16 of the Regulatory Guide, ASIC states that it will only withdraw an EU in exceptional circumstances. ASIC provides an example of such an exceptional circumstance as being when a licensee has required that ASIC revoke its

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<sup>8</sup> ASIC website - “What are enforceable undertakings?”, as downloaded at 20 September 2008:

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Enforceable+Undertakings+Register?opendocument>.

<sup>9</sup> See Regulatory Guide 100, Enforceable undertakings, March 2007, as downloaded on ASIC website - [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/EU\\_guide.pdf/\\$file/EU\\_guide.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/EU_guide.pdf/$file/EU_guide.pdf) - at 20 September 2008. See clause 2.1, p 7.

<sup>10</sup> Regulatory Guide, clause 2.2, p 7.

<sup>11</sup> See Regulatory Guide, clause 2.8.

<sup>12</sup> Regulatory Guide, clause 2.9.

license.<sup>13</sup> In these circumstances, ASIC states that the licensee is no longer able or required to comply with the undertaking.<sup>14</sup> The EU withdrawn on 19 December 2002 is an example of such a scenario occurring. The EU withdrawn on 22 May 2008 was justified by ASIC through a file note.<sup>15</sup> On that file note, ASIC stated that the EU no longer provided the appropriate means of addressing ASIC's concerns and that a more appropriate regulator action existed (in the imposition of additional conditions on the promisors' AFS license).<sup>16</sup>

In Clause 3.13 of the Regulatory Guide, ASIC states the circumstances in which it will consider a request to vary an undertaking. These include: if the variation will not alter the spirit of the original undertaking and that compliance with the undertaking is subsequently found to be impractical.<sup>17</sup> In Clause 3.12, ASIC states that variations of an EU do not replace the original EU, and merely modify it.

As stated earlier, ASIC has agreed to 9 variations in the last ten years. These have all occurred prior to (and including) the year 2002. ASIC may not have become fully accustomed to its new EU power in these earlier years. In 2000, there were 5 variations. This figure corresponds to the high number of EUs accepted in that year.<sup>18</sup> The content of these variations have predominately involved timeframe extensions.<sup>19</sup>

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<sup>13</sup> See Clause 3.16 of the Regulatory Guide.

<sup>14</sup> Ibid.

<sup>15</sup> Ref 06-3008 as found on the ASIC register at the 20 March 2006 EU acceptance date (GE Personal Finance Pty Ltd).

<sup>16</sup> ASIC File Note – 06 3008 (same as above).

<sup>17</sup> See Clause 3.13 of the Regulatory Guide.

<sup>18</sup> There were a total of 61 EUs accepted in 2000 – the highest number on record in the last ten years.

<sup>19</sup> See 21 Oct 02 Variation (document #017029162) Mid West Radio, 1 May 00 Variation (document #008547448) concerning CIBC World Markets Australia Ltd and 1 May 00 Variation (document #008547437) concerning Online Investors Advantage.

### III ENFORCEABLE UNDERTAKING TRENDS (1998 to 2008)

#### A Table of Summary

**Figure 1**

This table summarises the types and quantities of enforceable undertakings accepted by ASIC in the last ten years. Please refer to the 'Key to Figure 1' and the 'Notes to Figure 1' on the counting and classification of EUs.

Y	C	I	C+I	TOT EU	Individuals (I)					Corporations (C, C+1)										W/D	Vars				
					Aud	Liq	Dir	Sec Brok	Ot	M/D	FI - C	CG	AFSL	Fund	Err	Soft	USO	MIS	Ot						
08	2	3	1	6	1	1	1				1	1						1							
07	2	4	1	7	3	1					1		1					2					1		
06	9	3	2	14	1			1	1	1	5	4		1			2		1						
05	15	12	2	29	5		4	2	1	5	4		1	1	4	1			1						
04	11	9	2	22		3	2	2	2	5	7		2	1	1		1								
03	10	9	8	27	1		5	3		5	1		3	4	2				1						
02	12	17	5	34			6	11		3	9	1	1	3	1	1						1		2	
01	15	12	6	33			2	5	5 <sup>20</sup>	3	8	3	1	4					2	1					
00	28	22	11	61			5	16	1 <sup>21</sup>	9	18	7	3	11					3					5	
99	15	16	4	35	1		4	6	5 <sup>22</sup>	3	9	4		1		1			1	3 <sup>23</sup>				1	
98	4	5	4	13			4	1				1	1	1		2			3	1 <sup>24</sup>				1	
Σ	123	112	46	281	12	5	33	47	15	34	63	21	13	27	8	5	3	13	7			2		9	

<sup>20</sup> Includes 2 company officers (13 Dec 01 EU#017029017 and 017029018) and a person promoting of investment schemes while not licensed to do so (31 May 01 EU#008547518)

<sup>21</sup> An EU relating to a person under the age of 18 (identity concealed) posting misleading information online (14 July 00 EU#008 547 457).

<sup>22</sup> Includes persons promoting or managing investment sites while not licensed to do so or without offer document (31 Dec 99 #008 547 399, 8 Dec 99 #008 547 400, 17 Aug 99 EU #008 547 364, 22 July #008 547 429), managing a corporation in contravention of the law (28 Oct 99 #008 547 392)

<sup>23</sup> Includes a 14 May 99 EU #008 547 342 where ASIC assisted company convert to a corporation from co-operative, 7 April 99 EU# 008 547 316 in relation to takeover bid, 16 Feb 99 EU#008 547 314 re Nomura International Plc and its closing out of its arbitrage position.

<sup>24</sup> Relates to a 17 Dec 98 EU#008 547 301 concerning a takeover dispute.

## KEY to Figure 1

- **Y = Year**
- **C = Corporation(s) EU.** This refers to enforceable undertakings accepted by ASIC that involved only a corporation(s)/company.
- **I = Individual(s) EU.** This refers to enforceable undertakings accepted by ASIC that involved only an individual(s)
- **C + I = Corporation(s) and Individual(s) EU.** This refers to enforceable undertakings accepted by ASIC that involved both corporations and individuals.
- **TOT EU = Total EUs.** This refers to the total number of enforceable undertakings accepted by ASIC per year. The Total EU number should equal the sum of the C, I and C + I columns.
- The **Individuals (I)** column is broken down into columns for:
  - **Aud = Auditor(s)** (where the EU concerns an individual in their capacity as an auditor)
  - **Liq = Liquidator(s)** (where the EU concerns an individual in their capacity as a liquidator)
  - **Dir = Director(s)** (where an EU concerns an individual in their capacity as a directors)
  - **Sec Brok = Securities Representatives, Investment Advisers, Brokers, Traders, Financial Planners** (and other individuals in a similar type role)
  - **Ot = Others** (where an EU concerns an individual in a capacity other than those above – examples include company officers, persons managing corporations other than as directors, people promoting investment schemes while not licensed to do so)
- Where an EU concerns **either a corporation (C) or a combination of corporations and individuals (C + I)**, the data is captured as follows:
  - **M/D** = where the EU concerns **misleading and deceptive conduct**.
  - **FI - C = General Financial Services Industry** matter concerning a **Corporation**. This is a rather broad category and includes any kind of matter concerning an entity in the financial services industry. This category is discussed further in the ‘Financial Services Industry’ section of this essay, and may also include ‘M/D’, ‘CG’ and ‘AFSL’ type matters. Hence 1 EU concerning both a ‘FI-C’ and ‘M/D’ will be counted twice (once in each category).
  - **CG** = where the EU involves **Corporate Governance** matters. **CG** in this context refers to ‘C’ and ‘C + I’ EUs concerning purported breaches of financial reporting and disclosure obligations, and internal compliance procedures. Note EUs involving solely individuals but otherwise relating to corporate governance type matters, e.g. breach of director duties etc, are not included in this classification.<sup>25</sup>
  - **AFSL** = EU concerning **breach of an Australian Financial Services Licence (AFSL) condition or the provision of financial advice/services without an AFSL**
  - **Fund** = where an EU concerns a **breach of a fundraising provision** of the Corporations Act or another similar law.

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<sup>25</sup> These type of EUs have been classified according to the position of the individual, e.g. director, auditor etc (see ‘I’ category of EUs).

- **Err** = where an EU refers to a **corporation** allegedly making an **error in its financial calculations**, e.g. relating to its accounts, unit pricing, pricing of premiums etc
- **Soft** = where the EU relates to a corporation or a corporation and individuals being involved with the **production or distribution of computer software** that is considered the **provision of financial services without an AFSL**.
- **USO** = where the **EU** concerns an unsolicited share offer(s).
- **MIS** = where the EU concerns a registered or unregistered **managed investment scheme** (although the majority of these concern unregistered managed investment schemes).
- **Ot = Other**.

## Notes to Figure 1

### *Counting of EUs*

Please note that the ASIC register occasionally lists more than one document against the EU “date of acceptance”. In some circumstances, the documents are the same, and ASIC has merely uploaded more than one document as parties to the EU have signed the document separately. In these situations, the author has treated the EU as just one document (and accordingly counted the multiple documents as being just the 1 EU). For example, see 9 May 2008 (document numbers – 017029217, 017029128, 017029219) where three separate documents have been uploaded. These documents as a whole contain all signatures of the parties to the one EU.

Where there are several parties included in the one EU, this has also been counted as just the 1 EU. (See 11 May 2006, document number 017029198 for example.) This has occurred in several situations where directors of the corporation and the corporation itself have all been included in the one EU.

In some matters, ASIC has also entered into more than 1 undertaking per matter. For example, in the Elm Group matter (see 20 Oct 05, 10 Oct 05, 28 Sept 05, 23 Sept 05 EUs), ASIC entered into separate undertakings with each director. In these situations, the author has counted each separate undertaking as 1 undertaking, and for example, the author recorded 4 separate undertakings for the Elm Group matter as ASIC had entered into separate EUs with each of the 4 directors (each EU date above represented a separate EU).

### *Counting and classification of EU Matters*

The total of the **Individuals (I)** table per year should equal the number of EUs for ‘I’ per year (i.e. the figure in the 3<sup>rd</sup> column from the left). E.g. In 2008, 1 Aud + 1 Liq + 1 Dir in the Individuals (I) table = 3 (the ‘I’ column on to the left for Y08).

It is noted that the total of the **Corporations (C, C+I)** table per year does not equal the total of the **C** and **C+I** columns in the table on the left per year. This is because there is some overlap in the classifications, for example, an EU can concern a General Finance Industry Matter (FI-C) as well as involve misleading or deceptive conduct (M/D). In such a situation, the EU would be counted as both a ‘FI-C’ matter and a ‘M/D’ matter. There are also overlaps in the ‘FI-C’ category and the ‘CG’ and ‘AFSL’ category (so for example, 1 EU may be counted as both a ‘FI-C’ and a ‘CG’ or a ‘FI-C’ and an ‘AFSL’).

While there are some overlaps between ‘M/D’, ‘FI-C’ and ‘CG’ columns, there are no overlaps when the subject matter of the EU concerns: ‘Fund’ – i.e. a fundraising matter, ‘Err’ – errors (e.g. unit pricing/administrative errors) in the financial services, ‘Soft’ – producing/distributing software programs considered to be the provision of financial advice without an AFSL, ‘USO’ – unsolicited share offers and ‘Ot’. Where EUs have concerned these matters, the EU has only been counted once in the relevant category – i.e. they are not counted as both ‘Err’ and ‘FI-C’ (for example).

There are occasionally overlaps between 'MIS' (managed investment schemes) and other categories, for example the 26 April 01 EU (EU #008547512) concerned a managed investment scheme that had made unit pricing errors. In this situation, the EU was categorised as both a 'MIS' and an 'Err'. However, this situation is rare and most EUs concerning managed investment schemes (whether they had breached a licensing condition or failed to register the scheme) are counted just once under the 'MIS' column.

It is noted that the **Corporations (C, C+ I)** table does not capture data relating to individuals concerned in those EUs, i.e. whether or not they are directors of the corporation concerned or securities dealers etc. 'C + I' (i.e. combined EUs) have been categorised according to their subject matter only.

## B General Observations

There is an obvious decline in the number of EUs accepted by ASIC since 2005.<sup>26</sup> From 1999 to 2005, ASIC accepted at least 20 to 30 EUs a year.<sup>27</sup> At the height in 2000, ASIC accepted 61 EUs.

It appears that ASIC were keen to make the most of their EU power since its introduction in July 1998. In the years following – 1999 and 2000, ASIC recorded the second highest and highest number of EUs, respectively.<sup>28</sup> No doubt, ASIC believed in the effectiveness or flexibility of this new remedy and were keen to utilise the new power. ASIC were potentially encouraged by court decisions in its favour. For example, in August 1999, the Supreme Court of Sydney upheld an enforceable undertaking entered into with ASIC in October 1998 (regarding a securities adviser), declaring also that the individual had breached the EU.<sup>29</sup>

Possible reasons for the downward trend include that EUs and other enforcement action taken by ASIC resulted in effective education campaigns. Thus as individuals and entities began to better understand their duties and obligations, fewer breaches occurred, resulting in a lesser need for ASIC to enter into EUs with persons. This certainly seems the case with directors and their understanding of their duties as the number of EUs relating to directors has dramatically dropped since 2003.

Another possible reason for the decline in use of EUs is that ASIC has since identified weaknesses in the use of EUs. For example, not all EUs will be upheld as enforceable in a court.<sup>30</sup> There may also be a public perception that ASIC is being ‘soft’ on individuals or entities in its use of EUs and instead it should be pursuing tougher remedies. It would be interesting to see whether the number of banning orders on directors have increased since 2003 (to counteract with the diminished use of EUs on directors). The ‘softer’ remedy that an EU offers also potentially sends a less prominent message to persons or entities – thus it is a not so effective education tool.

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<sup>26</sup> See Figure 1.

<sup>27</sup> Ibid.

<sup>28</sup> In 1999, there were 35 EUs accepted. This is the 2<sup>nd</sup> highest number of EUs to be accepted in a single year. However, note that the years 2001 and 2002 also recorded similarly high numbers (33 and 34, respectively).

<sup>29</sup> See Media Release ASIC 99/277 (issued on 11 August 1999) regarding Robyn Ann-Carrolle Cochrane and concerning EU #008 547 294 (accepted on 20 October 1998).

<sup>30</sup> See Marina Nehme, ‘Enforceable undertakings and the court system’ (2008) 26 *Corporate & Securities Law Journal* 147, 165 (e.g. undertakings that are vague and subject to interpretation).

## C Year by Year Snapshot

### 2008

In 2008 there were just 6 undertakings entered into with ASIC. This represents a dramatic drop in the number of EUs compared to all other years prior to 2007 – for example, in 2001 (3 years after the EU power was introduced) ASIC entered into 61 undertakings. The year 2008 represents the lowest year of recorded EUs. Even in 1998, where the power was only introduced on 1 July 1998, there were nevertheless 13 EUs by the end of the year.

In 2008, 3 EUs concerned individuals,<sup>31</sup> 2 involved corporations<sup>32</sup> and 1 EU involved both corporations and individuals.<sup>33</sup> The 3 EUs which concerned individuals were ones which referred to persons in their capacity as liquidator, auditor and as (sole) director of a company.<sup>34</sup>

The EUs involving corporations concerned a listed intellectual property and technology company that failed to disclose price sensitive information to the ASX<sup>35</sup> and an unregistered managed investment scheme.<sup>36</sup>

The EU which involved both corporations and individuals also involved the sole director of each of the corporations.<sup>37</sup> This EU concerned an unregistered managed investment scheme.

### 2007

In 2007 there were 7 EUs accepted by ASIC.<sup>38</sup> Once again, this is a small quantity of EUs compared to most other years. There were 4 EUs concerning individuals only ('individual EUs'), 2 EUs concerning corporations only ('corporation EUs') and 1 EU concerning both an individual and corporations ('combined EUs').<sup>39</sup>

In regards to the 4 EUs concerning individuals, 3 were in relation to persons in their capacity as auditors<sup>40</sup> and 1 concerned a liquidator.<sup>41</sup>

In relation to the 2 EUs concerning corporations, one was in relation to the company's failure to comply with AFSL conditions.<sup>42</sup> The corporation was a trustee and investment manager of an unregistered managed investment scheme. The other EU involving a corporation was in regards to providers of financial advice to NSW

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<sup>31</sup> See 29 August 08 (EU #017029223), 28 July 08 (EU#017029222) and 31 Jan 08 (EU #017029214).

<sup>32</sup> See 3 July 08 (EU#017029221) and 22 May 08 (EU#017029220).

<sup>33</sup> See 9 May 08 (EU#017029217).

<sup>34</sup> See Figure 1 and EUs at Footnote [X –fn top of page] above.

<sup>35</sup> 3 July 2008 (EU#017029221).

<sup>36</sup> 9 May 08 (EU #017029217).

<sup>37</sup> Ibid.

<sup>38</sup> See Figure 1.

<sup>39</sup> See Figure 1.

<sup>40</sup> 24 Oct 07 (EU#017029213), 15 May 07 (EU#017029208), 15 May 07 (EU#017029206).

<sup>41</sup> 15 May 2007 (EU#017029209).

<sup>42</sup> 22 June 2007 (EU# 017029212).

government teachers.<sup>43</sup> It was alleged that a Statement of Advice provided to teacher members was misleading and deceptive.

The EU concerning both an individual and corporations was in relation to an unregistered managed investment scheme.<sup>44</sup>

## 2006

In 2006 there were 14 EUs accepted by ASIC. There were 3 EUs concerning individuals, 9 EUs concerning corporations and 2 combined EUs.<sup>45</sup>

One EU, which concerned the life insurance sales practices of GE Money,<sup>46</sup> was subsequently withdrawn by ASIC on 22 May 2008. In the ASIC Withdrawal Notice of 22 May 08,<sup>47</sup> it was stated by ASIC that the EU no longer provided the appropriate means of addressing ASIC's concerns. It is noted that the EU was breached by GE Money. This is one of only two circumstances where ASIC has withdrawn an EU.<sup>48</sup>

The 3 EUs concerning individuals involved an auditor,<sup>49</sup> a person uploading an investment website (without an AFSL)<sup>50</sup> and a proper authority holder/ securities representative.<sup>51</sup> ASIC has accepted a number of EUs from securities representatives/proper authority holders/investment advisers. These types of undertakings will be discussed further in Part III of this essay 'The Financial Services Industry: Individuals – Securities Representatives'.<sup>52</sup>

There were 9 EUs concerning corporations (only) in 2006. These were in respect to a range of matters, including in relation to:

- Disclosure obligations;<sup>53</sup>
- General Financial Services Industry matters –
  - operation of discretionary accounts, supervision of staff, internal compliance procedures;<sup>54</sup>
  - failure to disclose reasonable basis for providing advice;<sup>55</sup>
  - life insurance sales practices (GE Money);<sup>56</sup>
- An unsolicited share offer;<sup>57</sup>
- Misleading and deceptive advertising;<sup>58</sup>

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<sup>43</sup> 11 May 2007 (EU#017029207).

<sup>44</sup> See 25 September 2007 (EU #01435351).

<sup>45</sup> See Figure 1.

<sup>46</sup> See Media Release Number 06-080 concerning EU accepted on 20 March 06.

<sup>47</sup> [http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/GEMoney\\_EU2006-Withdrawalnotice.pdf/\\$file/GEMoney\\_EU2006-Withdrawalnotice.pdf](http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/GEMoney_EU2006-Withdrawalnotice.pdf/$file/GEMoney_EU2006-Withdrawalnotice.pdf), as downloaded 11 November 2008 (Ref 06-3008).

<sup>48</sup> The other was in relation to 9 May 02 EU #017029035 – Barton Capital who requested its license be revoked (thus the EU had no relevance). (See Note on ASIC EU Register as at 30 October 1998.)

<sup>49</sup> 20 Nov 2006 (EU#017029203).

<sup>50</sup> 8 August 2006 (EU#017029202).

<sup>51</sup> 25 May 2006 (EU#017029199).

<sup>52</sup> See page 21 of this essay.

<sup>53</sup> Multiplex Ltd – failure to disclose material change in profit. (20 Dec 06, EU #017029205).

<sup>54</sup> Patersons Securities Ltd (5 Dec 06, EU#01702204), 24 Jan 06 (EU#017029191 and EU#01729190).

There were three EUs on compliance procedures of AFSL holders in 2006.

<sup>55</sup> 27 July 06, AMP Financial Planning (EU# 017029200).

<sup>56</sup> 20 March 06 (media release #06-080) – as mentioned earlier, this EU was subsequently withdrawn.

<sup>57</sup> 1 Aug 06 EU # 01729201.

- Other –
  - Prohibited use of shareholder information on share registries.<sup>59</sup>

The two combined EUs related to a breach of a fundraising provision of the CA<sup>60</sup> and an unsolicited share offer.<sup>61</sup>

## 2005

ASIC accepted 29 enforceable undertakings in 2005. Twelve related to individuals only ('individual EUs'), 15 were entered into with corporations only ('corporations EUs'), and two concerned both corporations and individuals ('combined EUs').

Five of the individual EUs concerned auditors, 4 involved directors of companies,<sup>62</sup> 2 concerned brokers/investment advisers, and 1 involved an individual engaged in an unsolicited share offer.

A substantial portion of EUs this year concerned misleading/deceptive conduct in advertisements and other materials.

The corporations EUs concerned:

- The provision of financial advice without an AFSL (software program);
- Misleading Advertisements (Retailer – credit card);
- Financial Services Industry calculation errors (4 in total);
  - unit pricing errors (2);
  - errors in calculation of interest rate;
  - calculation member account balances;
- General Financial Industry issues involving a –
  - Trustee of Super fund in misleading/deceptive conduct in a product disclosure statement (PDS);
  - Mortgage originator – misleading/deceptive conduct (brochures);
  - Sale of debentures – misleading/deceptive promotion;
  - Superannuation provider – advertisements were misleading/deceptive;
- Breach of fundraising provisions where the company was acting as a charitable scheme;
- An unsolicited share offer.

The combined EUs concerned a company and its directors engaging in misleading/deceptive conduct in respect to statements in a prospectus. The other combined EU referred to a previously banned insurance intermediary and his new employer.<sup>63</sup>

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<sup>58</sup> 28 March 06, EU #017029194 - This EU concerned a Credit Union.

<sup>59</sup> 15 March 06 – **Note regarding further footnotes: from this point onwards a date reference refers to the corresponding EU document available on the ASIC Enforceable Undertaking Register. The date corresponds with ASIC's date of acceptance as per the Register.**

<sup>60</sup> 20 April 2006.

<sup>61</sup> 11 May 2006 EU.

<sup>62</sup> Please note that 4 EUs were in relation to the same matter – concerning Elm Group. ASIC entered into separate EUs with each director, one was the managing director.

<sup>63</sup> See 30 March 05 EU – Robert Tressider and Ausure Insurance & Finance Pty Ltd.

## 2004

In 2004, there was a total of 22 EUs accepted by ASIC. 11 of these were corporations EUs, 9 were individuals EUs and two were combined EUs.

The individual EUs referred to:

- Securities representatives/Financial advisers (total of 3);<sup>64</sup>
- Non-executive director and chairman of One Tel;<sup>65</sup>
- Persons considered to be engaged in the provision of financial advice without an AFSL (2) (one was involved in the production/distribution of a computer software program);
- Director of a trustee company;<sup>66</sup>
- 3 equity partners in an insolvency practice.

The corporation EUs included:

- General Financial Industry matters, for example:
  - Misleading/deceptive advertisements in relation to funds, fund fees;
  - Mortgage brokers – misleading/deceptive conduct;
  - Superannuation company – failure to issue proper statements to members;
  - Breach of securities licensing conditions.
- Financial Services Industry calculation errors (unit pricing);<sup>67</sup>
- AFSL compliance (2);<sup>68</sup>
- An unsolicited share offer.

The combined EUs involved a company and its directors engaging in misleading/deceptive conduct in a fundraising activity (share offer).<sup>69</sup> The other involved reinsurance arrangements.<sup>70</sup>

## 2003

In 2003, there were 27 EUs accepted by ASIC – 9 involved individuals only, 10 were corporations EUs, and 8 were combined EUs.

The individual EUs concerned 1 auditor, 5 directors and 3 securities reps/financial advisers (or similar roles).<sup>71</sup>

Other EU matters concerned misleading/deceptive advertisements, general financial industry matters, managed investment schemes (6), disclosure requirements, fundraising, AFSL breaches or provision of advice without an AFSL, internal compliance regimes and financial industry calculation errors.

