



ASIC
Australian Securities &
Investments Commission

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and Investments Commission**

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Committee Secretary
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Dear Secretary

ASIC submission to the Inquiry into ASIC Investigation and Enforcement – enforcement of standards in the auditing and accounting profession and recent allegations involving PwC

We refer to your letter to ASIC Chair Longo dated 19 May 2023, inviting ASIC to make a submission on

the matter of how governance laws and standards are enforced in the auditing and accounting professions and the role of ASIC in relation to recent breach of confidence allegations involving PricewaterhouseCoopers (**PwC**) and a number of its partners, including Mr Peter-John Collins.

ASIC considers the alleged conduct of Mr Collins and PwC to be a serious breach of trust, and notes referral of these issues to the Australian Federal Police.

ASIC is currently taking a number of steps to ascertain whether the conduct of any involved individuals enlivens ASIC's jurisdiction, including seeking information about those individuals to understand to what extent they hold professional registrations administered by ASIC. On receipt of that information we will determine whether investigation by ASIC is warranted in the circumstances.

ASIC's submission is set out below.

ASIC has no jurisdiction over the governance activity of partners of the big four consultancy firms

PwC Australia is a partnership established in accordance with the laws of the Australian Capital Territory (pursuant to the *Partnership Act 1963*), offering a broad range of services. ASIC's jurisdiction in relation to the auditing and accounting profession does not extend to the governance activity of partners of the big four consultancy firms, as the duties that the partners owe to partnerships (such as those that directors owe to companies) are not governed by the Corporations Act or the ASIC Act.

As individuals, partners may be subject to separate disciplinary, civil or criminal sanctions under legislation or codes that are not administered by ASIC.

Professional disciplinary bodies are responsible for breaches of codes of ethics by professionals involved in the audit and accounting industry

The auditing and accounting profession comprises a range of professionals. These professionals are generally subject to certain ethical codes and standards overseen by their relevant professional disciplinary bodies.

Tax agents are registered and monitored by the Tax Practitioners Board. Other disciplinary bodies in the auditing and accounting profession include: the CPA Australia Disciplinary Tribunal, the Chartered Accountants Australia and New Zealand Disciplinary Tribunal, and the Institute of Public Accountants Disciplinary Tribunal. The jurisdiction of these tribunals is limited to members of the relevant professional association.

ASIC's jurisdiction in relation to the auditing and accounting professions arises in certain specific circumstances

ASIC supervises companies that are registered by ASIC as Authorised Audit Companies, or entities that hold an Australian Financial Services (**AFS**) licence.

ASIC also supervises individuals who are registered by ASIC as Registered Company Auditors (**RCA**), SMSF Auditors (**SMSFA**), or Registered Liquidators (**RL**); AFS licensees and their authorised representatives; or individuals who are directors, officers or employees of companies.

ASIC can take criminal or civil action against the companies, entities, and individuals outlined above in circumstances where they have contravened specific provisions in the Corporations Act, the ASIC Act or the Superannuation Industry (Supervision) Act (or in other laws administered by ASIC) in the performance of their functions and duties. ASIC can also, in certain instances, take administrative or disciplinary action against these companies, entities and individuals.

ASIC is also able to refer RCAs to the Companies Auditors Disciplinary Board, RLs to the Liquidators Disciplinary Committee, and financial advisers to the Financial Services and Credit Panel for disciplinary or other administrative action. These bodies are constituted under the ASIC Act or Corporations Act.

ASIC's jurisdiction over companies and partnerships that are Authorised Audit Companies, Audit Firms and Australian Financial Services licensees

ASIC regulates Authorised Audit Companies (**AAC**) under the Corporations Act for compliance with auditing standards and other legislated audit requirements. The AAC registration is limited to companies, and therefore the PwC partnership is not registered as an AAC. ASIC records indicate that there are no PwC incorporated entities that are AAC's.

Although a partnership can be appointed to act as an auditor for a company, registered scheme or to an AFS licensee that is not a public company (an '**Audit Firm**'), that appointment is taken to apply only to members of the firm who are, at the date of appointment, RCAs; it does not extend to the partnership more generally.

Further, while ASIC regulates Audit Firm compliance with the auditing standards (including the auditing standard requirements around governance and firm culture), ASIC is only able to take action against an individual who is an RCA of an Audit Firm in the circumstances outlined in the following section.

ASIC also regulates entities, including companies and partnerships, that hold an AFS licence. AFS licensees are required to adhere to certain general obligations in the provision of financial services. These obligations include a requirement to ensure that the licensee has in place adequate arrangements for the management of conflicts of interest that might arise in relation to the provision of financial services by the licensee or its representatives. ASIC is able to take a broad range of action in circumstances where an AFS licensee has failed to meet its AFS license obligations in the provision of services.

