

SENATE ECONOMICS REFERENCES COMMITTEE

Inquiry into Liquidators and Administrators

**ASIC'S ADMINISTRATION OF PART 2M.3 OF THE
CORPORATIONS ACT IN RESPECT OF COMPANIES**

SUBJECT TO PART 5.3A

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EXECUTIVE SUMMARY

- i. Part 5.3A of the Corporations Act does NOT override the Part 2M.3 financial reporting obligations that apply to companies or the Part 2M.2 obligation to keep financial records that would enable true and fair financial statements to be prepared and audited.**

- ii. ASIC has not sufficiently administered Part 2M.3 and Part 2M.2 against companies subject to the control of administrators**

- iii. ASIC has not sufficiently applied its own policies in Regulatory Guide 174 including when making instruments of individual relief from financial reporting for companies subject to Part 5.3A**

- iv. ASIC's administration of Part 2M.3 against companies subject to Part 5.3A has contributed to many of these companies not maintaining financial records in accordance with Part 2M.2 after the appointment of the administrator**

- v. ASIC has not sufficiently maintained the public record in respect of instruments of individual relief from financial reporting granted to companies subject to Part 5.3A**

1 INTRODUCTORY COMMENTS

- 1.1 Insolvency professionals are individuals and like all economic agents they will make decisions and take actions after due consideration of the regulatory framework within which they operate. Insolvency professionals are more likely to act opportunistically and in their self-interest to the detriment of third parties when the regulatory framework settings are weak. There are two weaknesses in Australia's current regulatory settings for insolvency professionals that should be under the consideration of the inquiry.
- 1.2 The first weakness, which is not the focus of this submission, is that enforcement action against insolvency professionals is perceived to be a remote possibility. When ASIC cannot or will not act against the repeated misdemeanours of major accounting and insolvency firms – refer to the cases at Sections 5 and 6 of this submission – do not be surprised if a culture of fearlessness spreads throughout the industry and gambles are taken on white collar crime.
- 1.3 The second source of weakness, which is the *raison d'être* of this submission, is that Part 2M.3 of the Corporations Act is commonly abused by administrators in control of listed public companies subject to Part 5.3A. In practice the insolvency profession and ASIC act together as if the transparency of financial information to shareholders, timely audited accounts, and the maintenance of financial records are matters of no importance to administrators of Part 5.3A companies.
- 1.4 The sources of the complaints and concerns that have led to this inquiry are not the personality defects of individuals but the non-transparency and non-accountability of administrators having stewardship of Part 5.3A companies.
- 1.5 Overcharging by insolvency professionals is a consequence of the financial affairs of the administration being opaque. Cash flows for fees are easy to manipulate by merely deferring payment. Timely accrual based accounts that disclose the amount of professional fees makes the information plain for all stakeholders. Auditors' fees are transparent in accounts and so should be administrators' fees.
- 1.6 Want an early warning sign for a bad administrator apple? Late financial reports, poor accounting practices and poorly maintained accounting records are notorious as early warning signs of corporate malpractice. Were the annual financial reports of Carlovers Carwash Limited lodged in accordance with the Corporations Act after the appointment of the administrator? No they were not.
- 1.7 ASIC can electronically identify the Part 5.3A companies that have deficient financial reporting lodgements and ask questions of administrators at an early stage. What ASIC requires is the political will to do it.
- 1.8 The remainder of this submission is organised as follows. Sections 2 & 3 provide a brief summary of ASIC's policies in respect of financial reporting by companies subject to Part 5.3A. Sections 4, 5 & 6 provide comprehensive evidence of regulatory failure in the form of missing accounts and derelict financial records. Section 7 outlines serious problems in ASIC's management of instruments of financial reporting relief.

2 PART 2M.2, PART 2M.3, PART 5.3A AND ASIC POLICY 1993 TO 2003

2.1 Current provisions of the Corporations Act relevant to maintaining financial records and financial reporting are as follows:

| | |
|----------|---|
| 286 | Obligation to keep financial records |
| 292, 319 | Annual financial report lodged within 3 months after financial year end |
| 301 | Annual financial report must be audited |
| 340, 341 | ASIC's power to make specific exemption orders or class orders |
| 302, 320 | Half-year financial report lodged within 75 days after half-year end |
| 309 | Half year financial report must be audited or reviewed |

2.2 ASIC's management of policy on financial reporting relief for Part 5.3A companies has a chequered history. Recall that Part 5.3A of the Corporations Act is effective 1 July 1993.

2.3 ASIC Policy Statement PS 43 'Accounts and Audit Relief' issued 18 January 1993 set out the policies for granting individual relief from the accounts and audit requirements in (then) Part 3.6 pursuant to applications made under (then) section 313. ASIC indicated that it would be inclined to grant relief where a receiver (or receiver manager) had taken over the management of all or significant part of day to day operations of the company. PS 43 was updated by ASIC on 17 June 1996 (after the commencement of Part 5.3A) and then remained in a steady state for a number of years thereafter. Notwithstanding this PS 43 has never included any discussion of the relief ASIC might offer in circumstances where a voluntary administrator or deed administrator had taken over the management of the company under Part 5.3A and the conditions for such relief.

2.4 ASIC Policy Statement PS 95 'Disclosing Entity provisions relief' was issued 24 July 1995 and ASIC dealt with the scenario of companies in receivership obtaining relief from the requirement for half yearly accounts but again it ignored companies subject to the VA procedure or DOCAs.