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<sup>64</sup> 11 Nov 04, 24 April 04, 22 April 04 EUs.

<sup>65</sup> 30 Aug 04: Note: It was never part of ASIC's case that Mr Greaves acted dishonestly in relation to the performance of his role and One Tel – unlike Rich and Sibermann.

<sup>66</sup> 23 Jan 04.

<sup>67</sup> 23 April 04.

<sup>68</sup> 20 Oct 04, 11 Oct 04.

<sup>69</sup> 27 April 04 EU.

<sup>70</sup> 22 April 04.

<sup>71</sup> See Figure 1.

## 2002

In 2002, there was a total 34 EUs – 17 individual EUs, 12 corporation EUs and 5 combined EUs.

In 2002, ASIC appeared to have particularly targeted the financial industry. This year, there were 11 individual EUs concerning securities advisers/brokers (and other similar roles) – this is a very high amount compared to other years.<sup>72</sup> The other 6 individual EUs concerned directors.

There were also a high number of corporations and combined EUs concerning the financial services industry.<sup>73</sup> Topics of EUs (concerning corporations and combined EUs) included:

- General Financial Industry matters (licensing compliance, advertising, policy payout,<sup>74</sup> wording of documentation – misleading/deceptive,<sup>75</sup> training of representatives);<sup>76</sup>
- Corporate Governance matters – e.g. compliance with continuous disclosure obligations;
- Provision of advice without an AFSL,<sup>77</sup> one regarding a computer software program;<sup>78</sup>
- Breach of fundraising provisions – material omissions, misleading/deceptive;<sup>79</sup>
- Unregistered managed investment schemes.

In fact, the years 1999 to 2002 resulted in large numbers of EUs in the financial services industry, including concerning securities advisers/brokers (and other similar roles). ASIC appears to have embarked on a big crackdown on contravening conduct (misleading and deceptive behaviour etc) in the financial services industry in these years.

## 2001

In 2001, there was a total of 33 EUs accepted by ASIC – 15 were corporation EUs, 12 were individual EUs and 6 were combined EUs.<sup>80</sup>

In 2001, there was also a fairly high number of EUs relating to the financial services industry – there were 5 EUs concerning security representatives/brokers (and others in similar positions) and there were 8 corporations and combined EUs concerning general financial industry matters. There were also a higher number of EUs

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<sup>72</sup> See Figure 1 – in all other years (other than in 2000 which had a very high amount of EUs), the number of EUs concerning securities/financial advisers etc was in single figure digits.

<sup>73</sup> See Figure 1. There was 9 in 2002 (see 'FI-C' column), compared to 1 in 2003 and smaller numbers in 2003-2007.

<sup>74</sup> 20 May 02.

<sup>75</sup> NRMA, 8 Jan 02 – had to repay customers, get an auditor to review compliance and report back to ASIC, misleading and deceptive conduct when charging policy holders.

<sup>76</sup> 9 May 02 – Barton Capital (although this EU was eventually withdrawn).

<sup>77</sup> 27 Aug 02, 18 Jan 02 (buying and selling securities on HK stock exchange without holding dealers' licence)

<sup>78</sup> 14 Feb 02.

<sup>79</sup> 8 Aug 02

<sup>80</sup> See Figure 1.

concerning corporate governance issues such as financial reports,<sup>81</sup> and continuous disclosure obligations.<sup>82</sup> There was also a significant amount of EUs concerning fundraising activities.<sup>83</sup>

## 2000

In 2000, ASIC recorded its highest number of EUs on its register. ASIC accepted 61 EUs in 2000. This figure is almost double the number of EUs accepted in the years surrounding 2000.<sup>84</sup>

In 2000, there were 28 corporation EUs, 22 individual EUs and 11 combined EUs.

In terms of the individual EUs, 5 EUs concerned directors and 16 concerned security/investment advisers/brokers (and other persons in similar roles). There was also an EU concerning an individual who was under the age of 18.<sup>85</sup> The person's identity was concealed.

The subject content of corporations and combined EUs ranged from General Financial Industry topics (18 EUs in this category) to misleading and deceptive conduct, AFSL related issues (breach of licence conditions<sup>86</sup>, providing investment advice without an appropriate licence)<sup>87</sup>, and fundraising activities (11 EUs in this category).

General Financial Industry topics concerned, for example, a failure for representatives to have a reasonable basis for making investment recommendations,<sup>88</sup> operating with a deficiency in an insurance broking account,<sup>89</sup> misleading and deceptive promotional material,<sup>90</sup> and inadequate disclosure to members.<sup>91</sup>

There were also 3 EUs concerning managed investment schemes.<sup>92</sup>

Possible explanations for the large number of EUs in 2000 include, that the EU power was relatively new (it was 1 ½ years since the power was introduced) and that the Regulator believed in the effectiveness of the remedy, and thus encouraged staff to consider accepting EUs as a resolution to alleged contraventions of the legislation or other corporations regulations. As the power was relatively new, there was potentially little known of the weaknesses of EUs – for example, see Marina Nehme's article which discusses situations where courts may not uphold EUs entered into with ASIC.<sup>93</sup> The large number of EUs may also have resulted from ASIC's regulatory

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<sup>81</sup> 2 June 01 EU.

<sup>82</sup> See 30 March 01 and 2 Feb 01 EUs.

<sup>83</sup> There were 4 in 2001 – see 18 Sept 01, 10 May 01, 30 March 01, 5 March 01.

<sup>84</sup> See Figure 1. For example, in 1999, there were 35 EUs accepted. In 2001, there were 33 and in 2002, there were 34.

<sup>85</sup> 14 July 00.

<sup>86</sup> 27 March 00 EU, 31 Jan 00.

<sup>87</sup> 20 Jan 00.

<sup>88</sup> See 24 Feb 00 – Wheaton Group Pty Ltd for example.

<sup>89</sup> 21 Feb 00.

<sup>90</sup> See for example, 13 April 00 and 18 April 00.

<sup>91</sup> See 31 Jan 00 for example.

<sup>92</sup> 29 Feb 00, 15 Feb 00, 12 May 00.

<sup>93</sup> Marina Nehme, 'Enforceable undertakings and the court system' (2008) 26 *C&SLJ* 147.

policy in 1999/2000 to step up its policing of the financial services industry and to crack down on illegal or suspected illegal behaviour for the sake of consumer protection.

## 1999

In 1999, there was a total of 35 EUs accepted by ASIC – 15 were corporations EUs, 16 were individual EUs and 4 were combined EUs.

There was also a considerable amount of EUs concerning the financial services industry in 1999. It certainly appears that 1999 to 2002 were the years in which ASIC focused extensively on financial services industry. See Figure 1 for the high number of ‘Sec Brok’ and ‘FI-C’ EUs in those years.

In terms of the individual EUs in 1999:

- 1 EU concerned an auditor;
- 4 EUs concerned directors;
- 6 EUs concerned securities advisers (or similar);
- 5 EUs were for matters such as:
  - promoting or managing investment sites while not licensed to do so or without an offer document;<sup>94</sup>
  - managing a corporation in contravention of the law (note: the individual was not a director).<sup>95</sup>

In terms of corporations and combined EUs, subject matter of the EUs ranged from General Financial Services Industry issues (e.g. failure to comply with licence conditions,<sup>96</sup> failure to disclose commissions,<sup>97</sup> inadequate disclosure to customers, misleading and deceptive materials)<sup>98</sup> to corporate governance (failure to disclose price sensitive information to the ASX,<sup>99</sup> financial reporting,<sup>100</sup> financial services internal compliance procedures)<sup>101</sup> to fundraising issues,<sup>102</sup> provision of financial advice without an AFSL (software program).<sup>103</sup> There was also an EU concerning a managed investment scheme,<sup>104</sup> and other issues, such as concerning a takeover bid,<sup>105</sup> and issues in ASIC’s assisting of a company converting to a corporation from a co-operative).<sup>106</sup>

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<sup>94</sup> See 31 Dec 99, 8 Dec 99, 17 Aug 99, 22 July 99.

<sup>95</sup> 28 Oct 99 EU.

<sup>96</sup> 24 Dec 99 EU.

<sup>97</sup> See 24 Dec 99 EU for example, 14 July 99 EU for failure to disclose fees to client.

<sup>98</sup> See 15 Sept 99, 30 Aug 99, 19 Aug 99 EUs for example.

<sup>99</sup> 15 Oct 99.

<sup>100</sup> 8 March 99, CH 7 – re its accounts and accounts of its subsidiaries.

<sup>101</sup> See 1 June 99 for example.

<sup>102</sup> 16 April 99.

<sup>103</sup> See 4 Aug 99 for example.

<sup>104</sup> 29 Oct 99.

<sup>105</sup> 7 April 99.

<sup>106</sup> See 14 May 99 EU.

## 1998

In 1998, there was a total of 13 EUs accepted by ASIC. This is nevertheless a considerably large number given that the EU power only commenced on 1 July 1998. There were 4 corporations EUs, 5 individuals EUs and 4 combined EUs.

In terms of the individuals EUs, 4 EUs concerned directors and 1 EU concerned a securities representative.

The topics of the corporations and combined EUs included:

- corporate governance (disclosure requirements)<sup>107</sup>
- providing investment advice without an AFSL (computer software) (2 EUs)<sup>108</sup>
- managed investment schemes (3 EUs);<sup>109</sup>
- fundraising activities;<sup>110</sup> and
- an issue involving a takeover dispute.<sup>111</sup>

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<sup>107</sup> 11 Sept 98, Crown Casino (inadequate disclosure of results), Crown disagreed with allegation.

<sup>108</sup> 13 Oct 98, 24 Sept 98.

<sup>109</sup> 22 Sept 98, 29 Oct 98, 21 Sept 98.

<sup>110</sup> 11 Aug 98.

<sup>111</sup> 17 Dec 98.

## D *The Financial Services Industry*

ASIC has used its EU power predominantly in regards to the financial services industry. More than 50% of the EUs have concerned the financial services industry.<sup>112</sup> As a financial services regulator, ASIC states that they license and monitor financial services businesses to ensure that they operate ‘efficiently, honestly and fairly’.<sup>113</sup> ASIC provides examples of financial services businesses as businesses that typically deal in superannuation, managed funds, shares and company securities, derivatives, and insurance.<sup>114</sup>

As stated earlier, there appeared to be a deliberate crackdown on individuals and companies operating in the financial services industry from 1999 to 2002. Even up until now, a considerable proportion of EUs still relate to the financial services industry.<sup>115</sup>

### 1 Individuals

#### (a) *Securities Dealers/Brokers/Investment Advisers*

These have been grouped together in Figure 1. However, these types of EUs refer to individuals in their capacity as:

- Securities Dealer
- Investment Adviser
- Financial Planner/Adviser<sup>116</sup>
- Trader<sup>117</sup>
- Broker<sup>118</sup>
- Sale agents<sup>119</sup>
- Proper Authority Holder<sup>120</sup>
- Futures representatives<sup>121</sup>

The largest proportion of these types of EUs were in 1999 (16 EUs) and 2002 (11 EUs).<sup>122</sup> The total number of EUs concerning brokers/securities representatives/advisers is 47. Note however that this number does not include brokers, securities representatives or investment advisers who signed the same EU as

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<sup>112</sup> This figure is derived from totalling the EUs in the ‘Sec Brok’, ‘FI-C’, ‘Err’, ‘Soft’, ‘Ot’ and ‘Dir’ columns (where relevant) in Figure 1, and dividing the total by 281 (the total number of accepted EUs).

<sup>113</sup> ASIC website: (as downloaded 22 November 2008).

<sup>114</sup> Same website as above (as downloaded 22 November 2008).

<sup>115</sup> See Figure 1 and constant stream of EUs in the ‘FI-C’ column relating to general financial services industry matters.

<sup>116</sup> E.g. 11 Nov 04 EU, 16 Aug 02 EU (please note that these dates correspond with the date of acceptance on the ASIC register).

<sup>117</sup> E.g. 18 Jun 99 EU.

<sup>118</sup> E.g. 4 April 01 EU – insurance broker.

<sup>119</sup> E.g. 7 March 00 – promoters of investments in illegal fundraising scheme.

<sup>120</sup> This term refers to persons who have been provided with the authority by a licensed securities dealer or investment adviser to represent the securities dealer. Note that a securities dealer or investment adviser or trader etc may also be a proper authority holder.

<sup>121</sup> E.g. 15 April 02 EU.

<sup>122</sup> See Figure 1.

a company or a firm.<sup>123</sup> Thus, the number of EUs concerning these types of individuals is actually higher.

The number of EUs involving the above person types has significantly slowed down since 2002. In the last two years (2007 and 2008), there has not been an EU concerning a broker/financial adviser/securities representative (or similar person type).

Typically, the content of these types of EUs involve a securities dealer or investment adviser not performing their duties 'efficiently, honestly and fairly' as required the Corporations Act.<sup>124</sup> Some EUs have also related to a failure to identify conflicts, a failure to disclose all fees and commissions, and an absence of a reasonable basis for recommending investment to client.<sup>125</sup>

The typical undertaking in these circumstances would involve the individual agreeing to not:

- act as a representative of a securities dealer or investment adviser;
- hold a proper authority from a dealer or investment adviser;
- apply for a dealers license or investment adviser license of the equivalent AFS license under the Financial Services Review Act.<sup>126</sup>

Depending on the seriousness of the breach (and potentially the degree of cooperation by the individual with ASIC), the typical time period from which the individual is prevented from engaging in investment/securities activities for clients, ranges from 2 years<sup>127</sup> to 5 years.<sup>128</sup>

Interestingly, many of these types of EUs also required the representative/adviser to undertake further education.<sup>129</sup> One particular EU mandated that the adviser successfully complete a course of study in 'Professionalism, Ethics and Compliance' at the Financial Planning Association before he could ever provide investment advice, act as a dealer etc again.<sup>130</sup> The EU required that the adviser complete the course as a condition of the adviser ever working in the financial services again.

ASIC has entered into other EUs involving conditions. For example, on 21 March 01 (EU#008 547 508), ASIC accepted an enforceable undertaking from a client adviser/securities dealer who allegedly traded on client accounts without authority and failed to perform his duties in an efficient, honest and fair way. The EU involved the adviser refraining (for 18 months) from discretionary trading on behalf of clients and arranging for an ASIC improved independent consultant to regularly evaluate his compliance with the undertaking. The EU also stated that if he breached the EU

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<sup>123</sup> i.e. the 47 figure refers only to 'individual EUs' and not 'combined EUs'. See for example 31 Aug 00 EU which was a 'combined EU' involving an insurance broker and its officers, and 24 Feb 00 EU concerning Wheaton Group Pty Ltd and 2 proper authority holders of Wheaton.

<sup>124</sup> See s 912A(1)(a) relating to AFS licensees. See 11 Aug 99 EU, 24 March 99 EU, 14 June 00 EU, 21 Feb 00 EU, 5 Dec 02 EU for examples.

<sup>125</sup> See 14 March 02 EU, for example

<sup>126</sup> See 22 May 02 EU, 15 April 02 EU, 22 Feb 02 EU for examples.

<sup>127</sup> 14 March 02 EU.

<sup>128</sup> See 22 Feb 02 EU, for example.

<sup>129</sup> See 11 Nov 04 EU, 18 Feb 03 EU, 22 Jan 03 EU, 10 Jan 03 EU, 28 Feb 02 EU, 27 July 00 EU, 14 June 00 EU, 3 March 00 EU.

<sup>130</sup> 28 Feb 02 EU.

before the end of the 18 months, then the adviser would agree to be banned from working in the securities and investment industry for the balance of the 18 months. For another conditional type EU, see 4 April 01 EU (#008547511) and 11 Nov 04 (EU#017029139).

The more serious cases have involved the individual undertaking to permanently refrain from conducting investment/securities advice and other related activities. In an EU accepted on 8 August 2002 (#017029047), the concerned securities representative transferred \$600K from client accounts to his own account without authority and used the funds without authority. It is curious why, in such cases, ASIC does not utilise its usual banning remedy. Perhaps these are exceptional circumstances where the individual has shown remorse or fully cooperated.<sup>131</sup> Nevertheless, ASIC stated that a permanent ban was necessary because of the ‘seriousness’ of the activities.<sup>132</sup> Another similar example is the EU accepted on 5 April 2002 (#017029030) where the securities representative also paid money into accounts the individual controlled. Again, the EU involved the individual permanently refraining from acting as a representative of a securities dealer, investment adviser or holder of an AFSL.<sup>133</sup>

In another light, EUs have been used to amend original banning orders to securities representative.<sup>134</sup> In an EU accepted on 25 May 06, ASIC made a variation to a banning order made five years ago on 30 May 2001. ASIC considered the Applicant to be remorseful, and stated that the ‘purpose of a banning order is not punitive but is for the protection of the public’.<sup>135</sup> It appeared that ASIC no longer considered the individual to be at risk of re-offending. Interestingly, the EU required the individual to complete a course “Directors Essentials” at the Australian Institute of Company Directors (‘AICD’).<sup>136</sup> There were also other undertakings regarding the individual’s re-entry into the financial services industry, including regarding education and supervision requirements.<sup>137</sup>

Potentially the success of ASIC’s crackdown on the financial services industry (particularly between the years 1999-2002) and its continual scrutiny of the industry has resulted in many individuals working in the financial services industry becoming more conscious of their obligations. This potentially explains the absence of, and the very low numbers of, EUs in recent years.

Also included in this section were individuals carrying on securities businesses without appropriate licenses.<sup>138</sup> These undertakings typically involved the individual refraining from engaging in employment or conducting businesses in the financial

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<sup>131</sup> See 8 Aug 02 EU #017029047 – ASIC acknowledged the individual had fully cooperated.

<sup>132</sup> See Media Release 02/288 referring to this matter.

<sup>133</sup> 5 April 2002 EU (#017029030). Another example of a voluntary permanent ban concerned a financial planner (EU# 017029050, 16 Aug 02) holding proper authorities from various licensees that were not cross endorsed as required by the Corporations Act. Although voluntary, this undertaking appears particularly harsh in comparison to the other EUs where individuals also agreed to permanently remove themselves from the securities industry.

<sup>134</sup> See 25 May 06 EU.

<sup>135</sup> 25 May 06 EU – see clause 1.4(h) of the EU.

<sup>136</sup> 25 May 05 EU.

<sup>137</sup> 25 May 06 EU.

<sup>138</sup> See 15 Nov 00 EU and 11 Aug 00 EU.

services industry for a period of 10 years<sup>139</sup> – it is noted that this is a longer time span than advisers who do not act efficiently, honestly or fairly, or have a reasonable basis for the provision of advice.

In regards to the individual who uploaded the investment website without an AFSL,<sup>140</sup> ASIC noted that the person cooperated with ASIC during its investigation. The individual undertook to permanently remove the website, and not to set up or operate any similar website until he obtains an AFSL. This appears an effective use of an EU – it provided for the rapid removal of the website, and the cooperative nature of the individual indicates that the person will not re-offend.

## 2 Corporations

### (a) Errors in Financial Services Businesses

ASIC has also used its EU power in relation to errors made by businesses in the financial services industry. From 1998 to current, there have been a total of 9 of these types of EUs, and these have all occurred between the years 2001 and 2005.

Interestingly, it appears that ASIC started to focus on these types of EUs shortly after its 1999 to 2002 crackdown on securities advisers/persons working in the financial industry. (See earlier discussion where it was identified that the height of crackdown on advisers/brokers in the financial services industry was between 1999-2002, and that from 2002, those types of EUs began to slow while EUs relating to financial services industry errors began to emerge.)

In 2005, there were four EUs concerning errors made by financial services businesses. Between 2001 and 2004, there were 5 of these types of EUs.<sup>141</sup> The content of these EUs have ranged, for example, from unit pricing errors<sup>142</sup> to administrative errors on the calculation of members' account balances.<sup>143</sup> Some of these EU processes have involved ASIC working closely with APRA.<sup>144</sup> It appears that ASIC has accepted EUs from these entities (instead of pursuing other remedies) where there is cooperation with ASIC on the matter.<sup>145</sup> This is particularly so where the EU has concerned unit pricing errors.<sup>146</sup>

The typical undertaking requires the business to compensate investors for the error.<sup>147</sup> On 20 September 2005, ING Australia was required to compensate investors an

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<sup>139</sup> Ibid.

<sup>140</sup> 8 August 06 EU. Note this EU was classified in the 'Individuals (I)'-'Ot' (Other) column in Figure 1.

<sup>141</sup> Note 20 May 2002 EU relating to QBE Insurance Ltd was included in this category. However, this EU was different to other EUs in this category. The typical EU in this category concerned generally administrative errors and unit pricing errors. In the 20 May 2002 EU, ASIC was concerned that QBE Insurance Ltd misapplied its policy restrictions to den claims that were made by policy holders under their travel insurance policies for cancelled Ansett Airline tickets.

<sup>142</sup> See 20 Sept 05 EU, 8 September 03, 26 April 01 EU.

<sup>143</sup> See 10 March 05 EU, for example.

<sup>144</sup> See 20 September 2005 EU (for example).

<sup>145</sup> See for example, 20 Sept 05 EU and 15 March 05 EU.

<sup>146</sup> Ibid (above examples are relevant).

<sup>147</sup> See 20 September 2005 EU and 15 March 2005 EU for example.

estimated \$14 million for its unit pricing error.<sup>148</sup> Colonial Mutual signed an undertaking requiring that investors who had been affected the error to be returned to the same position as they would have been had the error not occurred.<sup>149</sup> Tower Super (who made an administrative error in the calculation of members' account balances) was also required to compensate investors affected by the error and then to report to ASIC post rectification of the issue.<sup>150</sup>

In some cases, the entity itself has alerted ASIC of the error.<sup>151</sup>

### *(b) Fundraising*

As part of its consumer protection role, ASIC is particularly concerned with investors receiving adequate information when it comes to potential investments. Ensuring corporations and schemes comply with fundraising provisions of the Corporations Act (or other relevant provisions) is a fundamental component of this role.

Since the introduction of the EU power, there have been a considerable number of EUs concerning alleged breaches of fundraising provisions.<sup>152</sup> Other than the last two years (where there have been none), there has been at least 1 EU per year concerning fundraising by a corporation or a scheme. The majority of these types of EUs were accepted between 2000 and 2003. The year 2000 recorded the highest number of fundraising type EUs – there were 11 in that year.

Generally, these EUs concern an alleged failure to disclose material information in prospectuses,<sup>153</sup> insufficient information in the prospectus,<sup>154</sup> insufficient disclosure of material risks<sup>155</sup> or an absence of a financial report.<sup>156</sup>

The typical EU requires the corporation to withdraw prospectus, inform investors, and not make an offer of securities, advertise or publish statements that refer to the offer, or accept any money from investors who have contacted the corporation.<sup>157</sup> Depending on the stage of the fundraising activity, some EUs also require that the entity refund money to investors who have already purchased the shares or securities.<sup>158</sup>

### *(c) Australian Financial Services License*

This section is relevant to the 'AFSL' column in Figure 1. Some EUs classified in this column have concerned specific breaches of AFS licenses.<sup>159</sup> However, the majority of EUs classified in this column have included the alleged provision of a financial

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<sup>148</sup> See 20 September 2005 EU.

<sup>149</sup> See 15 March 2005 EU.

<sup>150</sup> See 10 March 2005 EU.

<sup>151</sup> See 20 September 2005 EU (for example).

<sup>152</sup> See Figure 1.

<sup>153</sup> 8 Aug 02, 5 March 01, 18 Dec 00, 9 Nov 00, 7 Aug 00 EUs.

<sup>154</sup> 30 June 00 EU.

<sup>155</sup> 11 Dec 00 EU.

<sup>156</sup> 12 July 00 EU.

<sup>157</sup> See 20 April 2006 EU, 5 March EU, 12 July 00 EU, 7 Aug 00 EU.

<sup>158</sup> 18 Aug 00 EU, for example.

<sup>159</sup> 20 Oct 04 EU (NAB), 11 Oct 04 EU (Capital Intelligence).

service without an AFS license. These have included the operation of an online investor club without an AFSL,<sup>160</sup> the operation of a general insurance brokering service or other financial services business without an AFSL,<sup>161</sup> provision of investment training courses without an AFSL<sup>162</sup> and more broadly, the secondary sale of timeshare agreements in the tourism industry.<sup>163</sup>

Please note that EUs in this section do not include persons who have produced/distributed software programs that have been considered as the provision of financial advice without holding an AFSL – these EUs have been categorised in the ‘Soft’ column in Figure 1.