PwC's investment management company, PricewaterhouseCoopers Securities Limited (ACN 003 311 617) (**PwC Securities**), holds an AFS licence. There is currently no information to indicate that the alleged misconduct occurred in connection with the provision of financial services.

ASIC's jurisdiction over individuals who are registered company auditors, SMSF auditors, registered liquidators, AFS licensees, authorised representatives, and financial advisers

In certain circumstances, the conduct of individuals may be subject to ASIC's jurisdiction, such as where those individuals also hold the role of RCA, SMSFA, RL, or where they are an AFS licensee, an authorised representative of an AFS licensee, or financial adviser. ASIC's oversight of these individuals relates to their compliance with relevant legislative requirements whilst performing their function or duty. For example, ASIC's oversight of RCAs and SMSFAs relates to their adherence to legislative requirements during the course of an audit activity, and its oversight of financial advisers relates to their provision of financial services. In some instances, ASIC is able to take criminal or civil action in relation to non-compliance with these legislative provisions.

ASIC has jurisdiction to disqualify individuals who are registered as SMSFAs, or to cancel or impose additional conditions on their registration. Where an individual has been registered with ASIC as an RCA or RL, ASIC is also able (in limited circumstances) to take action to suspend or cancel that individual's registration, and may also refer that individual to the CADB or LDC as appropriate. Possible grounds for disciplinary action by one of these disciplinary bodies include that the individual is no longer a fit and proper person to remain registered. Disciplinary action can only be taken by ASIC, the CADB or the LDC against individuals who are *currently* registered as an SMSFA, RCA or RL.

ASIC is also able to take similar action to ban individuals who are AFS licensees, or the authorised representatives of AFS licensees, from providing financial services or from carrying on a financial services business, on the grounds that they are no longer a fit and proper person to provide financial services. Authorised representatives who are financial advisers and planners are also subject to additional accountability and education requirements, including an obligation to adhere to the *Financial Planners and Advisers Code of Ethics 2019*.

Mr Peter-John Collins is not a RCA, SMSFA, or RL; however, he was an authorised representative of AFS licensee PwC Securities between 1 March 2004 and 14 July 2006, and 9 December 2013 and 6 October 2022. ASIC has been provided with information regarding Mr Collins' role in the alleged misconduct and is assessing whether there are sufficient grounds to take regulatory action to prevent Mr Collins from providing financial services in the future.

ASIC has also sought information in relation to other individuals involved in the alleged conduct to understand to what extent they hold professional registrations administered by ASIC.

ASIC's jurisdiction over directors and officers of corporations

ASIC also has jurisdiction to regulate the conduct of individuals within the auditing and accounting profession in circumstances where those individuals hold the role of director or officer of a corporation.

The Corporations Act imposes a number of duties on corporate directors and officers. These duties are owed to the company, and include the requirement to exercise powers and discharge duties with due care and diligence; and with good faith, for a proper purpose, and in the best interests of the corporation. Moreover, directors and officers of companies must not improperly use their position, or use information obtained as a result of their corporate position, to gain an advantage for themselves or someone else to the detriment of the corporation.

ASIC has not received information that indicates that the alleged misconduct occurred in connection with the management of a corporation.

Approach to culture of auditing and accounting firms in other jurisdictions

A number of international jurisdictions have moved to increase regulation in relation to auditing and accounting firms.

For example, in March 2021 the UK Government began consultation on improving the UK's audit, corporate reporting and corporate governance systems (with the release of a whitepaper entitled "*Restoring trust in audit and corporate governance*"). Since then, the UK Government has proposed the establishment of an Audit, Reporting and Governance Authority (replacing and expanding on the role of the current UK regulator, the Financial Reporting Council), and has also recently announced an update to the UK Corporate Governance Code.

The USA has also previously taken action to address major failures in corporate accounting (following the collapse of Enron and WorldCom in the early 2000s), with US Congress enacting the *Public Company Accounting Reform and Investor Protection Act of 2002* (the 'Sarbanes-Oxley Act') to improve auditing and public disclosure by audit firms. The Sarbanes-Oxley Act establishes the Public Company Accounting Oversight Board (PCAOB) and, relevantly, empowers it to conduct investigations and disciplinary proceedings concerning registered accounting firms (and associated persons) for violations of the law, including professional standards, and to take disciplinary action for those violations.

Yours sincerely,

Melissa Smith,
A/g Executive Director
Markets Enforcement