*(d) General Finance Industry Matters*

The following discussion is relevant to EUs that have been categorised into the ‘M/D’, ‘FI-C’, ‘CG’ and ‘AFSL’ columns in Figure 1. Matters that have concerned managed investment schemes, fundraising breaches, unit pricing errors, unsolicited share offers and the distribution of financial software programs without an appropriate license have been classified separately.<sup>164</sup>

Many EUs accepted by ASIC have concerned corporations (and individuals) conducting activities in the financial services industry. These EUs have involved businesses in the insurance, securities, superannuation, and mortgage broker industries. Issues have included misleading and deceptive conduct (e.g. in advertisements and product disclosure statements), license breaches, internal compliance matters, operating without an appropriate license, and disclosure matters.

*(i) Internal Compliance, License Conditions*

ASIC has utilised its EU power to require that securities dealers (and other financial services providers) adopt more prudent internal compliance procedures.<sup>165</sup> In a Media Release relating to 13 July 00 EU (MR 00/302), ASIC stated that it expects all securities dealers to ensure that they have compliance systems and procedures in place to enable them to meet their responsibilities under the law and their licences.<sup>166</sup> For example, ASIC has specifically accepted EUs regarding compliance with the ‘know your client rule’ and supervision and training of proper authority holders.<sup>167</sup> In some circumstances, ASIC has also required that the compliance procedures of the entity be reviewed by an external consultant over a certain period.<sup>168</sup> The same EU (5 Dec 06 EU#017029204) concerned the alleged operation discretionary accounts without appropriate authority (and the inadequate supervision of 2 proper authority holders) –

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<sup>160</sup> 20 Jan 00 EU.

<sup>161</sup> 24 April 03 EU, 14 Jan 03 EU, 18 Jan 02 EU.

<sup>162</sup> 30 July 03 EU.

<sup>163</sup> 27 Aug 02 EU.

<sup>164</sup> I.e. the discussion in this section does not concern the columns ‘Fund’, ‘Err’, ‘Soft’, ‘USO’, and ‘MIS’ in Figure 1.

<sup>165</sup> See 9 March 01 EU, 13 July 00 EU, 22 Dec 00, 26 Feb 03, and 24 Jan 06 EU (for examples).

<sup>166</sup> MR 00/302 of 13 July 00 EU.

<sup>167</sup> See 22 Dec 00 EU, for example

<sup>168</sup> See for example, Patersons Securities (5 Dec 06) – in this situation, the time period undertaken for external compliance review was 2 years.

here ASIC stated that financial services licensees ‘must have comprehensive arrangements in place to manage these risks’.<sup>169</sup>

A further example of these types of EUs is the 26 Feb 2003 (#017029080) concerning RetireInvest Pty Ltd. ASIC had concerns regarding the entity’s compliance with the CA and regulations, and alluded to the possible breach of conditions of its dealers licence. The entity failed to fully disclose fees, commissions and benefits payable to them, and omitted to obtain all necessary information to ensure clients were not placed into investments that were inconsistent with client’s needs, objectives, circumstances or risk profile. The EU aims to improve the compliance standards of the company, and to provide redress for clients of Retireinvest who were adversely affected by the entity’s poor compliance.<sup>170</sup> Retireinvest undertook to engage an external independent compliance consultant to (among other things) carry out a review and assessment of Retireinvest’s compliance systems and procedures. Retireinvest also undertook to post a notice in its client newsletter and on its website, disclosing information relevant to ASIC’s concerns, and providing details of the enforceable undertaking to encourage clients who may have been adversely affected by Retireinvest’s practices to come forward.<sup>171</sup>

#### *(ii) Misleading and Deceptive Conduct*

A large number of EUs have related to misleading and deceptive conduct in the financial services industry.<sup>172</sup> Some of these have related to misleading advertising, for example, in relation to:

- credit cards (Coles Myer);<sup>173</sup>
- deposit accounts (St Georges Bank);<sup>174</sup> and
- reverse mortgages.<sup>175</sup>

The use of EUs in these circumstances provide for an effective means of quickly addressing ASIC’s concerns over potentially misleading advertising. In the Coles Myer EU, despite the company disagreeing with ASIC on the advertisements being misleading or deceptive, Coles Myer nevertheless agreed to immediately withdraw the relevant advertising, review the advertising of the card and its benefits, and to provide corrective notification to cardholders.<sup>176</sup>

Other EUs categorised in the ‘M/D’ category in Figure 1 have referred to: the mortgage brokering, securities, insurance and superannuation industry.<sup>177</sup> Please see the following (Exhibit 1) for a breakdown/summary of these type of EUs.

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<sup>169</sup> MR 06-421 of 5 Dec 06 EU. This matter has arisen following notification by Patterson to ASIC. Paterson has cooperated with ASIC during its investigation. The time period undertaken for external compliance review was 2 years.

<sup>170</sup> See Media Release 03-074 concerning 26 Feb 03 EU #017029080.

<sup>171</sup> See Media Release 03-074.

<sup>172</sup> See Figure 1 – ‘M/D’ column.

<sup>173</sup> 7 Oct 05 EU.

<sup>174</sup> 19 June 03 EU.

<sup>175</sup> 28 March 06 EU.

<sup>176</sup> 7 Oct 05 EU, MR 05-305.

<sup>177</sup> Please note that some of these have been categorised in both ‘FI-C’ and the ‘M/D’ column as they concern corporations in the financial services industry that have engaged in misleading or deceptive conduct of some form.

### Exhibit 1 - EUs matters concerning 'FI-C' and 'M/D'

#### Securities and Investment Industry:

- Sale of debentures;<sup>178</sup>
- Performance of investment funds (Colonial First State Investments).<sup>179</sup>

#### Mortgage Brokering Industry:

- Statements in promotional brochures;<sup>180</sup>
- Misleading advertising;<sup>181</sup>
- Broking practices.<sup>182</sup>

#### Insurance Industry:

- Claims under disability insurance cover;<sup>183</sup>
- Wording in documentation (NRMA);<sup>184</sup>
- Advertising (one EU concerning Suncorp Metway Insurance Ltd).<sup>185</sup>

#### Superannuation Industry:

- Misleading Advice – the EU required the corporation to reimburse members for any difference in wealth if members followed the advice, changed funds and subsequently became worse off;<sup>186</sup>
- Advertisements;<sup>187</sup>
- Superannuation fund fees;<sup>188</sup>
- Product Disclosure Statement;<sup>189</sup>
- Statement about introduction of Super Choice on 1 July.<sup>190</sup>

#### *(iii) Other General Financial Services Industry Matters*

Other EUs classified in this section include

#### Insurance Industry:

- Sales and Debt collection practices of companies in the GE Money Group, involving insurance advice and sale business allegedly being poorly managed, also includes a failure to meet obligations requiring there be a 'reasonable basis' for providing advice;<sup>191</sup>
- Inappropriate policies sold – This EU involved policies sold to Aboriginal communities that were considered inappropriate for the needs and circumstances;<sup>192</sup>
- Life insurance sales practices (again concerning GE Money);<sup>193</sup>

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<sup>178</sup> 30 Aug 05 EU.

<sup>179</sup> 21 Dec 04 EU.

<sup>180</sup> 24 Feb 05 EU, 3 Sept 03 EU.

<sup>181</sup> 10 Aug 04 EU, 25 May 04 EU.

<sup>182</sup> 29 Oct 03 EU.

<sup>183</sup> 14 March 01 EU.

<sup>184</sup> 8 Jan 02 EU.

<sup>185</sup> 15 Sept 99 EU, 30 Aug 99 EU.

<sup>186</sup> 11 May 2007 EU.

<sup>187</sup> 3 June 05 EU.

<sup>188</sup> 27 Aug 04 EU.

<sup>189</sup> 1 Sept 05 EU.

<sup>190</sup> 3 June 05 EU.

<sup>191</sup> 22 May 08 EU.

<sup>192</sup> 13 Nov 00 EU.

- Insurance claims – this EU concerned an alleged misapplication of policy restrictions to deny claims made (concerned cancelled Ansett Airline air tickets);<sup>194</sup>
- Failure to disclose fees charged to clients;<sup>195</sup>
- Payment of premiums to insurers – this EU involved an undertaking to ensure that all agreements with underwriters comply with the Act, i.e. that premiums are not held for greater than 90 days.<sup>196</sup>

Superannuation Industry:

- Superannuation payouts – failure to ensure employees were paid their lawful super entitlements;<sup>197</sup>
- Failure to issue proper statements to members.<sup>198</sup>

In almost all of the EUs accepted by ASIC, ASIC has released an accompanying media release. This would seem an important part of ASIC's policy in accepting EUs as it publicises the potential breach, placing the individual/company concerned on alert, as well as assisting to educate the public. An example of a matter in which ASIC potentially considered as minor and thus not requiring a media release concerns Elderslie Finance Corp and the issue of unsecured deposit notes.<sup>199</sup> Elderslie immediately notified ASIC of the contravention and initiated a review, as well as undertook to carry out various actions at ASIC's request.<sup>200</sup>

An example of the use of EUs by ASIC in a protracted dealing with a company and individuals, involves the directors and officers of Onkourse Pty Ltd (in liquidation) and Brink Pty Ltd and its directors. In a seven month period between 15 August 01 to 12 March 02, there were a total of 6 EUs relating to this particular matter.<sup>201</sup> There were shared personnel between the two corporations. Onkourse was a company that offered financial and investment advice. ASIC had concerns regarding the management of the company and entered into EUs with the company officers and directors of Onkourse preventing them from providing future financial advice and from being a company officer/involved in company management.<sup>202</sup> Later when Brink Pty Ltd sought to enter into a fundraising arrangement with Onkourse, ASIC intervened by requiring that the interests of the directors and shareholders be disclosed, that Brink have its financial statements and company accounts independently audited and that it call a general meeting to vote on the appointment of the directors.<sup>203</sup>

Another example of multiple EUs accepted by ASIC but concerning just the one matter relates to the directors of Elm Group.<sup>204</sup>

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<sup>193</sup> 20 March 06 EU.

<sup>194</sup> 20 May 02 EU.

<sup>195</sup> 14 July 99 EU.

<sup>196</sup> 5 Sept 01 EU.

<sup>197</sup> 20 Dec 00 EU.

<sup>198</sup> 4 Nov 04 EU.

<sup>199</sup> 7 June 02 EU.

<sup>200</sup> 7 June 02 EU.

<sup>201</sup> 15 Aug 01 EU, 11 Oct 01 EU, 13 Dec 01 EU, 11 March 02 EU, 12 March 02 EU.

<sup>202</sup> See 15 Aug 01 EU, 13 Dec 01 EU.

<sup>203</sup> See 11 Oct 01 EU.

<sup>204</sup> See next section on Corporate Governance EUs – Directors.

## IV THE USE OF ENFORCEABLE UNDERTAKINGS BY ASIC AS PART OF ITS CORPORATE GOVERNANCE ROLE

### A *What is Corporate Governance?*

While a number of definitions exist for corporate governance, corporate governance is commonly referred to as “the system by which companies are directed and controlled”.<sup>205</sup> Generally, it can be said that corporate governance concerns the accountability of corporations.<sup>206</sup> The issue of whether the accountability is towards just shareholders or to the broader community is a current debate. The narrow definition of corporate governance, as provided by Professors Shleifer and Vishny,<sup>207</sup> states that corporate governance is concerned with “the ways in which suppliers of finance assure themselves of getting a return on their investment”.<sup>208</sup> This definition suggests that a corporation is only accountable to its shareholders and that corporate governance codes or rules should only concern a corporation’s duties to its shareholders.

However, a broader definition of corporate governance includes a wider range of stakeholders in the company.<sup>209</sup> Professor Prentice’s states that at the broadest level, corporate governance “involves the issue of the relationship between stakeholders in a company and those who manage its affairs (the board of directors)”.<sup>210</sup> Despite the debate regarding the scope of corporate governance (i.e. whether it should extend to persons other than shareholders), there remains some commonality in the themes or mechanisms of which corporate governance seeks to address.

David Knott, as Chairman of ASIC in 2002, identified some common essential points in corporate governance codes or guides.<sup>211</sup> He noted the plethora of codes or guides available that describe best corporate governance practices, including those issued by the Bosch Committee (November 1995), the Australian Institute of Company Directors and also the numerous guides found in the European Union.<sup>212</sup> Mr Knott noted some common points as being that corporate governance is a “means of ensuring that the exercise of economic power by the corporate sector is grounded in

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<sup>205</sup> *Ford’s Principles of Corporations Law* – Part III The Law of Corporate Governance – [7.620] Definitions of Corporate Governance, as downloaded 12 November 2008 (Lexis Nexis database). See also Berna Collier, Commissioner, ASIC, ‘The role of ASIC in corporate governance’ an address to the Corporate Governance summit 2002 (27 November 2002). Also, ‘Corporate Governance – principles, promotion and practice’ Inaugural Lecture by Mr David Knott, Chairman to ASIC to the Monash Governance Research Unit, 16 July 2002.

<sup>206</sup> David Knott, p 5 of speech (above n 201).

<sup>207</sup> A Shleifer and R W Vishny, *A Survey of Corporate Governance*, National Bureau of Economic Research Working Paper No 5554 1996 as quoted from *Ford’s Principles of Corporations Law*, para [7.620] as downloaded on 12 November 2008 (Lexis Nexis database).

<sup>208</sup> *Ibid.*

<sup>209</sup> *Ford’s Principles of Corporations Law*, para [7.620] as downloaded on 12 November 2008 (Lexis Nexis database).

<sup>210</sup> D D Prentice, “Some Aspects of the Corporate Governance Debate” in D D Prentice and P R J Holland (eds), *Contemporary Issues in Corporate Governance*, Oxford University Press, 1993, p 25, as quoted from *Ford’s Principles of Corporations Law*, para [7.620] as downloaded on 12 November 2008 (Lexis Nexis database).

<sup>211</sup> ‘Corporate Governance – principles, promotion and practice’ Inaugural Lecture by Mr David Knott, Chairman to ASIC to the Monash Governance Research Unit, 16 July 2002.

<sup>212</sup> *Ibid.*, p 4 of the speech.

accountability”, that boards have a supervisory and managerial function and that there should be a separation between the supervisory and managerial roles, including for example the separation of Chairman and CEO roles and the appointment of independent directors.<sup>213</sup>

The *OECD Principles of Corporate Governance* also provide an indication of the aspects of a corporation that concern corporate governance. The *OECD Principles of Corporate Governance* are a well recognised and widely adopted set of corporate governance rules that have acted as a benchmark in both OECD countries and elsewhere.<sup>214</sup> The current revised version (as approved by governments of 30 OECD countries in 2004) addresses six broad areas including the rights of shareholders and key ownership functions, equitable treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and the responsibilities of the board of directors.<sup>215</sup>

*Ford’s Principles of Corporation Law* suggests some mechanisms that play a role in corporate governance.<sup>216</sup> These mechanisms include:

- Directors’ and officers’ legal duties;
- The structure of the board;
- Auditors;
- Disclosure of information by companies;
- Ownership concentration;
- Corporate financial policy;
- Member voting;
- Intervention by regulators (See [7.630] for further details).<sup>217</sup>

Corporate Governance is considered a response to some of the high profile corporate failures of recent years. Christine Mallin highlights in examples concerning Barings Bank, Enron and Royal Ahold some issues that were considered to contribute to their failures.<sup>218</sup> The demise of Barings Bank – ‘one of England’s oldest established banks’ – in 1995 was considered the result of the actions of just one employee.<sup>219</sup> Christine Mallin writes that the Barings Bank example highlights ‘the lack of effective controls’ and the ‘folly of trusting one employee without adequate supervision and understanding of his activities’.<sup>220</sup> Many EUs accepted by ASIC have concerned the financial services industry, and inadequate internal procedures or supervision of staff. Christine Mallin writes in respect to the fall of Enron that it highlighted the need to ensure directors are people of integrity and act honestly and that external auditors are able to sufficiently perform their role unfettered by the

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<sup>213</sup> Ibid, see page 5 of Mr Knott’s speech.

<sup>214</sup> Ford’s Principles of Corporations Law (above n201), [7.650] Corporate governance reports and principles, as downloaded on 12 November 2008 (Lexis Nexis database).

<sup>215</sup> Ford’s Principles of Corporations Law (above n201), [7.650] Corporate governance reports and principles – ‘OECD Corporate Governance Principles’, as downloaded on 12 November 2008 (Lexis Nexis database).

<sup>216</sup> Ford’s Principles of Corporations Law (above n201)– [7.630] ‘Mechanisms that play a role in corporate governance’.

<sup>217</sup> Ibid. See [7.630] for further details.

<sup>218</sup> Christine Mallin, *Corporate Governance*, Oxford University Press, Oxford, 2004, Chapter 1, p 1- 5.

<sup>219</sup> Ibid, p 1.

<sup>220</sup> Ibid, p 3.

consideration of potential fee loss.<sup>221</sup> Many EUs accepted by ASIC have concerned the regulation of auditors and directors.

It is interesting to note ASIC's definition of corporate governance. ASIC refers to above definition of corporate governance ('the system by which companies are directed and controlled') and also to 'the mechanisms by which those who direct and control the corporation are monitored and supervised. That is, it is about mechanisms to ensure those who are in control are accountable'.<sup>222</sup>

## B ASIC's role in Corporate Governance

In 2002, ASIC appears to have focused particularly on its role in corporate governance in Australia. Both the (then) Commissioner, Berna Collier, and the (then) Chairman of ASIC, David Knott, provided a public speech about ASIC and its role in corporate governance in Australia.<sup>223</sup> In these speeches, they emphasised the importance of good corporate governance to the financial stability of Australia's corporate sector.<sup>224</sup> Mr Knott captured these sentiments, as well as the seriousness of ASIC's commitment to good corporate governance in Australia in this statement:

'We therefore need to view good corporate governance not as a fad, or a mantra to be invoked when convenient; but rather as an essential and enduring component of any sound economic and regulatory system.'<sup>225</sup>

It is also noted that the theme of the 2001– 2002 ASIC Annual Report was 'tackling ethics and governance'.<sup>226</sup>

Under the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth) ("ASIC Act"), it is noted that ASIC's functions include:

- 'Registering companies;
- Registering company auditors and liquidators;
- ...
- Regulating the securities industry, including licensing professional participants, monitoring securities exchanges, and policing provisions of the Corporations Act concerned with the conduct of securities transactions;
- ...
- Investigating suspected contraventions of the Corporations Act;
- Enforcing compliance with the Corporations Act; and
- Enforcing and investigating suspected contraventions of the consumer protection provisions relating to the financial sector, contained in Pt 2 Div 2 of ASICA.'<sup>227</sup>

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<sup>221</sup> Ibid, p 3.

<sup>222</sup> See Berna Collier, Commissioner, ASIC, 'The role of ASIC in corporate governance' an address to the Corporate Governance summit 2002 (27 November 2002), page 1 of speech. See also, 'Corporate Governance – principles, promotion and practice' Inaugural Lecture by Mr David Knott, Chairman to ASIC to the Monash Governance Research Unit, 16 July 2002, page 4 of speech.

<sup>223</sup> Berna Collier's speech, above n218, David Knott's speech, above n218.

<sup>224</sup> See for example, Berna Collier's speech, above n218, p 9 and David Knott's speech, p 4.

<sup>225</sup> David Knott's speech, above n 218, p 4.

<sup>226</sup> ASIC 2001-2002 Annual Report, [http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/annual\\_report2001-02.pdf/\\$file/annual\\_report2001-02.pdf](http://www.asic.gov.au/asic/pdf/lib.nsf/LookupByFileName/annual_report2001-02.pdf/$file/annual_report2001-02.pdf) (as downloaded 16 November 2008).

<sup>227</sup> Ford's Principles of Corporations Law, above n 210, [3.140].

Many of these above responsibilities are directly related to corporate governance. For example, registering auditors is connected to the regulation of the auditing industry – this helps to ensure that companies are accountable to their shareholders and other external parties in that their financial reports show the ‘true and accurate’ position of the company. It will also be seen that in regulating the securities industry (and general financial services industry), ASIC works to ensure that internal compliance regimes are satisfactory, thus, from a corporate governance perspective, adequate controls and systems in place for the supervision of staff and to ensure one individual cannot exercise a high degree of power on their own, and thus potentially place the entire company/firm at risk.<sup>228</sup>

ASIC evidently considers its role in corporate governance regulation in Australia to be significant. In November 2002, the Commissioner, Berna Collier, stated that even under the narrow definition of corporate governance (i.e. that corporate governance only concerns management, the board and shareholders), ‘a great deal is [nevertheless] encompassed’.<sup>229</sup> In this regard, ASIC considers its role in corporate governance to involve, at the minimum, the regulating of provisions of the Corporations Act that concern the exercise of power by directors and managers.<sup>230</sup> Mr Knott provides examples of these provisions as including duties of directors, transactions with related parties, and meetings of company shareholders.<sup>231</sup> Even under the narrow definition of corporate governance, ASIC’s role also extends to the regulation of disclosure obligations of companies, financial reporting and auditors/liquidators. These areas are relevant to corporate governance as they concern the *accountability* of corporations to shareholders and other stakeholders.<sup>232</sup>

ASIC states that under the ASIC Act, it is required to:

- ‘maintain, facilitate and improve the performance of the financial system and entities in it;
- promote confident and informed participation by investors and consumers in the financial system;
- administer the law effectively and with minimal procedural requirements;
- enforce and give effect to the law;
- receive, process and store, efficiently and quickly, information that is given to us; and
- make information about companies and other bodies available to the public as soon as practicable.’<sup>233</sup>

ASIC also states that its priorities as follows:

1. ‘Assist and protect retail investors and consumers in the financial economy
2. Build confidence in the integrity of Australia's capital markets
3. Facilitate international capital flows and international enforcement
4. Manage the domestic and international implications of the global financial turmoil

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<sup>228</sup> See Christine Mallin article, above n 214, i.e. like the Baring Bank example.

<sup>229</sup> Berna Collier’s speech, above n 218, p 2.

<sup>230</sup> See David Knott’s speech, above n 218, p 6.

<sup>231</sup> Ibid, see p 6 of his speech.

<sup>232</sup> See ASIC’s definition of corporate governance as including the ‘mechanisms to ensure those who are in control are accountable’.

<sup>233</sup> <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Our%20role>. See s 1(2) of the ASIC Act which states that ASIC must “strive” to undertake the following.

5. Lift operational effectiveness and service levels for all ASIC stakeholders
6. Improve services and reduce costs by using new technologies and processes<sup>234</sup>

The first two points regarding what ASIC is required to do under the ASIC Act and the first two of ASIC's priorities are directly related to corporate governance. Good corporate governance regimes are considered to protect investors and consumers, improve performance of the financial system and build confidence in the integrity of Australia's capital markets.<sup>235</sup>

The remainder of this essay will address the use of enforceable undertakings by ASIC in respect of its role as regulator of corporate governance in Australia.

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<sup>234</sup> <http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/Our%20role> (downloaded 13 November 2008)

<sup>235</sup> See Christine Mallin article, above n 214.

### *C Enforceable Undertakings relating to ASIC's role in Corporate Governance*

As discussed earlier, ASIC's role in corporate governance regulation in Australia concerns the regulation of directors, auditors, liquidators,<sup>236</sup> continuous disclosure obligations and internal compliance systems.

#### *1 Directors*

The table below provides a summary of the number of individual EUs accepted by ASIC concerning directors.

ASIC considers rules dealing with the proper behaviour of boards and directors as falling within the scope of corporate governance.<sup>237</sup> Thus laws in relation to the duties of directors and other corporate officers are relevant to corporate governance (and ASIC's regulation of corporate governance). Without doubt, directors and company officers play a very direct role in how a corporation is 'directed and controlled'. The regulation of their conduct is thus crucial to any corporate governance regulatory regime.

In the last ten years there have been a total of 33 individual EUs concerning directors.<sup>238</sup>

<b>Year</b>	<b>Director EU</b>
2008	1
2007	-
2006	-
2005	4
2004	2
2003	5
2002	6
2001	2
2000	5
1999	4
1998	4

There have also been 'C + I' (combined) EUs concerning both companies and directors. In fact, the majority of combined EUs have involved both the company and the director(s) of the company.<sup>239</sup> These types of EUs have concerned a range of matters – some of these types of matters were discussed in the previous section of this essay concerning the financial services industry.<sup>240</sup>

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<sup>236</sup> See Figure 1 for breakdown of EUs concerning liquidators. Note this won't be a focus in the essay.

<sup>237</sup> Berna Collier, Commissioner, ASIC, above n 218, November 2002, p 2.

<sup>238</sup> This total does not include 'C+I' EUs where directors have also been signatories.

<sup>239</sup> There have been at least 32 (out of a total of 46) combined (C+I) EUs that have involved both the company and its director(s).

<sup>240</sup> Please note that this section of the essay will only discuss individual 'I' EUs concerning directors.

ASIC's first EUs concerned directors.<sup>241</sup> Approximately one month after the EU power was enacted ASIC had entered into two EUs concerning just directors. One EU concerned a director of a company that had been put into liquidation (in excess of \$120K in debt).<sup>242</sup> ASIC had formed the view that the director breached her duty to exercise a reasonable degree of care and diligence in acting as a director of a company. The director undertook not to be a director or to take part in the management of a company for five years without ASIC approval. The other EU accepted on 11 August 98 also concerned a director of a company that had solvency issues.<sup>243</sup> The director alleged arranged for a creditor to be paid in preference to others to gain an advantage for himself and other companies. In this situation, ASIC accepted a lesser undertaking than the previous one – the director undertook not to take part in the management of a company or act as a director/secretary for 3 years (as compared with 5 years in the previous EU). The director also agreed to undertake a suitable corporate management course in the future prior to becoming a director again. The 20 June 00 EU is another example of EUs concerning directors where the corporation has had a solvency issue or been placed in liquidation.<sup>244</sup> See also the 1 March 00 EU.<sup>245</sup>

It is noted that while an EU can be flexible in that it can require an individual to complete further education, the description of the further education needs to be more specific to be enforceable.<sup>246</sup> Otherwise it may be difficult for ASIC to establish a breach of an EU if the requirements of the EU are vague – for example, there may be different interpretations a 'suitable management course'.

It appears that ASIC entered into some of these undertakings following complaints from consumers.<sup>247</sup> The 22 Feb 99 EU concerned a director of two companies who had failed to ensure that ASIC was notified of the change of address of the registered office, principal place of business and the directors' residential address for both companies.<sup>248</sup> The director agreed to be banned from managing a corporation or being a director or secretary for 3 years. The director also undertook to complete a suitable corporate management training course if he wished to become a director in the future. The ASIC investigation apparently also uncovered that a number of legal and commercial firms were taking action to recover debts from one of the companies concerned.<sup>249</sup>

Recently the EUs concerning directors have related to their involvement in the financial services industry.<sup>250</sup> These EUs typically involve the director undertaking to

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<sup>241</sup> ASIC's first EUs were accepted on 11 August 1998. The EU power was only introduced on 1 July 1998. All three EUs accepted on 11 August 1998 concerned directors – 2 were individual 'I' EUs concerning directors, 1 was a combined EU concerning a company and its directors.

<sup>242</sup> 11 Aug 98 EU #008547287.

<sup>243</sup> 11 August 1998 EU #008 547 288.

<sup>244</sup> EU #008 547 445. See also

<sup>245</sup> EU#008 547 417.

<sup>246</sup> See Marina Nehme, 'Enforceable undertakings and the court system' (2008) 26 *Corporate & Securities Law Journal* 147, 165.

<sup>247</sup> See 22 Feb 99 EU - ASIC commenced investigations following a customer who complained that they had paid for a computer in full and was never delivered.

<sup>248</sup> It appears one company was a 'phoenix' of the other – See 22 Feb 99 EU.

<sup>249</sup> See Media Release 99/044.

<sup>250</sup> See for example, 31 Jan 08 EU, 20 October 05 EU, 10 October 05 EU, 28 Sept 05 EU, 23 September 05 EU, 23 Jan 04 #017029115, 10 Dec 03 #017029115.

not act as a director or officer of a company holding an AFSL or an investment company for a certain number of years (typically 5 years) and not be involved in the financial services industry for a period of time (also typically 5 years), i.e. in not holding or applying for an AFSL, acting as a representative of an AFSL etc during that time.<sup>251</sup>

In 2005, the four director EUs related to the same matter.<sup>252</sup> The individuals were involved in the failed Elm Financial Services Group ('Elm) where allegedly illegal fundraising and misleading and deceptive conduct occurred. There were also alleged contraventions of directors' duties by the individuals. ASIC appears to have utilised these EUs alongside court orders. The court orders relating to a permanent ban on the managing director of Elm (Dennis Terracini) and a banning of the other directors (Terracini, Young and Kay).<sup>253</sup> There were also court orders relating to payment of \$150K in compensation to creditors and court costs. The EUs concerned these directors undertaking not to partake in the financial services industry (the MD agreed to permanently refrain from any future involvements while the other directors undertook to be precluded from operating in the financial services industry for periods of 5 to 7 years).<sup>254</sup>

Generally these director EUs have concerned directors of companies that have experienced solvency issues or were eventually placed in liquidation.<sup>255</sup> ASIC thus appears to have particularly scrutinised director conduct in these situations. These types of EUs tended to occur during the earlier years – 1998 to 2000.<sup>256</sup> The more recent EUs concerning directors have tended to relate to their conduct in the financial services industry (as well as to breaches of directors' duties).<sup>257</sup>

## 2 Auditors

ASIC registers auditors and commences disciplinary proceedings for misconduct. Where misconduct occurs, ASIC can make an application to the Companies Auditors and Liquidator Disciplinary Board. In some of these auditor EUs, ASIC has accepted the undertaking as a substitute (in essence) for commencing disciplinary action.

The following table provides a summary of the number of EUs accepted by ASIC concerning individuals in their capacity as auditors.

In the last ten years there have been a total of 12 EUs concerning auditors.<sup>258</sup>

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<sup>251</sup> See 23 Jan 04 and 10 Dec 03 EUs for example.

<sup>252</sup> 20 October 05 EU, 10 October 05 EU, 28 Sept 05 EU, 23 September 05 EU.

<sup>253</sup> See Media Release 05-330.

<sup>254</sup> See same EUs above.

<sup>255</sup> See above EUs discussed in para above.

<sup>256</sup> See for example (EU dates from above).

<sup>257</sup> See for example EU numbers from above.

<sup>258</sup> Note: this total does not include the EU concerning auditing firm – PKF Victoria (16 Sept 05, #017029169 and so on).

Year	Auditor EU
2008	1
2007	3
2006	1
2005	5
2004	-
2003	1
2002	-
2001	-
2000	-
1999	1
1998	-

The majority of EUs relating to auditors have concerned an alleged failure to adequately or properly perform the duties of a registered auditor,<sup>259</sup> a failure to issue a qualified auditing report,<sup>260</sup> or a failure to perform an audit in accordance with Australian auditing standards.<sup>261</sup>

Many of these EUs require the auditor to cancel their registration and to not apply for re-registration for a certain amount of time,<sup>262</sup> or to not to fulfil duties of a registered auditor for a certain period of time.<sup>263</sup>

In 2008, the EU concerned an auditor who was connected to the 2000 audit of HIH Insurance Ltd. The auditor (Mr Buttle) allegedly failed to adequately or properly carry out the duties of a registered auditor in relation to the 2000 audit of HIH. The auditor undertook to cancel his registration as an auditor and to not apply for re-registration until 1 March 2010.<sup>264</sup> ASIC stated that it took into account the fact that Mr Buttle had not signed any audit reports since 2004, is not currently registered as a company auditor and provided ASIC with information relevant to criminal proceedings following ASIC's investigations into the collapse of HIH.<sup>265</sup>

Where the misconduct has been more serious, the EUs require the auditor to immediately resign as an auditor and to not reapply other than on terms to be agreed with ASIC.<sup>266</sup> In this particular EU, the auditor had to pay \$13,800 to ASIC towards the cost of its investigations, and ASIC explicitly stated that it was accepting this EU as an alternative to making an application to the Companies Auditors and Liquidators Disciplinary Board.<sup>267</sup>

<sup>259</sup> 28 July 08 EU #017029222, 20 Nov 06 EU # 017029203, 25 Nov 05 #017029187, 13 Oct 05 #017029181, for example.

<sup>260</sup> 15 May 07 #017029208, 15 May 07 #017029206, 20 Nov 06 EU # 017029203.

<sup>261</sup> 21 Dec 99 EU#008547402, 9 May 05 EU #017029156, 13 October 05 #017029181.

<sup>262</sup> 20 Nov 06 EU # 017029203, 28 July 08 EU #017029222, 9 May 05 EU #017029156.

<sup>263</sup> 15 May 07#017029208, 15 May 07 #017029206, 16 Sept 05 #017029166 and #017029167.

<sup>264</sup> 28 July 08 EU #017029222.

<sup>265</sup> Ibid. Please note ASIC also accepted another EU from a former auditor (of Arthur Andersen) who also participated in the HIH audit and allegedly signed an unqualified audit report – see 15 May 07 EU #017029206.

<sup>266</sup> 20 Nov 06 EU # 017029203

<sup>267</sup> Ibid.

In other less serious breaches, the EU has merely required that the auditor complete additional hours of continuing professional development and to submit compliance plans for the next 6 audits.<sup>268</sup> In other EUs, ASIC has requested that the auditor engage a reviewing auditor,<sup>269</sup> be subjected to review and supervision of selected audits and monitoring and quarterly reporting on compliance with EU.<sup>270</sup>

Other auditor EUs have related to a failure to detect a conflict of interest.<sup>271</sup> In one of these EUs, the auditor undertook to immediately resign as auditor of the company (Kalista) due to a conflict of interest.<sup>272</sup> ASIC stated in the Media Release (03-148) concerning this EU that the ‘obligation to avoid conflicts of interest is one that underscores the independence of the audit function. Auditors must take active steps to avoid conflicts of interest when accepting audit engagements’.<sup>273</sup> It appears that ASIC accepted this EU in this instance (as opposed to pursuing tougher remedies), as the auditor’s failure to detect the conflict of interest was allegedly ‘inadvertent and not deliberate’.<sup>274</sup> Occasionally, these types of EUs result from a complaint being made to ASIC about the auditor concerned.<sup>275</sup>

### *3 Internal Compliance Procedures*

Please see discussion in previous section – Financial Services Industry – ‘Internal Compliance, Licence Conditions’.

One further example of ASIC using EUs as part of its crackdown on internal corporate governance procedures relates to a 17 April 00 EU concerning Hudson Investment Group Ltd and its directors.<sup>276</sup> This EU was entered into before the introduction of legislation regarding related parties transactions. The EU required the Group to introduce corporate governance policies and procedures for the provision of finance to directors, employees and third parties. The Group also had to introduce a compliance regime and report to ASIC every six months for 1 and a half years.<sup>277</sup>

### *4 Financial Reporting and Disclosure Obligations*

ASIC considers both the regulation of auditors and standards of financial reporting as forming part of the broader corporate governance debate in Australia.<sup>278</sup> As stated earlier, ASIC’s definition of corporate governance includes ‘mechanisms to ensure those who are in control are accountable’ (emphasis added).<sup>279</sup> ASIC thus considers financial reports and auditors to play an essential role in the ‘monitoring and supervision of management and the board’. The financial reporting process is also

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<sup>268</sup> See 13 October 05 #017029181.

<sup>269</sup> 15 May 07 EU# 017029206.

<sup>270</sup> 15 May 07 EU# 017029208.

<sup>271</sup> 7 May 03 EU # 017029086, 21 Dec 99 EU # 008 547 402.

<sup>272</sup> 7 May 03 EU # 017029086.

<sup>273</sup> Media Release # 03-148.

<sup>274</sup> See Media Release # 03-148.

<sup>275</sup> See 21 Dec 99 EU # 008 547 402, for example.

<sup>276</sup> EU #008 547 430.

<sup>277</sup> See EU.

<sup>278</sup> Berna Collier, p 2 of speech.

<sup>279</sup> See earlier part of essay, p X.

essential to the 'external accountability of directors and management'.<sup>280</sup> There is a direct link between financial reporting and auditing to a good system of corporate governance:

'An audited financial report shows shareholders and the world at large how the board and the company are performing. Therefore, if the financial reporting and audit process is flawed, the whole external accountability framework is at risk. In other words, our system of corporate governance is at risk.'<sup>281</sup>

Thus, an audited financial report must be independent of the company that is being audited, and external auditors must be independent of the company.

In the last ten years, ASIC has entered into at least 8 EUs concerning financial reporting and disclosure obligations.<sup>282</sup> Out of these 8 EUs, just one has concerned accounting treatment of financial reports;<sup>283</sup> the other 7 EUs have concerned disclosure obligations of publicly listed corporations. The majority of latter EUs have concerned compliance with continuous disclosure obligations under the ASX Listing rules and the Corporations Act (or other relevant legislation).<sup>284</sup>

All of these EUs have concerned publicly listed companies: TZ Limited, Multiplex Limited, Uecomm Limited, SMEC Holding Ltd, Plexus International Limited, Pahth Telecommunications Ltd, Seven Network Limited and Seven Network (Operations) Limited and Crown Casino Limited.<sup>285</sup>

Many of these EUs related to a failure to disclose changes in profit or revenue forecasts.<sup>286</sup> The typical undertaking involved the company needing to review its internal procedures for ensuring compliance with continuous disclosure obligations, having the procedures independently audited by a senior member of the corporate finance industry or of the stockbroking industry, reviewing, formalising and annually auditing its corporate governance practices, and reporting back to ASIC.<sup>287</sup> In some of these undertakings, ASIC acknowledged full cooperation by the company.<sup>288</sup>

The 4 June 01 EU related to a failure to lodge half years accounts (for nearly 5 years).<sup>289</sup> In this EU, the company undertook to establish procedures to ensure the company's compliance with their disclosure obligations, including quarterly directors' meetings and audit committee reviews of this compliance.

It is noted that in 2004, ASIC acquired new powers regarding continuous disclosure breaches (ASIC is now able to issue infringement notices in respect to these type of

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<sup>280</sup> Edit, this is directly from ASIC speech, use Fords or Pamela's book.

<sup>281</sup> ASIC speech, Berna Collier, 27 November 2007.

<sup>282</sup> 11 September 98 (008 547 289), 8 March 99 (008 547 317), 2 Feb 01 (008 547 505), 30 March 01 (008 547 509), 4 June 01 (008547519), 17 Oct 02 (017029061), 20 Dec 06 (017029205), 3 July 08 (017029221).

<sup>283</sup> 8 March 99.

<sup>284</sup> 2 Feb 01, 30 March 01, 17 Oct 02, 20 Dec 06, 3 July 08.

<sup>285</sup> See above EUs in Footnote 283.

<sup>286</sup> 2 Feb 01, 30 June 01, 17 Oct 02, 20 Dec 06.

<sup>287</sup> See 2 Feb 01 EU, 30 March 01 EU.

<sup>288</sup> See 2 Feb 01 EU, for example.

<sup>289</sup> EU# 008547519.

breaches). This may partly explain the decline in EUs relating to continuous disclosure breaches in recent years.

The most recent EU concerning disclosure requirements involves a listed intellectual property and technology development company. The company allegedly failed to disclose price sensitive information to the ASX concerning a purchase order. The company did not consider the information to be price sensitive. Nevertheless, the company undertook to improve its compliance with disclosure obligations through the engagement of an external consultant to review its policies and procedures and to assist it in implementing industry best practice procedures.<sup>290</sup>

On 20 Dec 06, ASIC accepted a fairly high profile EU concerning Multiplex Limited. On 24 February that year, Multiplex's share price dropped from \$5.57 to \$4.76 (a 14.5% fall) following an announcement regarding the profit forecast of its Wembley National Stadium project in London – the profit forecast was adjusted from £35.7 million to zero.<sup>291</sup> ASIC alleged that the disclosure should have occurred soon after a Board meeting on 2 February. Instead, it was announced on 24 February 2006. This EU is an example of ASIC working to improve corporate governance of corporations – ASIC accepted the EU on the basis that Multiplex agreed to improve compliance measures aimed at meeting its continuous disclosure obligations in the future.<sup>292</sup> ASIC also took into account Multiplex's decision to change its board composition to consist of a majority of independent directors within 12 months. This EU is an example of the flexibility, power and effectiveness of an EU – ASIC was able to secure a \$32 million compensation fund for affected investors. The undertaking also provides for a timely response as compared to undergoing litigation proceedings.

In March 1999, ASIC stated that: 'Accounting standards promote confidence and informed participation of investors in the market' and that it would continue to monitor financial reports prepared by entities to ensure compliance with financial reporting requirements.<sup>293</sup> To date, ASIC has only accepted one EU relating to this matter – this EU involved Seven Network Limited (Seven) and one of its subsidiaries.<sup>294</sup> Seven entered into this EU, agreeing to adopt ASIC's alternative preferred accounting treatment, while still maintaining that it nevertheless complied with accounting standards.<sup>295</sup>

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<sup>290</sup> EU # 017029221 (3 July 08).

<sup>291</sup> See ASIC Media Release 06-443.

<sup>292</sup> Multiplex undertook to commission an independent review of its disclosure policies and procedures and has agreed to implement recommendations generated from that independent review to ensure compliance with industry best practice – see Media Release 06-443.

<sup>293</sup> See Media Release 99/055.

<sup>294</sup> EU #008 547 317, 8 March 99.

<sup>295</sup> Ibid.

## V CONCLUSION

In the years 1998 to 2008, ASIC has accepted a total of 281 enforceable undertakings.<sup>296</sup> As discussed earlier, the majority of these enforceable undertakings were accepted during the years 1999 to 2006, and that since 2006, there has been a significant decline in the number of EUs accepted by ASIC.

More than half of the EUs accepted by ASIC concerned the financial services industry (i.e. relating to security advisers/brokers, AFSL holders, the provision of financial advice without an AFSL, and misleading/deceptive behaviour by parties in the financial services industry). The high number of EUs relating to the financial services industry may simply be correlated with ASIC's deliberate focus on or crackdown on illegal behaviour in this industry.

While the topics of EUs are demonstrably broad, a common theme relates to the cooperativeness of the party(s) involved. ASIC has acknowledged in numerous media releases the cooperativeness of the party(s) to the EU. ASIC thus appears likely to accept an EU where the party(s) is cooperative, shows remorse and is perceived to be at a low risk of re-offending. In these situations, EUs are an effective regulatory tool as they can educate an industry participant without imposing a penalty on the party, and the EU has the effect of educating other industry participants. EUs are generally accompanied by a media release, and in addition, all EUs are uploaded onto a public register on the ASIC website. EUs are thus in alignment with ASIC's perceived purpose of its enforcement activities as not necessarily being 'punitive but is for the protection of the public'.<sup>297</sup>

EUs are also effective in remedying alleged misleading or deceptive advertising, for example when a quick removal of offensive material is required from a website or print advertisement. A further advantage of EUs is that their content can be varied and flexible. The content of EUs has included requirements of parties to appoint a third party independent consultant to review their internal compliance procedures, to the requirement for individuals to undertake particular courses at an education institution. However, one disadvantage is that these types of EUs require ASIC to follow up with or monitor the progress of the party(s) involved.

While this report has invested considerable effort into classifying the EUs accepted by ASIC in the last ten years, there remains significant scope to take this report's findings further. Further research into ASIC's other enforcement activities and court proceedings concerning EUs during the last ten years may unearth explanations for the significant decline in the number of EUs in recent years. For example, the unenforceability in court of certain types of EUs would significantly influence ASIC's decision to accept EUs in these circumstances. Analysing ASIC's other regulatory or enforcement activities may uncover a change in ASIC's preferences for certain types of enforcement mechanisms, for example, ASIC may now prefer more straightforward enforcement tools such as a banning order or the immediate cancellation of licenses.

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<sup>296</sup> This report has classified EUs up until 30 October 2008.

<sup>297</sup> See EU #017029199 (25 May 2006).

## **APPENDIX – TABLE OF CLASSIFICATIONS**

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
<b>2008</b>							
1	29 Aug 08	I	Liquidator	Systematic failures in Mr Travers' practice	Mr Travers will end his current appointment as external administrator by taking steps required under CA or obtain court order to transfer duties to another practitioner Mr Travers has undertaken to request cancellation of his registration as liquidator within 14 days and to not re-apply for registration for 3 years.	Mr Travers voluntarily made admissions and cooperated during investigation	
2	28 July 08	I	Auditor	May have failed to carry out or perform adequately and properly the duties of an auditor in relation to the 2000 audit of HIH	The EU provides for Mr Buttle's registration as an auditor to be cancelled and for him not to apply for re-registration until after 1 March 2010.	ASIC took into account that Mr Buttle had not signed any audit reports since 2004, is currently not practising as a registered company auditor, and provided ASIC with statements relevant to criminal proceedings following its investigations into the collapse of HIH	Mr John Buttle was the former partner of Arthur Anderson (AA) and auditor of HIH Insurance Ltd (HIH)  Investigation date: 2000-2001
3	3 July 08	C	Listed IP and tech development company	Failure to disclose price sensitive information to the ASX	To improve compliance with its disclosure obligations through the engagement of an external consultant to review its policies and procedures and to implement subsequent recommendations in accordance with industry best practice.		ASIC retains monitoring function - will receive a 6 month progress report to monitor the implementation and effectiveness of the recommendation
4	22 May 08	C	Sales and debt collection practices of companies in GE Money Group	Insurance advice and sale business often poorly managed, not meeting obligation requiring there be a 'reasonable basis' for personal advice giving to customers. Consumer complaints about harassment from debt collection practices.	Hallmark entered into separate EU : - engage an independent expert over two year period to assess its debt collection processes to ensure that it complies with ASIC/ACCC Debt Collection Guidelines - provide ASIC with an Action Plan to implement recommendations from independent expert (if any) -pay compensation to affected customers -arrange and pay for an industry workshop to promote best practice in the debt collection industry	Major changes in personnel to GE Money's senior management, substantive and voluntary changes undertaken by the new regime, including compensation payments and the state desire of new management to ensure better compliance with the law.	Hallmark companies did not comply with a number of key undertakings given to ASIC in 2006. ASIC imposed more stringent conditions on their AFSLs to replace 06 EU.
5	9 May 08	C + I s	2Cs and the sole director of each C	Unregistered managed investment scheme linked to Newcastle property development	- to inform investors in the scheme of ASIC's concerns - offer to refund money invested -make a refund to any investor who accepts the offer -report to ASIC on any refunds requested and paid to investors	In addition to court orders: 'ensure that no further investors joined the scheme and that <u>existing investors are able to exit the fund</u> '	Court orders to stop promoting or issuing further interests in the scheme. Court made consent orders restraining each of the companies and directors from -operating an unregistered managed investment scheme in contravention of s 601ED of the Act, carrying on fin services without an AFSL, promoting the scheme or issuing any further interests in the scheme
6	31 Jan 08	I	Sole director of a company	Capacity as a sole director – failed to: -ensure Newstar's fin services were provided efficiently, honestly and fairly under the AFSL -ensure Newstar lodged its p&l statement, b/s or auditors report for fin year 06 - ensure Newstar reps complied with fin services law	Undertook for 10 years not to: -carry on fin services business, -hold out that he holds an AFSL -provide a fin service -apply to ASIC under s 911A of the Act for an AFSL -become an authorised rep of an AFSL holder -act as a responsible officer of an AFSL holder -act as a director or hold any other managerial role with an AFSL holder -act as a director or hold any other managerial role with a corporate rep of an AFSL holder.		2 reps banned from 13, 20 Dec 07. 29 Aug 07 – FCA ordered that Newstar Sec Pty Ltd be wound up 3 Sept 07 – Newstar Sec requested ASIC cancel its AFSL.
<b>2007</b>							
1	24 Oct 07	I	Auditor	Failed to carry out or perform adequately and properly the duties or functions required of a registered company auditor	Cancellation of his registration and undertaking not to apply to re-register	Fully cooperated with the investigation.	

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
				under the CA			
2	25 Sept 07	I and 3 Cs connected to I	Mr Lewski and 3 associated companies	Unregistered managed investment scheme	Commission qualified independent person to conduct valuation of the scheme's assets, pay members difference,		Court declared scheme as a managed investment scheme that was required to be registered.
3	22 June 07	C	Trustee and investment manager of unregistered managed investment scheme	Failure to comply with conditions of AFSL	Ensure independent expert performs quarterly reviews and reports on the company's compliance with reqs of fin serves law and C's licensing conditions		
4	15 May 07	I	Liquidator	Failed to carry out or perform adequately and properly duties or functions required of a registered liquidator	Within 28 days request cancellation of his registration as liquidator and arrange at his cost transfer to other practitioners Not to reapply for registration until 2011, undertake education		
5	15 May 07	I	Auditor	Failed to issue a qualified audit report, to obtain sufficient audit evidence to support classification of Loan receivables	Not to accept new audit appointments to any listed companies or managed investment schemes for 12 months, continuing professional development, review and supervision of selected audits, monitoring and quarterly reporting on compliance with EU		
6	15 May 07	I	Auditor	Mr Pye – Arthur Andersen – HIH – signed an unqualified audit report 30 Nov 00	Not to fulfil duties and responsibilities of a registered auditor or sign any audit reports until after 30 June 2007 Engage reviewing auditor if he does any audit work.	Clause 1.2 of EU: 'ASIC is responsible for the registration of company auditors' etc	HIH collapse One of the auditors of Arthur Andersen
7	11 May 07	C	Providers of financial advice to NSW Government teachers	Statement of Advice provided to teacher members were misleading and deceptive as...	If First Capital client decides to return to First State Super (initial Government superannuation fund) but is worse off than if they had remained with First State Super, the EU ensures that First Capital will reimburse them with the amount.		EU complements court orders
<b>2006</b>							
1	20 Dec 06	C	Multiplex	Failure to disclose material change in profit on Wembley National Stadium project	To commission an independent review of its disclosure policies and procedures and to implement recommendations generated from the review.	Purpose of EU: to improve compliance measures that will assist the company meeting its continuous disclosure obligations in the future. See MR for more details.	Associated high profile cases – remember when share price of Multiplex significantly dropped.
2	5 Dec 06	C	Patersons Securities	Operating discretionary accounts without appropriate authority -inadequate supervision of 2 advisers	Compliance procedures will be reviewed by external consultant over a two year period	ASIC: 'Financial services licensees must have comprehensive arrangements in place to manage these risks' The Matter came up following notification by Paterson to ASIC. Paterson has cooperated with ASIC during its investigation.	ASIC obtained orders in the FCA against Mr Hawley (one of the advisers) requiring him to deliver his passport to his solicitor and restrain him from taking or sending assets out of Australia. THIS MR has a comment on what discretionary accounts are.
3	20 Nov 06	I	Auditor - Partner of Pitcher Partners	Issued an unqualified audit report. ASIC's concerns that I failed to carry out or adequately perform the duties of an auditor...	To resign as a registered company auditor. Will not apply to have his resignation reinstated other than on terms to be agreed with ASIC. To pay \$13,800 towards cost of ASIC's investigations.	ASIC has accepted this EU as an alternative to ASIC making an application to the Companies Auditors and Liquidators Disciplinary Board	
4	8 Aug 06	I	William Woolcock	Website that contravened s 156, may constitute provision of fin advice without AFSL, misleading and deceptive statements.	Permanently remove website, not to set up or operate any similar website until obtains AFSL.	ASIC acknowledges that Woolcock co-operated with ASIC during its investigation.	
5	1 Aug 06	C	Fendwave Pty	Unsolicited offers to shareholders to	To ensure unsolicited offers over the next 3 years are overseen by an		

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
			Limited	purchase securities in subsidiary -offer contravened provisions of the Act	ASIC approved independent compliance expert, and that any future securities offers are made in accordance with consumer protection requirements.		
6	27 July 06	C	AMP financial planning	Provision of financial advice: Planners failed to disclose reasonable basis for advice, to make proper disclosure about the costs of acquiring recommended product May not have had adequate arrangements in place to manage conflicts of interest	EU sets out how it intends to rectify the issues and how it will provide suitable redress for clients who received advice which did not have a reasonable basis.		1 Oct 05 – 12 April 06 (investigation date)
7	25 May 06	I	Former proper authority holder (sec rep of CIBC)	Seeking variation to original banning order.	To complete course "Directors Essentials" at AICD (Australian Institute of Company Directors), other undertakings regarding Mr Daws re-entry into the fin services industry, including education, supervision by licensee etc		Banning order made on 30 April 2001, been 4 years since banning, not intended to be lifetime ban. Applicant is remorseful. "The purpose of a banning order is not punitive but is for the protection of the public" clause 1.4(h) of EU.
8	11 May 06	C I	Island Arch Pty Ltd One of its directors	Unsolicited offer to shareholders in HGL to acquire their shares. Did not comply with the requirements under the CA concerning unsolicited off-market offers to purchase shares. Eg, no price for which the shares would be purchased nor the MV of the shares as at the date of the offer	Not to send or otherwise provide a copy of the letter to any shareholder of HGL One other		
9	20 April 06	C I	Cash Now Pty Ltd One of its directors	Advertising of securities offered by CNC (the American company) failed to comply with investor protection provisions of the CA. -website links -application form to at least one Australian investor about offer of securities by CNC	Cash Now and director not to make an offer of securities, advertise or publish statements that refer to the offer, accept any money from investors who have contacted Cash Now etc...		2003 (investigation date)
10	28 March 06	C	Transcomm Credit Co-operative Limited	Credit union's advertising material featured claims that were misleading. Reverse mortgages.	Refrain from making misleading claims		
11	20 March 06	C	GE Money	Life insurance sales practices	Stop recommending customers the life policies Undertake a review, both internally and by an independent compliance expert, of its sales practices	NOTE WITHDRAWAL NOTICE here ASIC withdrew EU on 22 May 08 – said it no longer provides appropriate means of addressing ASIC concerns (EU was breached by GE Money)	
12	15 March 06	C	Shareholder Advocacy Pty Ltd	Prohibited use of information on company registers – s 177 using info from company registers to contact shareholders except in certain circumstances	Not use shareholder information obtained from company registers, immediately cease sending offers to shareholders of the companies....		ASIC's actions follows a decision of Full Court of the FCA May 05 that ruled against IMF (Aust) using Sons of Gwalia share register to contact shareholders to invite them to participate in a class action against the company.
13, 14	24 Jan 06	C	AIA AIAFS	Compliance procedures, alleged market misconduct by their authorised reps. Both hold AFSLs. ASIC concerned AIA, AIAFS did not adequately supervise the market conduct	Engage an independent compliance expert, approved by ASIC to periodically conduct reviews of their compliance program and documentation over three years and to report to companies and ASIC on any deficiencies -implement any recommendations from independent compliance expert		

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
			[2 EUs]	of its authorised reps -audit sufficient client files of its authorised reps -implement internal controls -implement disciplinary measures against authorised reps who breached AIA compliance reqs	-maintain and regularly update their compliance program and documentation to ensure compliance with legal obligations and their licence conditions -require all Australian resident directors and legal or compliance staff to undertake required annual compliance or related training for the next three years.		
<b>2005</b>							
1	25 Nov 05	I	Auditor	Material deficiencies in the audit of the KLALD accounts. Deficiencies in KLALC's auditing processes.	To request that ASIC cancel his registration as auditor under the CA Not to make any future application to ASIC for registration as an auditor.		Fin reports of the Koombahtoo Local Aboriginal Land Council 1996-02 (Investigation)
2	25 Oct 05	C	ExploreItAll Technology Pty Ltd The Lifestyle Planner Pty Ltd	Operating financial services business through the sale of software program – The Lifestyle Planner – without holding an AFSL.	Offer a refund to customers who purchased a license to use the software, notify customers that they have entered into an EU with ASIC	Cooperation of EIA and TLP during the course of the investigation	
3	20 Oct 05	I	Dennis Terracini  5 individuals involved with the failed Elm Financial Services Group	Illegal fundraising, misleading and deceptive conduct and contraventions of directors' duties	Terracini (MD of Elm) gave EU to ASIC to prevent him from any future involvement in the fin services industry. Andrew Terracini, director of Elm, son of MD, gave undertaking not to operate in fin services industry for 7 years.  Young, Kay – banned from managing companies for 5 years -gave EUs precluding them from operating in fin services industry for 5 years (something can't get court to give? Within other ASIC powers?)		Court ordered permanent ban on former Elm director – Mr Dennis Howell Terracini, ordered him pay \$150K in compensation to creditors and court costs of \$50K. McCartney – director of Elm, banned for 5 years from managing corporations and ordered to pay \$50K in costs. Also banning orders made by Court on other three officers. Andrew Terracini-banned 7 years.
4	13 Oct 05	I	Registered company auditor and audit partner of PKF Chartered Accountants in Syd.	Deficiencies in audit procedures arising from failure to comply with AUSs.	Accepted all of ASIC's concerns, agreed to complete 10 hours of additional continuing professional education in audit related matters within the next 12 months, agreed to submit the next 6 compliance plan audits he performs for review by the National Technical Director of PKF.	Holbrook's cooperative attitude in this matter and willingness to take into account ASIC's concerns in the future.  'compliance plan audits form a key investor protection mechanism in that they facilitate the early detection of problems...'	2003-2004 audits (Investigation)
5	10 Oct 05	I	Robert Kay – Elm Group	See above (20 Oct 05)	See above (20 Oct 05)		
6	7 Oct 05	C	Coles Myer	Credit card advertising was misleading (that savings were a permanent feature of the card)	Withdraw relevant advertising; Review the advertising of the card; Provide corrective notification to cardholders	'Coles Myer has fully cooperated with ASIC on this matter and has taken immediate action to resolve our concerns' 'consumers need to be in a position where they can make informed choices about how to manage their finances'	Did not accept the advertising was misleading.
7	28 Sept 05	I	Andrew Terracini - Elm group director	See above (20 Oct 05)	See above (20 Oct 05)		
8	23 Sept 05	I	Howard Young – Elm Group director	See above (20 Oct 05)	See above (20 Oct 05)		
9	20 Sept 05	C	ING Australia	ING Australia works with ASIC to resolve	ING will compensate investors an estimated \$14 million for unit pricing	ING Australia fully cooperated with ASIC to try to	ASIC is working closely with APRA on this matter.

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
			Limited	unit pricing problems. EU follows ING Australia advising ASIC that it had identified unit pricing errors	errors	resolve the matter for investors.	
10, 11,12	16 Sept 05	2 Is C [3 sep EUs]	Auditors from PKF Melbourne – Mr Andreola, Mr Phillips  All the partners of PKF Victoria	Failure to audit specific account balances.	Andreola and Phillips have undertaken not to act as registered company auditors for 12months and 6 months respectively. PKF have undertaken to ensure these 2 comply with all matters required of them during periods in which their respective undertakings take effect, and that future audit work is conducted in accordance with PKF standards.		(many EUs cos PKF is a partnership)  Investigation: 2002-03 audits of Poltech
13	5 Sept 05	I	Broker and lender  CashKing	Overcharged clients, misleading/deceptive conduct	EU – agreed to repay over \$170K to more than 50 customers.		FCA handed down judgement. Case brought by ASIC – misconduct had occurred in 200 occasions. Cash King consented to orders restraining it from making reps, engaging in misleading and deceptive conduct.
14	1 Sept 05	C	Trustee of superannuation fund – Host Plus Pty Ltd	Concerns that members and contributing employers of Host-Plus could be misled.  PDS	Stop using projections.... Stop referring to its past investment performance and fees without warning that past investment performance and fees are not guides to its future performance and fees Disclose research etc		
15	30 Aug 05	C	Fincorp Investments	Potentially misleading <b>advertising</b> promoting the sale of debentures to retail investors	Publish corrective advertising in major metropolitan newspapers Not to publish any advertisements with substantially the same effect as the ones involved here.	'ASIC wants to make it clear to all debenture issuers that it will not tolerate any issuer creating a misleading impression about the level of risk involved in investing in debentures.'	
16	29 June 05	C	Romanza Group Pty Ltd -Gold Cost property development company	Failed to comply with an exemption provided under the CA, allowing it to operate as a charitable scheme -fundraising and management components -failed to provide financial statements as required by the exemption when offering investments in the Fund.	Pay all remaining investors who invested in the Fund their principal and interest on or before 31 July 2005 -surrender the exemption to ASIC - <b>close and wind up the fund</b> -engage the services of an independent Accountant to monitor payments to investors, and to report to ASIC that amounts have been paid Also, Romanza not to engage in any activity involving the provision of unlicensed financial advice.		
17	17 June 05	I	Ms Sisson [Court proceeding involved: Ludgates Chartered Accountants and its principals – Mr Whitehouse and Ms Sisson]	Court proceeding: Concerns that C and 2 Is were providing improper investment advice, not complied with Feb 2000 EU,	Ms Sisson: Not to provide either directly or indirectly financial product advice, deal in financial products or operate a registered scheme for a period of five years	[USE THIS CASE to show breach of EU] And for concurrent court action/ASIC	From Feb 2000 undertaking provided by Ludgates Corporate and Ludgas Accountants not to promote Shell Schemes or similar
18	3 June 05	C	Industry Fund Services	Superannuation Advertisements – possible confusion	Specific EUs: to refrain from using projections...unless projections were properly qualified, representing the only relevant factor for comparisons of different super funds is the fees charged by the operator of the fund.	'All advertising about superannuation funds must be clear, accurate and unambiguous, with the correct level of detail set out for consumers. This is particularly important with the introduction of Super Choice on 1 July' ASIC	

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19	24 May 05		AXA Australia	Method of calculating interest rate on members' benefits, offer by the employer to buy out future pension entitlements.	The Trustee will reinstate earlier method of calculating interest on members' superannuation, offer certain former members the opportunity to re-enter the Fund on actuarially determined terms, provide disclosure to members of both these decisions.		APRA
20	25 May 05		Zurich Australia	Failure to account for two reinsurance transactions. Concerned accounts were misleading	Preparing a note to their 2004 accounts, setting out details of the original errors, providing correct financial positions, adding supplementary notes to their financial reports.		Also, APRA EU
21	16 May 05	I	Person	Unsolicited share offers	Unsolicited offers made by Mr Mercorella will be overseen by independent compliance expert, any future offers to be made in accordance with consumer protection requirements under the CA.		Provisions under the Act introduced in 2004 to regulate unsolicited offers
22	9 May 05	I	Auditor	Concern that Mr Thomson failed to comply with 15 Auditing and Assurance Standards and other standards in relation to the financial statements and accounts of Voyager Resort Ltd	Cancelling of registration will not re-apply as an auditor for a period of five years, refunding to Voyager Resort Pty Ltd professional fees, pay amount to ASIC for investigation costs.		
23	8 April 05	C Is	Export Growth Pty Ltd Its directors and former directors	Statements in the prospectus about finance package misleading and deceptive Demands under loan agreements	Immediately withdraw its demands on investors to repay any amount under loan agreements, repay investors who made payments under its demand. Directors to pay any shortfall between amount paid to Export Growth Finance by investors under the demand and the amount paid from the bank account. Export Growth Finance has agreed that the loans made to investors are void and unenforceable against any relevant investor.	EU settles proceedings commenced by ASIC in the Supreme Court of Qld – ASIC alleged misleading and deceptive conduct	
24	30 Mar 05	C I	Robert Tressider, Ausure Insurance & Finance Pty Ltd	Employment of previously banned Mr Tressider (see 'other' column), requirement of previous undertaking in Feb 2000.	Tressider: to adhere to terms of appointment with Ausure Insurance, notify ASIC of any change in employment, not to operate any accounts until 2010. Asure: to notify ASIC of any changes in I's terms of appointment, of any breach by Tressider, cooperate with ASIC in respect to I's capacity as an insurance intermediary.		Mr Tressider prohibited from managing corp until 7 Feb 2010 by court order in Feb 2000. EU was also entered into with ASIC in Feb 2000.
25	24 Mar 05	C	ClearView Limited MBF Limited	Unit pricing issues	Incorrect allocation of external management fees and unit prices of some products		
26	15 Mar 05	C	Colunical Mutual	Unit-linked investment options	Investors who had been affected by the unit pricing error to be returned to same position as they would have been had the error not occurred.	Cooperation	
27	10 Mar 05	C	Tower Super	Errors in the calculation of members' account balances	Compensate all members affected by administrative errors and report to ASIC on this issue		
28	24 Feb 05	C	Mortgage Point Pty Ltd -mortgage originator	Potentially misleading and deceptive statements in its promotional brochures	Not to make any of the above claims or use certain words in future advertising and promotional material, provide compensation to any customer who has suffered loss, <b>implement a compliance program</b> , make financial contribution towards consumer education or similar programs.	'This case highlights the need for anyone operating in the financial services industry, including mortgage brokers, to ensure that all claims in advertising material are accurate'. 'ASIC will continue to work with industry participants, as well as the Mortgage Industry Association of Australia to improve standards in this area'	
29	20 Jan 05	C	Ross Investments Pty Ltd – financial services	Unsolicited offers to purchaser securities made by Ross to shareholders in... these contravened provisions (Jan 04 provisions). Brochures and documents	Future unsolicited offers to purchase securities are overseen by an ASIC-approved external compliance expert, and made in accordance with consumer protection requirements introduced under the CA		

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			company	attached to offers did not comply with law- did not state period for which they were to remain open, nor include details about any withdrawal of the offer, contain the MV of quoted securities at date of offer, Contain fair estimate of value of unquoted securities.			
<b>2004</b>							
1	21 Dec 04	C	Colonial First State Investments	Advertisements re fund's overall performance.	Write to relevant investors and offer full refund, undertake further review of its advertising sign-off processes, give education to relevant staff about 'ASIC Guide to		
2	2 Dec 04	C	MMC Asset Management Limited	Unsolicited offers to purchase securities – not dated, failed to state the period for which they were to remain open and failed to include details about any withdrawal of offer.	Write to those who were sent the offer, refrain from registering any share transfers and report to ASIC in relation to the withdrawal of the offer.	'ASIC will take action, where possible, to protect consumers from offers that do not comply with the law'	'CA provisions were introduced in January 2004 to specifically regulate unsolicited offers to purchase securities'
3	11 Nov 04	I	Financial Adviser	Media release did not have any details other than the EU arose from settlement proceedings before the AAT.	Not to provide financial services or product advice until after 17 Jan 05 <u>when he can only provide financial services advice as an authorised representative of a holder of an AFSL</u> upon completion of a course accredited by the Fin Planning Association of Australia or the Securities Institute of Australia and approved by ASIC in relation to regulation and ethics. ALSO FURTHER CONSEQUENCES: he is required to inform each of the holders of an AFSL to whom he applies to become a rep and providing copy of the EU. Also, prior to commencing employment, holder of the AFSL will be required to nominate a director or principle who will be responsible for the supervision of Mr Trezona. [In effect, preventing him from operating independently in the future] [Note enforceability of such undertakings]		In settlement of proceedings before the AAT
4	4 Nov 04	C	UniSuper Limited, trustee of the UniSuper Fund	Superannuation industry – failed to issue proper statements to members	Conduct mail out, publish disclosure statement, engage external compliance auditor to review disclosure, inquiries, complaints handling obligations under the Superannuation Industry (Supervision) SIS Act 1993 and the CA 2001.		
5	20 Oct 04	C	NAB – National	AFSL compliance	To improve key systems and controls under its AFSL. Prepare a series of reports and have them scrutinies by independent auditors. Reports and audit opinions to be provided to ASIC. Reports to be designed to ensure National properly identifies, reports and escalates to ASIC breaches of AFSL, adequate procedures to properly select, appoint, monitor and remove its responsible officers, adequate procedure to properly recruit, train, monitor and supervise its reps.		\$340 million unauthorised trading in foreign exchange options
6	11 Oct 04	C	Capital Intelligence	AFSL license – compliance failures	To appoint appropriately qualified internal compliance officer etc		
7	30 Aug 04	I	Former non-exec director and chairman of One Tel. John Greaves	Failure to be informed of, and to inform the board of, certain circumstances in One Tel.	Agreed to certain declarations of fact relating to his position in One Tel, and other admissions.	It was never part of ASIC's case that Mr Greaves acted dishonestly in relation to the performance of his roles at One Tel (unlike Rich and Silbermann)	
8	27 Aug 04	C	Mellon	Misleading statements about super fund fees	Not to make similar statements in the future, for next 5 years, to review all Member Statements to ensure they do not contain misleading	It is important hat information about fees and costs is made clear...this information will become increasingly	

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					statements, issue corrective statement.	important in a Choice of Fund environment and will remain a focus of ASIC's regulatory attention.	
9	27 Aug 04	C	Australian Scholarship Group Friendly Society Limited	False, misleading statements, engaged in misleading or deceptive conduct in the marketing of funds to prospective members	Implement strict compliance plan to ensure its reps do not, in the future, mislead consumers about ASG's products, issue corrective notice to all members, institute compensation process for investors affected by misleading statements and conduct.	'ASIC will take action to protect consumers from misleading promotion of financial products and the use of misleading tactics at the point of sale of those products, including pressure-selling'	
10	10 Aug 04	C	Structured Financial Solutions	Misleading mortgage broker advertising	Not to make any of above claims, use words in future advertising material, provide compensation, <u>implement compliance program and complaints handling system, make financial contribution towards consumer education and similar programs.</u>		
11	7 July 04	I	Mr Smannell	Carrying on fin services without holding an AFSL (computer software program)	Not to deal or promote the program other than through the holder of an AFSL, not to act as a representative of a licence for a period of 2 years, can only act as a representative thereafter if he obtains the necessary qualifications.		
12, 13, 14	28 May 04	3 Is [3 sep EUs]	3 equity partners in an insolvency practice	Systems were not adequate to prevent or detect in a timely manner frauds on insolvency administrations.	To engage a consultant to review, assess, make recommendations and report in writing to all partners and ASIC on the internal controls, compliance systems, procedures and supervision of staff.	Former employee stole \$300K from bank accounts.	
15	25 May 04	C	Mortgage Choice – mortgage brokers	Misleading and deceptive advertisements	Mortgage Choice and its franchisees – not to make above claims, use word 'unbiased' in future promotional material, remove statement from its Customer Charter, place corrective advertisements in national and local papers, provide compensation to customer who has suffered loss.	Warning to financial services industry – including mortgage brokers	
16	27 April 04	C I	Recoilless Current directors	Concern that the company and directors were engaged in misleading and deceptive conduct -share offering	Investors to be offered shares or full refund	'companies seeking to raise funds from public must ensure that appropriate disclosure is made so investors can make an informed decision'	
17	24 April 04	2 Is	Two former representatives of the ARG Financial Group Limited	Concern that neither had performed their duties as investment advisers efficiently, honestly and fairly.	EU not to act as a financial services rep for three years. Before a hearing, the other was banned from acting as a fin services rep for a period of two years		
18	23 April 04	C	AMP	Unit pricing issue	To do all acts and things reasonably necessary to ensure that affected fund members are identified, properly notified of errors and correctly and promptly compensated		
19	22 April 04	C Is	General Reinsurance Australia Ltd; Messrs Barnum, Byatt, Smith – current officers, Mr Self – former officer	Reinsurance arrangements entered into by FAI with General (GRA) – true substance of those arrangements concealed from FAI auditors	GRA to pay \$27.2 million to liquidator of FAI General Insurance Company Ltd. GRA to develop an 'agreed' compliance program with ASIC and St James Ethic Centre for all of its resident senior exec officers and departmental managers. Current officers and former officer – not to apply for AFSL, accept authorisation by a holder of AFSL or be involved with the management of a corp with an AFSL or any listed Aust. Corp for 12 months. GRA to monitor performance of current officers for 3 years.	ASIC acknowledges assistance that the current and former employees have given in its investigation.	EU relates to matters that were the subject of referrals to ASIC by the HIH Royal Commission.
20	22 April 04	I	Former employee of ABN Amro Equities,	In accordance with decision of the AAT (21 June 2001), amendment of previous banning order. ASIC's appeal against decision of AAT on 21 June 2001 was	To cooperate with ASIC and ASX in preparation of seminars which will consider issues of law, practice and procedure relevant to a designated trading representative, not to create or do anything that is likely to create a false or misleading appearance, give copy of this undertaking	No media release issued.	Banning order previously made by ASIC on 20 July 1999 – prohibiting Mr Donald from acting as a rep of a dealer of an investment adviser for 4 years from banning order.

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			licensed securities dealer, proper authority holder of ABN AMRO, purchased and sold securities for clients of ABN AMRO	dismissed by Full Court in Fed Court on 23 Dec 2003.	to all licensed dealers by whom he is employed for 3 ½ years from 21 June 2001.		
21	14 April 04	I	Financial product advice	Did not hold AFSL, not an authorised rep of an AFSL			
22	23 Jan 04	I	Former director of Lifetrack Management Limited, which was the approved trustee of the AM Pooled Superannuation Trust.	A number of issues following investigation by an inspector appointed by APRA in June 2002. Report received Jan 2003.	To not act as a director or officer of a company holding an AFSL or of a listed investment company for five years.  Not to hold or apply for an AFSL or act as a rep of an AFSL holder for five years.		ASIC accepted EUs from LifeTrack and two other directors – Smith, Rich in August 2003.
<b>2003</b>							
1	10 Dec 03	I	Director CNA – Honneyman	Misleading representations made in prospectus, failed to exercise due care and diligence, becoming aware of illiquid nature of ECMT, failed to take adequate and timely steps to notify participants and stop further deposits being made. Also re duties of a rep of dealer or investment adviser.	Not to be involved in fin services industry for five years – not to manage corp, not to act as a director or apply to be a director, not to apply for an AFSL etc...	Clause 5.2 of EU: 'Mr Honeyman offers the commitments in this undertaking as an alternative to ASIC exercising its powers.'	ASIC banned two other directors
2	29 Oct 03	C	Express Loans	Advertising, broking practices misled borrowers and deposit bond issuers.	Provides for payment of compensation to past clients who lost money due to its advertising and broking practices		
3	16 Oct 03		Director CNA – Hanich	[above] – 10 Dec 03	[similar to above] – 10 Dec 03		
4	25 Sept 03	C	Automotive Financial Services -credit provider offering finance to consumers for purchase of motor vehicles	Offered credit which ASIC considered was an insurance policy thus ASIC considered consumers were entitled to greater consumer protection.	To ensure that consumers who purchased the program will be protected by having the same rights as consumers who deal with insurance companies. (effect of Insurance Contracts' Act also)	Cooperation of AFS throughout investigation.  'ASIC currently scrutinising the sale of financial products through car dealers...will take action to ensure interests of consumers protected'	
5	11 Sept 03	C I 2	Melbourne Law Firm Mr May Two responsible entities of managed	Neither Law firm or Mr May held AFSL.  Letters from law firm encouraging recipients to invest in schemes  Contravention of licences	To strengthen compliance procedures, engage independent consultant, report to ASIC		

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			investment schemes				
6	8 Sept 03	C	Macquarie Investment Management Ltd (fund manager)	Prospective financial information that should be included in prospectuses and disclosure documents	To improve its compliance with ASIC's policy on prospective financial forecasts.		
7	3 Sept 03	C I	Fintrack Pty Ltd Directors of C -mortgage brokers	Statements made in advertising and promotional material - misleading			
8	3 Sept 03	C	National Australia Financial Management Limited	That investors did not receive adequate and timely disclosure about the integration of the superannuation businesses or the subsequent unit price reduction	\$67.2 million compensation will be paid to 235,000 investors (to compensate for unit pricing errors)  NG must take steps to address ASIC's concerns about corporate governance within the superannuation businesses		Court proceeding – Federal Court undertakings on the website too
9	20 Aug 03	C	NMMT	Failure to lodge rollover prospectus			
10, 11, 12	18 Aug 03	C 2Is  [3 EUs]	Lifetrack 2 of its directors	ASIC concerns about Lifetrack's capacity to act as the responsible entity of any management investment scheme, and concerns that the Is should not hold an AFSL or be involved with the management of a corp with an AFSL.	Not to act as a director or officer of a company holding an AFSL for 10 years, or of a listed investment company for five years. Not to hold or apply for an AFSL for 10 years, act as a rep of an AFSL holder for 5 years.	Report received by Inspector appointed by APRA in 2002, asserting that Lifetrack may have breached various provisions of the SIS act, including...(see MR)	
13	30 July 03	C Is	Mr Kaye, Mr Meagher, Nil, Novasource	Provision of investment training courses without holding an AFSLs	Corrective advertising, payment of compensation and ongoing monitoring of parties compliance with the undertakings		Following Court ordered mediation – provided some undertakings to the court to prevent them from conducting seminars. Following proceedings commenced in the Fed Court Melb.
14	24 July 03	C Is	Wanted World Wide and its directors	Fundraising breach of CA			
15	3 July 03	C	Tower Australia	Court declared Tower had engaged in misleading and deceptive conduct (incorrect benefits)	19 June 2003: repay any shortfall (plus interest), correct entitlements of investors, rectify computer error, not take any action against overpaid investors	Court finding plus EU entered into  Tower cooperated	
16	19 June 03	C	St Georges Bank	Potentially misleading if interest rate does not stay low (card promotion said 'Starts low Slays Low Mastercard')	That the interest rate on credit card would stay low	St Georges cooperated, notes has already commenced actions	
17	7 May 03	I	Auditor	Failure to detect conflict of interest	Immediately resign as auditor of Kalista due to conflict of interests.	Mr Annings failure to detect the conflict of interest was inadvertent and not deliberate	'The obligation to avoid conflicts of interest is one that underscores the independence of the audit function. Auditors must take active steps to avoid conflicts of interest when accepting audit engagements'
18	24 April 03	C I	Hedley Goodridge Insurance Agencies Pty Ltd and sole director	Concerns that the company had operated as a general insurance broker although it was not registered to do so. Did not hold AFSL or register under Insurance Act (now repealed)			
19	8 April 03	C	Citibank Pty Ltd	Advertisements and promotional materials for premium deposit account may have been misleading.	All future advertising for its premium deposit account will clearly and fully disclose foreign exchange risks associated with the product.		

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20	31 Mar 03	I	Former financial adviser	Obtained more than \$700L from clients, sent to individuals connected to Nigerian letter scam, money has not been recovered.	That he be permanently excluded from the financial services industry.		FIDO – Nigerian letter scam
21	26 Feb 03	C	Retireinvest Pty Ltd – licensed securities dealer	ASIC has concerns relating to Compliance with the CA and regulations, breach of conditions of its dealers licence. -failed fully disclose fees, commissions and benefits payable to them so that investors were not fully aware... -omitted to obtain all necessary info to ensure clients not placed into investments that were inconsistent with client's needs, objectives, circumstances or risk profile	The EU aims to improve the compliance standards within Retireinvest. Provide redress for clients of Retireinvest who may have been adversely affected by the poor compliance standards identified in the company.		
22	18 Feb 03	I	Mr Curtis	Financial Planner/adviser	He will not act as a representative of an AFSL licence holder for four years. After 4 years, will not be entitled to become a representative of an AFS licence holder unless undertakes Dip of Fin Markets course offered by SIA or as approved by ASIC		
23	10 Feb 03	C I	Perpetual Plantations of Aust Pty Ltd and its directors	Unregistered managed investment scheme. Not registered		'People who invest in unregistered schemes are not protected by the law in the way that they would be if the scheme was registered' Perpetual Plantations apparently approached ASIC and agreed to the EU	
24	22 Jan 03	I	Mr Chalain	Former proper authority holder with Australian Financial Securities	Will not act as a representative of a holder of an AFSL until 31 Dec 2012. Also need take up course of study.		
25	14 Jan 03	C I	A&A Gillon Pty Ltd Directors (2)	Concerned C was carrying a fin services business without a AFSL.	Will not carry on a financial services business, with respect to providing financial product advice.		Action followed from referral from APRA – which became aware of the unregistered mortgage funds during a routine surveillance
26	13 Jan 03	2Cs Is	Hebe Computers Pty Ltd and its directors Herman & Berry – accounting firm	Several unregistered managed investment schemes.	All parties undertaken to immediately wind up several contributory mortgage schemes		
27	10 Jan 03	I	Director of former licensed securities dealer – NKH Securities Ltd	Concern that NHK may have failed to comply with conditions of its securities dealers licence, and the compliance plans and constitutions of the various managed investment schemes operated by it.	Not act as a director or key person of a responsible entity for a managed investment scheme for 12 months. Complete course with SIA in managed investments stream.		After ASIC notified NKH Securities of its concerns, NKH Securities made an application to have its dealers licence revoked. Licence revoked by ASIC Nov 2002.
<b>2002</b>							
1	5 Dec 02	I	Mr Cardillo – authorised rep of Wilson HTM Limited (a licenced dealer)	Concerned was not acting 'efficiently, honestly, fairly' in doing acts as representation of a dealer or of an investment adviser	Not to carry on securities business etc Not to engage in conduct, hold out that he is a rep of a dealer of an investment adviser etc		
2	30 Oct 02	C	Licensed securities dealer	Promotion of two products – prescribed interest scheme and managed investment	Cease operating business under the dealers' licence until a suitably qualified director is appointed to the company and all authorised		

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			- Greater Western Financial Services Co Pty Ltd	scheme. No approved deed was in force. The other was not registered with ASIC. No prospectus was registered with ASIC for either scheme	representatives comply with required training standards		
3	28 Oct 02	I	Sole director of Bell's Financial Services Pty Ltd	Giving investment advice to clients without being appropriately licensed, making securities recommendations without a reasonable basis...	Not carry on a financial services business with respect to financial products, including shares, managed investment schemes and other similar products for 2 years		
4	17 Oct 02	C	Uecomm Limited	Non compliance with continuous disclosure provisions	Review its compliance procedures, have those procedures independently audited by a senior member of the corporate finance industry. -engage an external consultant, approved by ASIC, to review its practices, policies and procedures for dealing with continuous disclosure obligations.	'ASIC will act to protect investors by ensuring that publicly listed companies comply with their continuous disclosure obligations so that the market is fully informed.'	
5	17 Oct 02	C	Licensed securities dealer	Sale and supply of share trading software	Not to sell or supply the computer software which provides advice on whether to buy, sell or hold shares and options) -engage an external compliance consultant to review and report to Mortgage and General and to ASIC on M and G's compliance practices, systems, supervision and training.		
6	16 Oct 02	C	Investment advisory group - Fat Prophets	Advertising concerns (re profits, rate of return)	Write to current and past subscribers to its online stockmarket newsletter about past investment performance figures used in advertising. Engage independent expert to devise a methodology...		
7	10 Oct 02	I	Proper authority holder	Breaches of CA, re T2 share offer -made 420 applications for T2IRs using contrived names -concerned many not in the future, perform its duties as a rep of a dealer or an investment adviser efficiently, honestly and fairly -engaged in misleading and deceptive behaviour	For 2 years - will not apply to ASIC for a AFSL -apply to a holder of an AFSL to become a rep of such a licence holder -perform any action or engage in any conduct for which an AFSL or an authorisation from an AFSL holder is, or would be required by law, and /or hold out that he is a rep of an AFSL holder.		
8	30 Aug 02	I C	Sole director of Coogi Group. Other companies associated with the individual.	ASIC accepted the undertaking to preserve the proceedings of the property: -pending further investigation by ASIC -for the benefit of creditors of the Coogi Group in the event creditors resolve to accept a deed of company arrangement	To pay a proportion of the sale of proceeds of a property owned by a Taranto company into a solicitors' trust account		
9	27 Aug 02	C I	Tourism Advisory Group World Services Pty Ltd Directors	Offering secondary sale timeshare intervals located in a number of countries, including Australia. ASIC concerned that the offer amounted to carrying on fin services business in Aust without a AFSL licence	TAG and directors have agreed not to facilitate secondary sales of timeshare while the company is not appropriately licensed	BROAD - AFSL - not just computer programs facilitating share trades, but education facilities and tourism	
10	16 Aug 02	I	Financial planner	ASIC concerns following investigation into certain proper authorities held by I from 89 to 02	To permanently refrain from acting as a rep of a securities dealer or an investment adviser, from applying for an AFSL and from being an authorised rep of an AFSL	I cooperated with ASIC during course of investigations.	DEFN: A proper authority

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				-I held proper authorities from various licensees that were not cross endorsed -provided sec recommendations to clients that were not authorised by principals, did not disclose value of commissions or fees charged, did not give a copy of the Advisory Services Guide to clients			
11	9 Aug 02	C	Tolhurst Noall Ltd – licensed dealer	Merger of D&D Tolhurst who provided undertaking to ASIC on March 2001	To adopt appointment of Compliance Consultant, adopt the Tolhurst Report, Action Plan, implement as reasonably practicable.		9 March 2001 entered into EU with ASIC – to engage independent external compliance consultant etc [see table below]
12	8 Aug 02	CS I	Landmark Ltd – former licensed responsible entity with over \$200m in property funds under management. MFS – appointed to replace Landmark as syndicate manager of property funds. Mr Diez – MD of Landmark	Made material omissions and false and misleading statements in a prospectus issued in early 2001 seeking funds.	MFS: guarantee returns to unit holders for misleading forecasts in prospectus, ... issue letters and disclosure statements to unit holder providing full explanation... Mr Diez – MD of Landmark – provide a written guarantee to repay sums that are required in the event that MFS is unable to meet its obligations Landmark – to withdraw current prospectus relating to another scheme, repay money to investors under that scheme.		Simultaneous court action – supreme court of Qld, ASIC appointed temporary responsible entity to Landmark, Landmark surrendered its dealers licence to ASIC, ASIC revoked licence.
13	8 Aug 02	I	Securities representative	Transferred \$600K to his account without authority, used funds without authority	Permanent ban from acting as representative of a securities dealer, applying for an AFSL etc	Full cooperation, Permanent ban necessary because of 'seriousness' of activities	
14	17 July 02	Is	Directors of McNally (co. that entered into loan agreements with 59 members...)	Unregistered managed investment scheme, providing investment advice without a securities licence			
15	1 July 02	C	Restricted securities dealer	Unregistered managed investment scheme -failed to adequately supervise or train proper authority holders	Cease operating securities business. Cancel licence		
16	26 June 02	I	Investment Adviser	Unauthorised trading			
17	13 June 02	C Is	Close the Loop Limited. Directors	Fundraising without meeting disclosure requirements	Not to offer securities in the company without a disclosure document		
18	12 June 02	C	Midwest Radio Ltd	Information Memo on new issue of shares required shareholder approval. Inadequate provision of information material to shareholder voting and decision making.	To enable minority shareholders to sell their shares through forthcoming prospectus. Midwest to include details of the arrangement in future prospectus.		

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					NOTE 2 variations: 21 Oct 02: variation to offer timeframe (one month extension) 5 Aug 05: other insertions	"Clause 4, 21 Oct variation – Pursuant to ss 93AA(2) of the Act, XX may vary the undertaking at any time, but only with the consent of ASIC" "Clause 5 – "ASIC considers the variation... in all the circumstances appropriate and consents..."	
19	7 June 02	C	Elderslie Finance Corp	Issued unsecured deposit notes, Elderslie notified ASIC of contravention, initiated review etc undertook various actions at ASIC's request	Provide ASIC with quarterly trust account statements etc, residual matters.	No media release	
20	22 May 02	I	Securities dealer/investment adviser	Failure to perform duties as representative 'efficiently, honestly, fairly'		Initially ASIC banned, Mr Geill appealed to AAT, ASIC has now accepted an EU from him	
21	20 May 02	2Cc	OBE Insurance Ltd Transport Industries Insurance Company Ltd (TII)	ASIC concerns OBE may have misapplied policy restrictions to deny claims that were made- OBE refused all claims for cancelled Ansett tickets, public statements by OBE discouraging policy holders from lodging claim.	Honour travel insurance policies covering the costs of any cancelled Ansett tickets: write to all relevant Ansett travellers, consider claims relating to collapse of Ansett etc EU applies to TII – wholly owned subsidiary of OBE Insurance Group		
22	9 May 02	C	Barton Capital	Insufficient training to proper authority holders etc		EU later withdrawn following BC's request that ASIC revoke its licence	
23	6 May 02	I	Director (sole) of Reeves Taxation and Business Services Pty Ltd	Giving investment advice without being appropriately licensed etc		'ASIC will take action to protect investors from advisers who fail in their legal duties and obligations'	
24	15 April 02	I	Futures representative	Unauthorised trading on an L Quay (C) account	For 3 years, not to be a rep of a futures broker, apply for an AFSL etc		SFE fined him in March 2001, and suspended him from being involved in futures business until March 2003
25	5 April 02	I	Authorised representative. [adviser]	Money paid into bank accounts I controlled.	Never again to act as a representative of a securities dealer, investment adviser or holder of an AFSL		
26	14 Mar 02	I	Investment Adviser/proper authority holder	Failed to identify conflict, no reasonable basis for recommending investment to client, failed to disclose all fees, commissions.	Not to act as a representative of a sec dealer, investment adviser or futures broker or apply for an AFSL or become a rep of an AFSL holder for 2 years.		
27, 28	11 Mar 02 12 Mar 02	I	Director of Onkourse Pty Ltd (in liquidation) -Mr Fairhead  [2 EUs]	Offering investment advice and products without being licensed to do so. Did not act in the best interests of the investors or with due care when giving advice or selling securities.	Not to be a company officer or participate in the management of a corporation for ten years other than his own company. undertaken that he will not, in the future, directly or indirectly carry on or hold out that he carries on an investment advice or securities business, give investment advice or be involved in a securities business or sell or promote investment in any scheme or project.	ASIC had previously accepted EUs from other Onkourse directors- failure to discharge duties as company directors with the required level of care and diligence.	
29	28 Feb 02	I	Investment adviser	Made securities recommendations without reasonable basis etc	Successfully complete a course of study in Professionalism, Ethics and Compliance commencing 12 Aug 2002. If he fails to enrol in the course or successfully complete the course of study, he has undertaken not to provide investment advice, act as dealer or adviser, apply to ASIC for dealers or adviser license or an AFSL until having successfully completed the course.		

EU No	Date ASIC accepted	Who (C or I)	Person Type	ISSUE - alleged breaches	Undertakings	ASIC considerations in accepting EU	Other
30	22 Feb 02	I	Director of Macquarie Advisory Group Pty Ltd (MAG) – Mr Pal Note: MAG is not associated with Macquarie Bank.	Clients in MAG advised to invest in a number of unauthorised investments	Not 'at any time in the future' provide investment advice to any person, deal in secs on anyone's behalf or provide any service for which he would require an AFSL.	[USE EXAMPLE OF PROTRACTED CASES]	ASIC obtained consent orders in court disqualifying Mr Pal from managing corporations until 21 Sept 2010. Other MAG director disqualified until 21 Sept 05. Last year, ASIC also received a consent order disqualifying another MAG director from managing corporations for 10 years.
31	22 Feb 02	I	Sole director of Capital Gateway Pty Ltd	Investment adviser			
32	14 Feb 02	2Cs	Computer hardware, software and data companies	Computer hardware, software and data – carrying on futures advice business while not licensed to do so			
33	18 Jan 02	C Is	Stockbroking company and directors – buying and selling securities on HK stock exchange	Not holding dealers licence		Even if trade in overseas stocks, must make sure dealer is licensed in Australia	
34	8 Jan 02	3Cs	NRMA etc	Misleading and deceptive conduct when charging policy holders – wording in documentation	Repay customers IMA's auditor to review compliance, ASIC to be provided with a report re EU compliance		
<b>2001</b>							
1	18 Dec 01	I	Proper authority holder	Securities recommendations to client without reasonable basis	18 months – not act as securities dealer, investment adviser, futures broker, futures adviser etc. Complete courses – <i>note vague</i>		
2	17 Dec 01	C	Tidswell Ltd – SA promoter and operator of managed investment schemes	Promoted and managed two unregistered managed investment schemes, number of deficiencies in its loan approval procedures in another registered scheme.	Appoint a person approved by ASIC to approve loans made by two registered schemes it operates. Not to seek further investments in unregistered schemes until it obtains variation of sec dealers licence allowing it to manage the schemes.		
3, 4	13 Dec 01	2Is [2EUs]	Company officers of Oncourse Resource Group – Ms Hill, Mr Grossman	Company was one that offered financial services and investment opportunities. ASIC's concerns on the management of the funds.	Not to be a company officer or participate in the management of a corporation for 10 years		ASIC previously accepted an EU from one of the directors (Grossman) – see below – prohibiting from being an investment adviser or participating in the securities industry. !!
5	13 Dec 01	C	AXA	Misleading print and television advertisements – past performance figures			
6	11 Dec 01	I	Director of Knightsbridge Finance.	Misleading and deceptive conduct etc	Permanently refrain from carrying on a securities business, acting as adviser etc		

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			Representative of Knightsbridge Managed Funds Ltd.				
7	3 Dec 01	2Cs	KJ Securities Ltd, National Money Managers Pty Ltd	KJS – securities dealers licence NMM (by directors) – circulated newsletter concerning investments – did not hold a dealers licence or investment advisers licence	NMM not to make any offer of products, provide investment advice until obtains licence, KJS – ensure authorised reps adhere to reqs of Corp Act...re proper and adequate disclosure of identity of licensee providing investment advice or offering secs.	No MR. "breach of Corps Act by NMM inadvertent"	
8	3 Dec 01	I	Securities representative	Stock market manipulation, false trading, market rigging, not acting honestly, efficiently, fairly	Not to act as a representative of a securities adviser or an investment adviser		
9	11 Oct 01	C, 2Is	Brink Pty Ltd - Manufacturing Company 2 Directors of Brink – Ms Hill, Mr Fairfield	Entering into arrangement with now failed company Onkourse Pty Ltd (EU above) for fundraising purposes	Call AGM (see EU for details), have company's accounts and fin statements independently prepared, directors to report on progress and development of company, refund to any unwilling investors		
10	18 Sept 01	C I	Ocean Salvage Corporation and its director	Fundraising – no disclosure document	...	'investors making informed decisions about investing'	
11	5 Sept 01	C	Insurance brokers	Payment of premiums to insurers	Ensure all agreements with underwriters comply with the Act, not hold premiums greater than 90days		Note, there is an 'if it does not comply with the undertaking clause'
12	15 Aug 01	I	Director of Onlourse – Mr Grossman	Offering investment advice, products without licence, not acted in best interests of investors or with due care in giving advice or selling securities	Not to directly or indirectly carry on or hold out that he carries on a investment advice or securities business	'who do not provide investors with sufficient accurate information to allow them to make informed investment decisions'	
13	31 July 01	C	Agrifuture Pty Ltd	Newspaper advertisements offering investments – no disclosure document	To cease advertising for export goat farming venture		
14	15 July 01	C	eStar Limited – share trading business	Does not hold dealers licence, sought to use licence of an associated company (Barton Capital)	Cease conducting a securities business		
15	9 July 01	C 2Is	MIP Limited and 2 directors	ASIC revoked MIP's dealer's licence in Aug 2000. Concerned MIP had not refunded investors' money when project failed minimum subscription	To repay over \$100K to 17 investors Is have agreed not to act as a proper authority of a securities dealer or of an investment adviser for 18 months. Not to be a director or responsible officer of a company...for 3 years		
16	27 June 01	C	Garrisons Pty Ltd	Solicitors mortgage investment funds – concern about advice Garrisons provided	Payment of interest to affected clients	'We sought compensation for these clients and we are satisfied that this is the best possible outcome we could have obtained'	
17	25 June 01	I	Former sec dealer/investment adviser of Merrill Lynch Equities, Johnson Taylor Potter Ltd.	ASIC concern engaged in misleading and deceptive conduct and failed to perform his duties as a sec rep, efficiently, honestly and fairly.	Not to act as a representative of a sec dealer or investment adviser for 3 years.		
18	4 June 01	C	SMEC Ltd	Failing to lodge its half yearly accounts	To establish procedures that will ensure the company's compliance		

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				since 1996 (5 years). ASIC found that it did not have appropriate procedures in place to ensure compliance with its disclosure obligations under the law.	with their disclosure obligations, including quarterly directors' meetings and audit committee reviews of this compliance.		
19	31 May 01	I	Mr Wallis	Promoting an international investment scheme, not registered under CA, providing investment and securities advice when not licensed to do so, potential to mislead	Cease providing investment advice, write to investors, assist investors to recover money		
20	10 May 01	C I	Asian Pacific Resources Ltd (Fijian company) And Its director	ASIC concerns fundraising proposal is misleading and deceptive	Not to distribute the document (investment strategy) and to offer refund of funds for those who subscribed for shares.		
21	27 April 01	I	'businessman'	Promoting investment scheme that was not registered. Did not hold licence to deal in securities or provide investment advice. Potentially misleading or deceptive.	Cease providing investment advice, write to investors, assist investors to recover monies		
22	27 April 01	I	Mr Iddon	See 31 May 01 (Wallis) – same as above	See 31 May 01 (Wallis) – same as above		
23	26 April 01	C	Tyndall Investment Management	Deficiencies in Tyndall's compliance arrangements – managed investment schemes, unit pricing errors	Appoint external consultant to conduct a review of its unit pricing, engage external compliance consultant to review, assess and make recommendations to Tyndall's on current compliance arrangements, report to ASIC		
24	4 April 01	I	Insurance broker	Deficiency in insurance broking account – ASIC concerns accounts did not contain sufficient funds for it to pay all premiums	...Instruct an ASIC approved auditor to conduct regular audits of his accounts for the next 2 years and report to ASIC, <u>to immediately cancel his registration as an insurance broker if he fails to comply with any of his undertakings...</u>	'ASIC will not hesitate to cancel the registration of brokers if they fail to implement good compliance systems, to manage their accounts in accordance with the law'	
25	30 March 01	C I	Mr Pratten Rural & General Insurance Ltd	R&G (Unlisted public co.), Mr Pratten was MD of R&G. Failure to properly record payments from fundraising.	Mr Pratten: for 4 years, not to be an officer of a corp, nor apply to ASIC to be a director or company secretary of any corp, not to be sole signatory of any bank accounts maintained by R&G. R&G: to put in place to satisfaction of its auditors – debtors/creditors ledger system to enable reconciliation of all receipts, payments etc.	No MR. ASIC took into account Mr PRatten's resignation and other factors at Clause 1.9.	
26	30 March 01	C	Technology company	DISCLOSURE PRACTICES AND CORPORATE GOVERNANCE processes of publicly listed company – continuous disclosure obligations	To review its internal procedures for ensuring compliance with its continuous disclosure obligations and to have those procedures independently audited by a senior member of the corporate finance industry. To review, formalise and annually audit its corporate governance practices		
27	21 Mar 01	I	Client adviser/securities dealer	Trading on client accounts without authority, failure to perform his duties as a securities dealer in an efficient, honest and fair way	For 18 months, Refrain from discretionary trading on behalf of any clients...arrange for ASIC-approved independent consultant to regularly evaluate his compliance with this undertaking. <u>If breaches EU</u> before end of 18 months, agrees to be banned from working in the securities and investments industry for the balance of the 18 months.		
28	14 Mar 01	C	TWU Nominees Pty Ltd – trustee of a super fund	Misleading conduct in connection with the disability insurance cover available to members of the Fund	EU and court orders – independent claims assessor will assess or reassess disablement claims etc..appoint independent compliance consultant to conduct compliance review...		Agrees to undertaking without admissions

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29	9 Mar 01	C	D & DTolhurst Ltd – licensed securities dealer	Internal compliance procedures following an investigation into 2 proper authority holders.	To engage an external independent compliance consultant approved by ASIC to review and assess compliance within the company (including relating to supervision and training of representatives, record keeping)	'ASIC expects all securities dealers to ensure that they have compliance systems and procedures in place to enable them to meet their responsibilities under the law and their licences.' 'to ensure compliance systems to Australian Standards are in place in order to protect the investing public'	Tolhurst brought the trading activity of 2 proper authority holders to ASIC's attention. (voluntary disclosure resulting in an EU)
30	5 Mar 01	C	Ingwersen & Lansdown Securities Ltd	Prospectus failed to disclose material information	To withdraw prospectus, not to offer or issue under the prospectus, inform investors		
31	2 Feb 01	C	Technology Company	ASIC concerns about compliance with continuous disclosure obligations – failed to issue profit downgrade at time it announced that key strategic negotiations would not be proceeding	To review its internal procedures for ensuring compliance, have procedures (for continuous disclosure obligations) independently audited by a senior member of the stockbroking profession, report back to ASIC	Full cooperation with ASIC by C	
32	7 Feb 01	C	Tidswell Ltd – promoter and operator of managed investment schemes	Promoted and managed two unregistered managed investment schemes, deficiencies in loan approval procedures, did not take adequate care	Register the scheme, obtain variation to securities dealers licence. Appoint person approved by ASIC to approve loans made by registered schemes.	To ensure schemes are being managed correctly.	
33	29 Jan 01	C, I	Company – internet based investment advisor and its director	Publishing information and recommendations concerning securities and futures commodities – not appropriately licensed, potential to mislead	Not to publish the type of info until it is appropriately licensed, write to customers within the next two weeks advising them that they may rescind their subscription agreements.	Financial services industry participants	
<b>2000</b>							
1	22 Dec 00	C	Stockbroking Pty Ltd	Concerned about internal compliance procedures, specifically compliance with 'Know your client rule' and supervision and training of proper authority holders	To appoint an independent compliance consultant to review, assess and report on certain aspects of Burrell's compliance, internal controls and procedures and training programs. Report to ASIC in 6 and 12 months.		
V1	22 Dec 00	C	CIBC World Market Ltd	Variation to EU – deficiencies identified in initial reports.	Variation to EU to include 2 additional reports to be prepared by an external compliance consultant.	To ensure that CIBC has in place appropriate compliance measures for the purposes of ensuring best practice in ongoing compliance with obligations under CA, regs, ASX rules and License	
V2	1 May 00	C	CIBC World Market Ltd	Variation to EU – change of due date of initial report from 30 April 2000 to 14 June 2000		ASIC concerned to ensure that the initial audit is comprehensive and the initial report detailed.	
2	18 Dec 00	C	IC Mutual Limited – Grenada incorporated unlisted public company	Concerns regarding adequacy of disclosure in the prospectus...see MR for further details	Not to issue, allot or offer for sale securities on the basis of the prospectus lodged, refund any subscription monies received.	ASIC issued an interim order on 2 Oct 00, further interim order made on 23 Oc, hearing conducted on 31 Oct 00.	Following final conclusion of hearing and <u>without admitting to ASIC's concerns</u> , the company agreed to not further circulate the prospectus etc
3	20 Dec 00	5Cs 4Is	5Cs – "the Asset Group" 4Is were "the directors"	Asset Group – operates employment agency, Directors responsible for administration of Super fund. ASIC concerns that Cummins and Tillet failed to	Mark Cummins not to be appointed a director or permitted to take part in the management of any corp in the Asset Group. Asset Group payments to staff. Asset Group to engage independent external consultant to review, assess, make recommendations and report in	No MR released.	

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				ensure Asset Group paid employees their lawful super entitlements.	writing on certain matters (see clause 2.3), each directors to use best endeavours to address any compliance issues identified by consultant, each directors to use best endeavours to ensure compliance by Asset Group with terms of this undertaking.		
4	15 Dec 00	C	Licensed securities dealer – HP LDV Limited	ASIC concerned about C's compliance with licence conditions, particularly the adequacy of its training and internal compliance systems and procedures.	To engage an external, independent compliance consultant to report on their compliance and training programs by 15 Feb 01. To implement all recommendations from an external and independent review of their compliance and training programs.	ASX also took disciplinary action against C for breaches of ASX Business Rules.	Following a large number of consumer complaints, ASIC commenced investigation into actions of former HP JDV advisers – this resulted in the EU
5	11 Dec 00	C	AusGem International Ltd	Reports did not confirm, insufficient info as to expert's valuation methods, insufficient disclosure of material risks. Misleading. Did not provide sufficient info to enable an informed assessment.	Not to proceed with its prospectus of 3 April 2000	Investor reliance on 'expert valuation'	ASIC put a temporary halt on 6 July, commenced hearing to see whether a final stop order should be made.
6	14 Dec 00	C	Tower Life Australia Ltd	Certain print advertisements relating to funeral plan products – potential to mislead or deceive	CHECK REGISTER	Prompt and cooperative attitude of Tower Life – withdrew advertisement and offered EU	
7	13 Dec 00	C	GIO General Limited – insurance company	Advertising campaign for business insurance – potential to mislead customers	Send letters, pay refunds, maintain compliance program that meets relevant Australian Standards, engage an independent consultant, approved by ASIC, to provide reports to ASIC on the implementation of its undertakings		
8	13 Nov 00	C	Combined Insurance Company of America – corporation authorised to carry on insurance business under Insurance Act 1973	Concerns over policies sold to Aboriginal communities – inappropriate for the needs and circumstances for persons within those communities. Breached Div 2 of ASIC Act.	Implement complaints handling procedure, education and training program (re Aboriginal cultural issues), Compliance Program, report to ASIC etc	No MR issued	Court Order. This undertaking to be read and interpreted together with Court Orders (2000).
9	15 Nov 00	I	Investment Adviser	Carried on unlicensed securities business, breached fundraising provisions of the CA, made or authorised false representations to clients	Not directly or indirectly to act as a representative of a securities dealer or an investment adviser for 10 years.		
10	9 Nov 00	C	Kaz Computer Services Ltd	Offer Information Statement – OIS for ordinary shares and options in the company – did not give all details or include copy of financial report	Not to issue the OIS to any person, not to issue securities on basis of OIS etc		PROSPECTUS
11	27 Oct 00	C	Shepherd Woolskins Australia	Private company at the time – cannot make an offer of securities that requires a prospectus under CH6D	Not to issue the OIS to any person, not issue any securities on basis of OIS, refund any moneys etc		PROSPECTUS
12	18 Oct 00	C	Peel River Vineyards Ltd	Prospectus – did not comply with disclosure requirements of the CA	Not to market the prospectus any further, or accept any investments on the basis of the prospectus		PROSPECTUS
13	4 Oct 00	2Cs I	Rene Rivkin 2Cs I is the director	Published recommendations – potential to mislead or deceive subscribers	TC – to provide execution-only brokerage services and will not offer advisory services.		

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			of both companies. 1C is a licensed investment adviser		I and other C – embargo on dealing in securities...  I and other C – appoint an external independent expert to carry out monthly reviews of their dealings and report to ASIC on their compliance with their EU. Lodge a compliance plane for ASIC's approval within 30 days.		
14	29 Sept 00	C	Licensed futures broker – Ord Minnett Futures Limited	Compliance procedures and failure of internal controls	Engage an external compliance consultant to review, assess, make recommendations and report in writing to Ord Minnett and ASIC (includes supervision and training of representatives; record keeping; adequacy of internal audit reviews; complaints handling procedures; structure and effectiveness of compliance programs)		Referral from Sydney Futures Exchanged Ltd – who commenced investigation into conduct of a rep from the Brisbane office of Ord Minnett
15	29 Sept 00	I	Director and representative of MML Management Ltd	Failed to exercise adequate supervision over the performance of obligations to MML and one of its authorised representatives (Craig Jones)	Will not apply to become a securities dealer or director or responsible officer of a securities dealer, nor act as an authorised representative or consultant of a securities dealer, for a period of 18 months.	'protect investors by improving standards in the <u>financial services industry</u> '	Craig Jones was banned by ASIC in May from acting as a representative of a securities dealer or an investment adviser for 2 years.
16	22 Sept 00	C Is	Superannuation Ltd and its directors	Documents provided to its members of Super Fund did not comply with level of disclosure in relation to individual member's entitlements, and performance of the fund	Establish and maintain complaints and enquiries arrangement as required by SIS Act. Each director of the trustee to attend and successfully complete a course of training in relation to duties and obligations of a trustee of a regulated complying superannuation fund. [vague]		
17	19 Sept 00	I	Mr Ellingworth – proper authority holder	ASIC concern that Ellingworth would not perform honestly, efficiently and fairly the duties of a representative of a dealer in securities – involved with a group of people who contributed to a Nigerian Advance Fee Fraud.	Ellingworth will not act as a representative of a dealer in securities or as a representative of an investment adviser for a period of 36 months from date of EU.		I acknowledges ASIC's concerns.
18	31 Aug 00	C Is	Allstate Insurance Pty Ltd and its officers  (insurance broker)	Concerns that the company had dealt with money received from its customers in breach of the provisions of the Insurance (Agents and Brokers) Act	Instruct a registered auditor to conduct 3 monthly audits of its accounts for next 2 years, report results to ASIC Immediately implement a computerised system that accounts for the source and destination of all money received by it Comply with all relevant laws... SHOULD Allstate fail to comply with any of undertakings...agreed to apply for cancellation of its registration as an insurance broker [ANALYSE THIS – how enforceable is such an undertaking], wind up company Director has also agreed to resign from his position in the company and other EUs		As a consequence of accepting the undertaking, ASIC has agreed to withdraw its application to wind up the company.
19	18 Aug 00	C	FAI General Insurance Company Ltd -seller of insurance products	Certain conduct that was misleading or deceptive (s 12DA of the ASIC Act) -false or misleading representations (s 12DB of the ASIC Act) RE: GST in relation to fin services	Appoint suitably qualified accounting professional ("the auditor") to report on incorrectly stated GST liability and number and identity of any additional affected policy holders etc Commission compliance professional to conduct a review of FAI's corporate trade practices compliance program		FAI acknowledges concerns of ASIC and that its conduct may have contravened.
20	7 Aug 00	C	Temps.Com Pty Ltd	Offer Information Statement – omission of material required to be included under the Corps Law, specifically the fin report was not for 12 month period	Not to issue the OIS to shareholder of the Company or any other person -write letter to persons, not allot or issue or transfer any securities on the basis of the OIS, not offer for sale securities of the Company, refund any monies etc		

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21	18 Aug 00	C	IT Investing Limited	Prospectus – material omission in the prospectus	Not to issue the prospectus to any other person, to notify persons who have been issued with the prospectus, refund all subscription money within 14 days.		
22	11 Aug 00	I	Ian William Snook – investment adviser, principal of Golconda Resources	Carried on a securities business under the name of Goldconda Resources, did not hold a securities dealer's licence, breached fundraising provisions of the Corporate Law, authorised false representation to clients regarding...	For 10 years, not to directly or indirectly, carry on a securities business, carry on an investment advice business, act as a representative of a dealer or an investment adviser.		
23	9 Aug 00	C	Grosvenor Securities Pty Ltd	Deficiencies in training and supervision of its representatives. Including where reps had recommended products and asset allocations which ASIC believed were not appropriate to client needs.	To appoint an independent consultant to conduct a compliance review of its procedures and processes over a period of 12 months Appoint a full time compliance officer to make annual visits to its representatives....etc	Fin services industry	
24	14 July 00	I	Identity of trader withheld – minor (<18y.old>	Internet posting may have breached Corp Law – which bans publication of misleading information relating to securities (posted notice of Coles Myer CEO)	Publish retraction, refrain from posting notices on the internet that are misleading, declare any interest he may have in a security when publishing info or opinions.		
25	27 July 00	I	Proper authority holder	Created misleading appearance with respect to the price of Ebet shares.	Not to act as a representative of a dealer or an investment adviser for 6 months To complete the Securities Industry Law and Ethics course before he returns to the securities industry.	'Proper authority holders are placed in a position of trust by their employers and their clients, and must ensure they operate within the Law'	Investigation was a result of a complaint from HSBC (where I was previously an employer)
26	13 July 00	C	Licensed securities dealer – DJ Carmichael Pty Ltd	Concern about C's internal compliance procedures	To engage an external independent compliance consultant within a month. The consultant will review, assess, make recommendations and report in writing ...on the change to C's compliance and training programs	'ASIC expects all securities dealers to ensure that they have compliance systems and procedures in place to enable them to meet their responsibilities under the law and their licenses'	Following investigation into the actions of 2 former C advisers
27	12 July 00	C	Castech Pty Ltd	OIS did not comply with the Corps Law as did not contain a fin report for a 12 month period	Not to issue, allot or offer for sale securities on the basis of an OIS		
V3	4 July 00	C	Variation to NM Health Insurance EU	Variation to undertaking provided on 16 June 2000 (see below)			
28	30 June 00	C	MDSnews.com Ltd	Insufficient information in the prospectus.	Not to issue, allot or offer sale securities on the basis of the prospectus lodged		Interim order was placed on 2 June 00.
29	30 June 00	I	Investment adviser	Traded securities without client authorisation	Not to act as a representative of a securities dealer or investment adviser for 5 years.	'at all times advisers need to be aware of the fact that trades undertaken for clients must be in accordance with the client's instructions'	
30	22 June 00	Is	Two authorised representatives of Lifespan Financial Planning Pty Ltd	Failed to adequately disclose the fees or commissions they would receive Made recommendations to clients without a reasonable basis for that advice	Agreed to a compliance review by an independent consultant approved by ASIC Reports to be prepared on training, supervision and compliance systems of two Is. Write to clients	'improving standards of participants in the securities industry'	
V4	1 May 00		Variation to CIBC EU	Variation to undertaking provided on 27 March 2000 (see below)			
31	16 June 00	C	National Mutual Health Insurance	Concerns that advertisements may mislead or deceive. Potential	To permanently refrain from causing to be broadcasted by tv or other means, the advertisements.		C acknowledges concerns of ASIC.

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			– provider of a range of private health insurance cover in Vic	contravention of asDA, 12DB, 12DF of the ASIC Act.			
32	20 June 00	I	The fourth sales agent promoting investments in a bluegum plantation scheme (previously accepted EUs from 3 other sales agents selling the scheme)	Unregistered managed investment scheme	Agreed to not be involved in the sale of similar schemes or associate with promoters of the scheme.	'Franchises are generally exempt from the managed investments provision but ASIC view that the forestry scheme was improperly marketed as a franchise'	Promoters of the scheme include Maritime Funding Pty Ltd which were also involved with the promotion of sunken treasure schemes such as Ocean Salvage Corp Ltd.
33	20 June 00	I	Director of 3 Pty Ltds – all in liquidation	I accepted he did not fulfil his duties as a director: -was not sufficient informed as to the fin affairs of 3 co.'s -signed docs without fully reading or understanding them -did not take sufficient steps to satisfy himself that person charged with duty of preparing the above-named companies books and records was a competent and reliable person	Not to be a director, secretary or be involved in the management of corporation for a period of three years.  To satisfactorily complete a corporate management training course which has been approved by ASIC [vague]	ASIC NSW: 'that directors should be fully aware of the responsibilities that are involved in managing a company' 'ASIC will continue to take action against company directors who fail to fulfil their duties, in order to protect investors and creditors'	
34	18 June 00	I	Herbert Fisher of MFA Finance Pty Ltd	I is director of MFA Pty Ltd – licensed finance broker WA. I did not make reasonable or adequate inquiries about fin position of borrower etc Loans to companies associated to a now bankrupt person – loans now in default.	Not to carry on sec business or be in any way concerned in conduct of such a business, act as a rep of a dealer, carry on investment advice business, act as a rep of an investment adviser [Note: no timeframe ...appears perpetual]	No MR released.	
35	14 June 00	I	Securities Dealer – Qi Zhu	Engaging in misleading and deceptive conduct concerning dealings in securities. Failing to perform his duties as a sec rep efficiently, honestly and fairly.	To cease acting as a representative of a dealer or an investment adviser for 3 years commencing from 7 Jan 00 To complete the Securities Law and Ethics Course (Securities Institute of Australia)	Dealers	
36	30 May 00	I	Sales Agent	Promoting investments in illegal fundraising schemes re recovery of sunken treasure.	Not to be involved in sale of similar schemes or to associate with any of the people involved in the promotion of the schemes for a period of 2 years.		ASIC investigated fundraising activities of Ocean Salvage Management, Maritime Funding Pty Ltd, Enterprising Nominees Pty Ltd, JJ McNamara & Associates Pty Ltd in connection with Ocean Salvage Corp Ltd shares and the recovery of underwater treasure.
37	23 May 00	I	Mr Taggart – accountant and partner of firm of Chartered Accountants	Recommending investments in Lateral Ltd to clients of the accounting firm. Mr Taggart carried on sec business and investment advice business in recommending the Lateral shares	Consent to banning order from ASIC prohibiting from being a rep of sec dealer or investment adviser for 1 year. Undertakes will not hold a proper authority, or act as rep of, sec dealer or investment adviser for 5 years after banning order [Note: what is the difference between this and initial banning order.] After 6 years,	No MR released. This EU offered to facilitate settlement of app to AAT and avoid incurring additional expenses in relation to the app. [not sure if its ASIC's expenses or applicant's expenses that are considered – could be both]	11 Aug 99 – ASIC made banning order prohibiting him from being a rep of a sec dealer or an investment adviser for 6 years. 8 Sept 99 Mr Taggard made an app to AAT for review of decision on basis ban was wrong, period excessive.

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					undertake course, withdraw app to AAT seeking review of ASIC decision.		
38	12 May 00	3Is C	3 sales agents who promoted investments in bluegum plantation	Forestry scheme improperly marketed as a franchise, in fact was a managed investment scheme	Not to be involved in the sale of similar schemes or associated with anyone involved in the promotion of the schemes.		
39	10 May 00	C	Insurance company – Connelly Temple Ltd	Brochures – aspects misleading	To review all insurance policies that have been issued under the brochures Use 'best endeavours' to remove the seclusion or restriction or credit the premium loading to the customer's super account	Full cooperation with ASIC	
40	20 April 00	2Cs	Promoters of insurance policies	Promotion of Death and disability insurance policy – misleading/deceptive	Ensure info given to consumers in a promotion is accurate, prominent and clear, provide ASIC with a compliance program, refund through company's internal dispute resolution scheme		
V5	1 May 00		Online Investors Advantage Incorporated	EU Variation – solicitors informed ASIC that it would be premature for the company to apply for ASIC for an appropriate license at this stage based upon the skills and experience only of existing responsible officers.	Short extension of time given from 30 April 2000 to 31 May 2000 (re the company's application to ASIC for an appropriate license)	No media release  [NO EU]	
41	13 April 00	C I	Capital Trading Group Ltd And Canberra resident	Misleading and deceptive info on internet concerning its returns.	Not to advertise info on the internet that may be misleading or deceptive and refrain from offering advice on future contracts without an appropriate futures advisers licence.	Site was voluntarily withdrawn at ASIC's request.	
42	7 March 00	2 Is	2 Sales Agents - Linthorne	Promoting investments in an illegal fundraising scheme relating to recovery of sunken treasure	Not to be involved in the sale of similar schemes or associated with anyone involved in the promotion of the schemes.		Following investigation into Ocean Salvage...etc
43	22 Feb 00		2 Sales Agents - Singlewood	Same as above	Same as above. Separate EU (individual) entered into with ASIC.		
44	18 April 00	C	N/A/T/O – markets engine oil products	Product liability insurance offered with its oil product – promotional material likely to be misleading and deceptive	Cease making incorrect statements and withdraw or amend any existing promotional material.	First time ASIC entered EU on company promoting product backed by insurance cover as an ancillary service. Combined product. Impt. all info provided to consumers not m/d.	
45	17 April 00	C I	Hudson Investment Group Ltd Directors	Fundraising – partial float – financial accounts did not accurately disclose nature of loans. Did not have procedures in place to ensure standards of CG were adequate for a listed company – did not define role of a consultant within the management of the Hudson Group of companies.	To have loans repaid (given to directors for sole purpose of purchasing HGL shares), introduce corporate governance policies and procedures for the provision of finance to directors, employees and third parties. [NOTE: pre related parties legislation] -introduce compliance regime, report to ASIC every 6 months until Nov 01		Investigations between Jan 1997 and Aug 1999  Referral from ASX in 1999
46	7 April 00	I	Director of finance broker ... Pty Ltd	Conduct liable to mislead investors, paid out investors' money to people or for purposes contrary to the investors' authorisation.	To refrain from carrying on a securities business of an investment advice business or from acting as a representative of a securities or investment adviser.	'To ensure only people who perform their duties efficiently, honestly and fairly participate in the securities industry'	
47	27 Mar 00	C	CIBC World	Compliance with its obligations under its	Supervision, training of staff, record keeping, procedures for new		

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			Markets Australia Pty Ltd	licence conditions and the Corp Law.	accounts...etc To review and assess legal and regulatory compliance program Compliance audit of internal controls etc by external consultant.		
48	16 Mar 00	C I	Salan Pty Ltd Managing Director	Fundraising from public when proprietary company. Audited reports indicate their 2 largest assets were located in Indonesia and subject of litigation.	To give Salan shareholders updates about progress of litigation. To lodge regular audited accounts with ASIC [does a normal pty company have to do that?] – no I: Not to engage in fundraising on behalf of Salan	ASIC agreed to discontinue proceedings it brought against Salan in the Supreme Court of WA. This is the 2 <sup>nd</sup> time in 6 months that ASIC has acted to ensure shareholders receive adequate information about the valuation of o/s assets.	
49	13 Mar 00	C	Greater Indochina Investment Ltd	Prospectus lodged did not comply with the Corp Law	Not to issue or allot securities on the basis of prospectus lodged 16 Feb 00		Interim order placed
50	3 Mar 00	I	Mr McRae – securities dealer	Breach of Corp Law in the trading of securities. Did not have and was not aware of a client order to buy UCR, not authorised to trade on behalf of Mac Equities.	Not to act as a rep of a sec dealer of an investment adviser for 6 months. To complete Sec Industry Law and Ethics course at SIA prior to 31 Dec 00.	Did not perform the duties of sec representative efficiently, honestly and fairly.  EU made without admissions.	Mac Equities subsequently took action against McRae, suspending him from duties in Sept 99.
51	1 Mar 00	I	Mr Brown – former director of Kenna & Brown Pty Ltd	Failed to exercise the degree of care and diligence that a reasonable person in a like position in a company would have exercised.	Not to be a director, secretary or be involved with the management of a corporation until 2006.		
52	29 Feb 00	2Cs	Ludgates	Unregistered managed investment schemes			ASIC received complaint
53	21 Feb 00	C I	Registered insurance broker Vic - Mayfield Pty Ltd Director – Mr Hornidge	Operating with a deficiency in its insurance broking account – in breach of IA. Concern to both insurers and their customers that Mayfield may not have been able to pay amounts owed when due.	Correct deficiency, operate within law in future... Engage an auditor prepare audits of that account on quarterly basis commencing 31 March 00 to 31 Dec 01 IN THE EVENT of any further deficiency or other contravention, Mayfield and its director also undertake to cease carrying on business as an insurance broker or an insurance intermediary.		
54	21 Feb 00	I	Mr Glover – securities representative of Pont Securities Ltd	Concern did not perform duties of a securities representative efficiently, honestly and fairly.	To enrol and successfully complete court in Sec Industry Law and Ethics (SIA course).		ASIC delegate on 15 July 99 made manning order prohibiting Mr Glover for 4 years from acting as a representative of a dealer.
55	24 Feb 00	C 2Is	Wheaton Group Pty Ltd (holder of dealer's licence) 2Is – each old proper authority issued by Wheaton	Wheaton and its representatives had no reasonable basis for making investments recommendations	To forgo \$218,353 in commission payments (but ensure commissions not deducted from client investment accounts) Undertake review of training, supervision, compliance and record keeping procedures.	'Advisers must ensure that an investment product is consistent with the clients' investment objectives and they must properly document the process and basis for the recommendation'	Parties assert they did have reasonable basis for their recommendation but acknowledged <u>no documentation to support assertion.</u>
56	21 Feb 00	I	Former authorised securities representative	Advised a number of clients to transfer some of their investment funds into a company where he was director and shareholder. Failed to act fairly and efficiently.	Not to act as a representative of a dealer or investment adviser...etc for 5 years.		He acknowledged.
57	15 Feb 00	C	Pty Ltd – Forest	Tree growing scheme – operating illegally,	To contact all investors, immediately cease to offer interests in the	The Law requires that Managed Investment Schemes	

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			Enterprises of Australia	did not meet requirements for a managed investment scheme under Corp Law	scheme	must provide investors with a registered prospectus, must be operated by a responsible entity licensed by ASIC and the scheme must be registered with ASIC.	
58	14 Feb 00	I	Mr Gardner – proper authority holder of ABN Amro Equities	Concern Mr Gardner created false or misleading appearance with respect to the market for, or the price of, shares in National Foods.	Pay ASIC \$9000 for investigation costs, complete SJA course, not convey client orders directly etc for period 30 July 00 to 30 April 2001.		ASIC delegate made banning order for four years on 30 July 99. Mr Garner applied to AAT for review.
59	7 Feb 00	2Is 2Cs	2 Tresidders Halliday Pty Ltd Hainic Pty Ltd	Validity of certain transactions, contraventions of Corp Law, Insurance Act	Mr Tressider: advise ASIC of any change in employment etc Mrs Tressider Cs: strictly adhere to terms of appointment of Tressider as insurance intermediary etc.	ASIC had regard to the effect of the transactions being reversed, Mr Tressider agreeing to court orders restraining him from managing a corp for 10 years.	Court orders. No MR released for this one.
60	31 Jan 00	C	AIF Pty Ltd – operated an investors' club providing info relating to upcoming share issues	Documentation given to members did not adequately disclose the position of the licensees – may have resulted in AIF suggesting that they were licensee in their own right. Operating in breach of licensing provisions of Corp Act and consumer protection provisions of the ASIC Act	Contact all members of club, provide them with options relation to their membership. As a result AIF has effectively ceased to operate all investment advisory activities.	AIF was not fun like some other investment clubs where investors meet and carry out their own research and decide where to invest their money	AIF have indicated that it will apply for a licence.
61	20 Jan 00	C	Online Investors Advance Incorporated (US internet advisers)	Providing investment advice to Australian investors without appropriate licence (in its advertisement and promoting of its services in Australia)	Not to advertise or promote any investment advisory activity in Australia or conduct any	'ASIC determined to pursue unlicensed advisers...'	C admitted/acknowledged ASIC's concerns
<b>1999</b>							
1	24 Dec 99	2Cs	Wholly owned subsidiaries of Suncorp Metways Ltd – SFP, SAML. These companies operate as licensed securities dealers	Failure to comply with Corp Law and reg and license conditions – representatives gave limited financial advice to clients who sought full advice, reps failed to record that they had disclosed to clients fees and commissions, Compliance systems and procedures inadequate, reps not adequately trained or supervised	SFP – to review, assess, report on implementation of...adequate training and supervision, content and disclosures in advisory services guide, 'know your client' rule, compliance systems and procedures... Compliance review will be done by independent compliance consultant approved by ASIC. SAML – no longer hold licence (business to move to another entity). EU: to undertake similar review to past business.	Statement by ASIC in MR: 'Securities dealers and licensed investment advisers need to be aware that in 2000 ASIC will continue to actively focus our surveillance activities on compliance with disclosure and ....' 'All financial services providers should take steps to actively review their current compliance systems and procedures to reassure their senior management and boards that <b>when they receive a visit from ASIC</b> , they won't have a regulatory problem'	This EU follows from an EU accepted from Westpac in late Dec 1999
2	21 Dec 99	I	Registered company auditor	Conflict of interest with the employed Chief Executive of the corp, failed to perform the audit in accordance with Aust Aditing Standards.	To have audits over next 12 months reviewed by another registered auditor 80 hours of professional development and training which emphasises auditing skills over next 2 years [vague EU?]	This is the 2 <sup>nd</sup> time in recent occasions in NT where ASIC has taken direct action against a registered company auditor in connection with the financial affairs of an Aboriginal corporation	Investigation arose after a complaint from an Aboriginal corporation about the conduct of his audit.
3	16 Dec 99	C	Westpac Banking Corp	ASG – Advisory Services Guide – did not make level of disclosure to its retail investment customers required by Corp Law. Did not adequately describe the extent to which remuneration of advisers was based on the value of products and services recommended. Deficiencies in Westpac's	To amend a number of consumer disclosure documents, have them reviewed by consumer consultant. To upgrade its compliance and engage an external independent compliance consultant to review and report to ASIC on Westpac's compliance and training programs during next 18 months. To contact all its financial advice clients... To regularly report to ASIC through its MD about the actions taken to comply with the EU	Westpac cooperation.	

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				trailing and supervision of advisers and planners, products recommended appeared inappropriate.			
4	15 Dec 99	2Is	Directors of Tuska Resources NL	Made statements about Tuska that were false or misleading – relating to ownership of mining leases, that reports were audited. Offered securities without a prospectus. Lodged documents bearing false signatures.	Will not manage a corporation for 7 years, and 3 and a half years, respectively. Not to solicit offers to invest in securities.	ASIC sought orders from court that 2Is be banned from managing corp pursuant to s 230 of the Corp Law. However, 2 Is offered undertakings.  'Ultimately, the public are entitled to expect that those who manage corporations will do so responsibly, honestly and diligently'.	10 Dec 99 ASIC obtained orders appointing an official liquidator to their company. Investigations followed a compliant about investments promoted in Tuska's gold mining ventures. Sept 99 – ASIC obtained injunctions restraining the 2 directors from offering securities in the company.
5	8 Dec 99	I	CPA, Tax Agent	Promoting internet site – managed investment scheme, no registered prospectus, failure to comply with fundraising provisions – scam	To stop promoting internet site...		
6	26 Nov 99	I	Director	Duties as director of NCRS – failing to maintain proper fin records, being aware that NCRS was unable to pay debts as they fell due, permitting it to continue trading while incurring debt [old law in this section?]	Not to manage or apply to be a director, secretary of any corp for five years To undertake suitable corporate management training course if he wishes to become a director secretary in the future.		Following complaints by customers
7	31 Dec 99	I	Perks	Circulated a business proposal to members of the public involving the issue and allotment of shares in the proposed company – offer document nor company itself had been registered with ASIC	Not to invite subscriptions for securities or collect expressions of interest in an unregistered company. Not to advertise or promote investments in the proposed company or any MIS not registered under the Corp Law		
8	15 Nov 99	C	Finance broker – Blackburne and Dixon Pty Ltd	Engaged in conduct liable to mislead investors, paid out investor's money to people or for purposes contrary to the investor's authorisation	Engage external party to act as compliance auditor to review all defaulting loans. Compliance auditor to provide findings to ASIC and investors.		
9	9 Nov 99	I	Director of Eastern Gold Corporation NL	False trading in shares. (failed to notify ASX in timely manner of his interests in Eastern Gold shares)	Not to be a director, secretary, be involved in management of a company listed on ASX until 1 Jan 01. To complete a corporate management training course and continuing education with AICD to improve his knowledge in area of corporate governance.		
10	2 Nov 99	C	Insurance broker – One to One	Promoted franchise in its insurance broking operations to ppl who wanted to trade as insurance brokers but were not registered	All franchisees operating within Australia become registered as insurance brokers with ASIC by no later than 28 Feb 00.	Part of a big ASIC unregistered insurance broker campaign	
11	29 Oct 99	C I	Papau New Guinean company and its director	Promoting unregistered high risk investment scheme to the public.	To cease operating or promoting the scheme and to return money to investors. Not to take any step in promoting the scheme or any other unregistered managed investment scheme.		
12	30 Sept 99	I	Investment adviser/security dealer	Promotion of unregistered schemes – Paulownia Tree Plantations	Not to act as an investment adviser or securities dealer for a period of 2 years commencing last August. (see MR for my detail)		
13	28 Oct 99	I	Investment adviser,	Actions were not efficient, honest or fair	Not to act as a rep of a securities adviser, investment adviser or futures adviser for 2 years. Undertake further education with Fin Planning	I 'understood that he had not provided his clients with the standard of advice required by the industry'	

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			securities dealer		Association of Aust of SIA.		
14	28 Oct 99	I	Managed a company (other ppl named as directors but he was the key player)	Managed a company in contravention of the law	Not to manage a corporation until 31 March 04 (a further 2 years from court ban), provide ASIC with statutory declaration every 6 months that he has complied with this requirement. Pay ASIC the sum of \$20K in relation to investigation costs.		Convicted of 12 counts fraud, 2 counts operating bank account under false name – sentenced by Perth Court to 6 years, 9 months jail. Banned from managing a corp. within 5 years of conviction/release from prison.
15	15 Oct 99	C I	Keycorp Ltd, Dep MD, Company Secretary	Shares purchased by Keycorp prior to announcement of price sensitive information, did not disclose confidential letter of intent to ASX	Pay ASOC sum of \$42,751 to be distributed to parties who sold their shares to Keycorp during relevant period and who may have been disadvantaged. Establish and operate a mandatory and continuing education program for Keycorp officers.	'KeyCorp, Dep MD, Company Secretary did not realise they may have inadvertently breached the Corp Law'	Referred from ASX
16	15 Sept 99	C	Lowndes Lambert Australia Pty Ltd	Promotion of insurance cover for Licensed Post Offices. Likely to mislead or deceive consumers, in breach of ASIC Act.	Not to incorrectly represent any company's financial strength rating or describe them as underwriters when they were not. Write to all operators of Licensed Post Offices who took up Lowndes insurance Implement compliance and education programs for its directors and employees to improve accountability and knowledge of the relevant law.	'ASIC is always concerned about misleading advertising.'	
17	30 Aug 99	C	Suncorp Metway Insurance Limited	Small print disclaimers used in Suncorp's promotion of home and car insurance – likely to mislead or deceive	Not to repeat billboard advertising...etc make a lawyer responsible for adherence to these undertakings		
18	19 Aug 99	C	Yates Security Limited	Published advertisements may have been misleading and deceptive	Not to publish any advertisements containing the representations...	Finance industry – managed investments	
19	17 Aug 99	I	McLaren	Publishes analysis of futures reports on his website – not a holder of a Futures Advisers' Licence or proper authority from a futures licensee	To cease giving futures advice on his website		
20	11 Aug 99	I	Anthony Cunningham – authorised representative	Concern that he had not performed efficiently, honestly and fairly in his duties as representative of a dealer.	Until Feb 2000, not to act as a rep of sec dealer unless provides notice to ASIC, nominates director or supervisor and notifies ASIC of person, provide reports to the licensee, licensee to notify ASIC of any breaches, licensee to be subjected to audit of his duties.		Notice of Hearing held
21	4 Aug 99	C	Paritech Pty Ltd	Software package – analysis methods re stock pricing. Constitutes investment advice. No licence.	Not to market, advertise, distribute or sell the computer software package until it obtains an investment adviser's licence from ASIC.		
22	28 July 99	C I	Manager of BlueGum Plantation Scheme (Afforestation Pty Ltd) and Directors – Charles and Margaret Pealy	Promoted and operated the scheme without prospectus or trust deed. Scheme promoters were not licensed. ASIC concerned about the scheme's management and likely returns to investors.	Convene meeting of investors, take steps to. abide by any decisions reached at the Investor's Meeting and take steps to satisfy investors demands.		This is a different kind of undertaking to other EUs where there were failures to register MIS – maybe this one was genuine and successful – been running since 1991.
23	22 July 99	I	Mr Roundhill	Sent out messages in an effort to raise \$10million for new internet company. I acknowledged there was no registered	Cease promoting an investment offer on the internet. Immediately repay all depositors.		

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				prospecturs, not complied with fundraising provisions of Corps Law (max penalty of \$20K or 5 years imprisonment of both)			
24	14 July 99	C	Trojan Insurance Brokers Pty Ltd	Breached IA – failing to disclose fees charged to its clients.	Disclose any amounts charged to a client as a broker fee separately from any premium, stamp duty or levy. Keep a permanent record of all renewal advice and invoices sent to clients for each and every insurance policy. Make those records available for inspection by ASIC. Appoint independent auditor to conduct quarterly reviews of files.		
25	9 July 99	I	Mr Casey – proper authority holder.	Investigation into the trading of shares into..by staff at ABN AMRO Equities Ltd.	Not act as a representative of a securities dealer or investment adviser for a period of 2 months – effective from 9 July. Complete a securities industry law and ethics course at the SIA.	ASIC considered significant educational value to Mr Casey and his peers. ASIC also considered that ABN AMRO had already taken action against him.	
26	18 June 99	I	Mr Froggatt – former proper authority holder	He was responsible for trading on behalf of PSL clients in ASX exchange traded options. On 16 occasions, transferred error positions of clients into his account. Did not obtain prior approval of PSL in respect of trading in personal account.	Not to act as a representative of a securities dealer, investment adviser, futures trader, futures trading adviser for a period of 6 months effective 18 Jun 99. Pay ASIC \$7000 to partly compensate for its investigation costs. Complete Securities Industry Law and Ethics course at SIA (Securities Institute of Australia).	Fully cooperated with ASIC.	
27	1 June 99	C	Count Financial Group Pty Ltd – licensed securities dealer that trades as Count Wealth Accountants	Concerns relating to their compliance program.	Engage an ASIC approved external professional compliance consultant to review, assess and report on Count's performance on its compliance plan every 6 months for 18 months.	'A properly implemented compliance program is the most effective way a licensed securities dealer can ensure they are meeting the requirements of the Law and their licence conditions.'	One of the largest securities dealers in the nation – approx 900 representatives Australia-wide
28	14 May 99	C	De Luxe Cab Company Ltd	C converted from a co-operative to a corporation on 2 Feb 98, since conversion De Luxe has been assisted by ASIC to achieve compliance under Corps Law	Cease offering its members interest bearing accounts, close accounts opened since 2 Feb 98.	'more disclosure requirements that when it was a cooperative' 'cooperatives can raise funds on loan from their members without need for registered prospectus' 'corps are required to issue prospectus disclosing all matters which an investor would reasonably want to know before deciding to invest.'	
29	4 May 99	C 2Is	Finance broker – Rowena Nominees Pty Ltd, Directors – Graeme and Margaret Grubb	Unacceptable practices by Rowena and its management in relation to the handling of client trust moneys, inadequate record-keeping and failing to promptly register lenders' securities interests.	Mr Grubb and Rowena will wind down the finance broking business. Independent accountant will undertake comprehensive review of the operations of the trust account. Report to ASIC. Mr Grubb – arrange for sufficient funding to ensure that any deficiencies in the trust account are met and that the business has sufficient funds to meet its ongoing costs.		
30	16 April 99	C	Consolidated Gaming Corporation Ltd (CGC)	2 March 99 prospectus – did not adequately address the risks associated with the development, production and sale of products...projected profit figures	Not allot or issue any further securities under the prospectus. Refund all subscription money received		ASIC issued an interim stop order preventing CGC from issuing any further securities following the 2 March 99 prospectus
31	7 April 99	4Cs	Paulsens Gold Pty Ltd, Resolute Limited,	Paulsens Gold Pty Ltd proposed takeover bid for ... ASIC agreed the bid can proceed subject to safeguards in the undertakings	P using its best endeavours to cause the target company to commission an independent expert report on whether the bid consideration is fair and reasonable. Bid structure to be unwound if it is unsuccessful, provisions to ensure	This 'removes any perception of an "anti-competitive block" resulting from the joint bid structure.' 'The conditions are designed to ensure that shareholders receive a fair control premium and that	

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			Killyhevlin Pty Ltd, Kemia Pty Ltd (related parties, shareholders of target co.)		that rival bidders are not discouraged having regard to the respective shareholdings of Paulsens, Resolute and Kemia.	an informed and competitive market is maintained.'	
32	24 Mar 99	I	Securities representative. Affiliate of the ASX, representative of a licensed securities dealer (Epic Ltd)	Engaged in misleading and deceptive conduct and false trading by buying and selling AAV shares between client accounts of which he was a beneficiary. Failed to perform his duties as a representative of Epic efficiently, honestly and fairly	Not to act as a representative of a securities dealer or an investment adviser for 6 years.		
33	8 March 99	C	Seven Network Limited	Accounts and of its subsidiaries	It will adopt an accounting treatment of its financial reports to address ASIC's concerns.	Cooperated with ASIC ASIC wants to ensure that accounting standards are compiled so that the financial statements are prepared on a consistent and comparable basis.	(Seven does not agree with ASIC's views)
34	22 Feb 99	I	Company director – two companies.	Failed to ensure that ASIC was notified of the change of address of the registered office, principal place of business and the directors' residential address for both companies.	Not take part in the management of a company or act as a director or secretary for 3 years.  To undertake a suitable corporate management training course if he wishes to become a director in the future. [vague? Difficult to enforce?]	'ASIC said this use of its enforceable undertaking power which was granted by parliament on 1 July 98, enabled ASIC to obtain an effective remedy without having to resort to costly and protracted litigation.'	ASIC commenced inquiries into Compass Viking following a complaint from a customer. Compass Viking appears to be a 'phoenix' of Compass IT. It was found that a number of legal and commercial firms were also taking action to recover debts from the company.
35	16 Feb 99	C	Nomura International Plc	Conduct in closing out its arbitrage position on 29 March 96.	That it would not engage in contravening conduct again.		Court made declarations that Nomura had contravened s 995, 998, 1260 of the Corp Law and s 52 of the TPA in closing out its arbitrage position on 29 March. Court made consent order that Nomura pay ASIC's costs of investigation and proceedings.
	24 Feb 99	2Cs	Treetop Projects Ltd, Australian Rural Group Ltd	VARIATION to EUs on 21 Sept 98 (TPL), 22 Sept 98 (ARG)			[NO EU]
<b>1998</b>							
1	17 Dec 98	C	Cs involved in a takeover dispute concerning QLD property developer - Berela	ASIC was of the view that the takeover proposal breached the CA.	Part C Offer enforced.  The Part C offer will allow shareholders in Berela to decide if they wish to exit the company at this price or remain in it given the likely change in control.	'The Corporations Law takeover policy is to ensure that changes in the control of companies do not occur without adequate information and equality of opportunity available to all shareholders'	
2	20 Nov 98	I	Director of company which was trustee of unit trusts.	Offered securities in Wildtman Pty Ltd, the Albert Unit Trust, Sports and Therapy Unit Trust without a prospectus and without being licensed as required by the Law.	Contact all investors and inform them that they may be able to rescind contracts entered into with Mr Hubbard, but he must first get independent legal advice.  Not to operate a securities business or offer securities unless he fully complies with the requirements of the law.		
	20 Nov 98	C	Aust Rural Group	VARIATION to EU signed 21 Sept 98.			

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3	11 Nov 98	I	Manager/Director of small business – asphaltting company	Mr Blake was declared bankrupt in 96, admitted breaching the CA by continuing to manage the company while prohibited	Prohibiting him from taking part in the management of Blake's Civil Construction Company Pty Ltd and from managing any corp while he is bankrupt (without leave of the court)		
4	29 Oct 98	3Cs, I	I was sole director of the three companies.	Promoted tea tree farming investment scheme in breach of CA – no approved trust deed and trustee, prospectus, dealers licence	Parties (3C and I) undertake not to promote, offer, accept, trade, assign or otherwise deal in units in the investment scheme.		
5	20 Oct 98	I	Ms Cochrane – securities representative	Continued to provide investment advice to members without an authority (proper authority was cancelled)	Not to act as an investment adviser or securities dealer or a representative of an investment adviser or securities dealer for 10 years.		In August 1999, the Supreme Court of Sydney held that Ms Cochrane had breached the EU. "This is the first time that a Court has upheld an enforceable undertaking since ASIC was given the additional powers to accept them on 1 July 1998".
6	13 Oct 98	1C, 2Is	C – Pty Ltd, programs assists users to select shares listed on the ASX 2Is were Directors of C	By marketing and distributing the programs – were engaged in an investment advice business (s 77 of CA) and therefore required to be licensed in accordance with s 781 of the CA Materials were misleading and deceptive.	C and 2Is, case marking and selling programs.		
7	24 Sept 98	2Cs, I	HWA – marketing, selling program assisting users select shares in ASX FIA – sold similar program I – common director and shareholder of Cs	Selling programs constitute being engaged in investment advice business. Similar to above. Misleading Deceptive conduct.			
8	22 Sept 98	C	TreeTop Projects Limited, Aust Rural Group	Rural managed investment schemes	TPL undertook to deposit \$3m with the trustees of ARG scheme ARG undertook to hold meeting of investors to vote on whether TPL should be removed as manager of each particular scheme.	"investors will now have the opportunity to either retain TPL or remove TPL as manager of the schemes"	
9	21 Sept 98	C	Australian Rural Group	Same issue as above	See above		
10	11 Sept 98	C	Crown Casino Limited	Inadequate disclosure of results.	To report quarterly to the market and establish an internal compliance plan and manual.		
11	11 Aug 98	I	Company director involved in the distribution of video tapes	Solvency issues – arranged for a creditor to be paid in preference to others to gain an advantage for himself and other companies. Breach of directors' duties.	Will not take part in the management of a company or act as a director/secretary for three years. Will undertake a suitable corporate management course if he wishes to become a director in the future.	'Enforceable Undertaking' power was granted by 1 July this year, has enabled ASIC to obtain an effective remedy without having to resort to costly or protracted litigation'.	
12	11 Aug 98	I	Director of	ASIC formed view that Ms Hilder had	Not to be a director of or take part in the management of a company for		

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			Tascom Holdings  Company was placed in liquidation with creditors in excess of \$120K	breached her duty to exercise a reasonable degree of care and diligence in acting as a director of a company.	five years without ASIC approval.		
13	11 Aug 98	C I	-Greenscape International Pty Ltd - Directors of the C	Financial schemes or products being promoted over the internet. Breached fundraising provisions of the CA.	To cease promoting a prescribed interest scheme on the Internet without a deed and prospectus To remove information about a public fundraising scheme from the internet -to refund all money raised from investors so far and to stop promoting the scheme and similar schemes in the future	'Mr Longo said this was an appropriate regulatory outcome for this case'	