2.5 ASIC finally initiated a project to review Policy Statement PS 43 taking into account the VA procedure of Part 5.3A towards the end of 2001. The project ultimately resulted in the release of Class order C0/392 'Externally administered companies: Financial reporting relief' and ASIC Policy Statement PS 174 'Externally administered companies: Financial reporting and AGMs' on 5 June 2003.

2.6 Professor Berna Collier, ASIC Commissioner, to the IPAA Conference Management on 28 May 2003 describes the state of Part 2M.3 financial reporting by Part 5.3A companies prior to 2003 as follows:

The law provides no automatic exemptions to these requirements [financial reporting obligations in Part 2M.3] when a company is under any form of insolvency administration. Accordingly, technically the administrator, for example is required to prepare and lodge financial reports on top of his or her other duties.

The problem was that many insolvency practitioners were not doing this – presumably because they weren't aware of this obligation.

3 ASIC'S POLICIES IN CO 03/392 AND RG 174: JUNE 2003

3.1 Class order CO 03/392 'Externally administered companies: Financial reporting relief' allows administrators a deferral of up to 6 months after the date of their appointment to meet any financial reporting deadlines for annual or half-yearly financial reports. The purpose of CO/0392 is to allow administrators some breathing space to arrange affairs for the important 2nd creditors meeting without the distraction of financial reporting compliance. Conditions of the class order relief in CO/0392 are that ASIC must be notified that the company is relying on the instrument and listed companies must at the same time also notify the relevant market operator.

3.2 ASIC Regulatory Guide 174 'Externally administered companies: Financial reporting and AGMs' outlines the relief available to externally administered companies from financial reporting obligations in Part 2M.3. ASIC's financial reporting relief may defer the application of Part 2M.3 to a company or exempt the company from the application of Part 2M.3.

3.3 ASIC's policy is that creditors should be advised of the costs of Part 2M.3 financial reports at an early stage in the administration.

RG 174.29 [ASIC] will not grant relief from financial reporting obligations merely because a company is being externally administered. When forming opinions or making recommendations about a company, external administrators and directors should make allowances for all the company's legal obligations including obligations under Part 2M.3. Creditors should be made aware of the costs of meeting those obligations when considering resolutions about the company's future.

3.4 ASIC's policy is that an administrator should cause Part 2M.3 reports to be prepared six months after appointment.

RG 174.18 [ASIC] considers that a deferral of up to six months gives the external administrator time to attend to the most urgent post-appointment matters, become familiar with the affairs of the company and cause the Part 2M.3 reports to be prepared, audited, lodged and for annual reports distributed.

3.5 ASIC's policy is that administrators of deeds of company arrangement are in a less severe position than voluntary administrators but may nonetheless apply for individual relief.

RG 174.22 [ASIC] have excluded from our class order relief companies that are subject to a DCA. DCAs are not an initial form of external administration and usually the deed administrator is the same person as the preceding voluntary administrator: see s444A(2). The initial burdens created by time, financial and human resources constraints are therefore less severe. However a company subject to a DCA may apply for individual relief if it considers, that in particular circumstances, compliance with financial reporting obligations would impose unreasonable burdens

- 3.6 ASIC's policy on granting exemption relief to Part 2M.3 financial reporting obligations protects shareholders from being deprived of financial information except where they have no ongoing economic interest.

RG 174.31 [ASIC] are generally likely to grant an exemption from all the financial reporting obligations (including any previously deferred financial reporting obligations) where:

- (a) The external administrator exercises all or most of the management functions and powers; and***
- (b) The application for relief contains a declaration by the external administrator that, in their reasonable opinion, the members have no ongoing economic interest in the company; and***
- (c) If the external administrator is a deed administrator. . . [ASIC] are satisfied that the company's business will be carried on only so far as is necessary to enable an orderly disposal of the whole or substantially the whole of the company's business and property.***

4 THE LAW AND RG 174 IGNORED BY ADMINISTRATORS IN PRACTICE

4.1 There is no evidence in the Reports to Creditors prepared by listed public companies subject to Part 5.3A that creditors are advised by administrators of the costs of Part 2M.3 financial reporting before making a decision to enter into deeds of company arrangement. ASIC's policy at GR 174.18 is ignored in practice.

4.2 Professor Berna Collier, ASIC Commissioner, to the Practical Insolvency and Practice Management Conference on 15 March 2004 describes the ongoing 'confusion' that administrators have with Part 2M.3 financial reporting as follows:

ASIC's experience to date has shown that many external administrators are either still not familiar with the policy and class order or are not taking the necessary steps to seek an extension of time to lodge the company accounts or to defer these obligations.

21 externally administered companies that were not entitled to the benefit of the Class Order did not lodge accounts within time or make applications for individual relief for the year ended 30 June 2003.

4.3 The financial reporting practices of administrators have not improved since.

4.4 Section 5 of this submission outlines 47 cases where administrator's failed to meet the Part 2M.3 obligations for listed public company accounts. These are companies where the public are entitled to good financial reporting practices rather than missing accounts or accounts lodged months or years after when they are supposed to be lodged.

4.5 There is no further evidence of ASIC's education of insolvency professionals in respect of Part 2M.3 obligations and there is no evidence that ASIC has ever acted against an administrator for failing to meet Part 2M.3 obligations.

4.6 The inquiry should be aware that ASIC recently received a complaint about missing 2008 annual accounts and 2009 half year accounts of a listed public company, Compass Resources Limited (Subject to Deed of Company Arrangement). ASIC declined to take any action in respect of the complaint on the basis of advice from the administrator that creditors are concerned about the cost of the audit.

4.7 Missing financial reports for listed public companies is embarrassing enough for the Australian market place but even more objectionable than this is the dereliction of administrators in maintaining the financial records of listed companies under their control.

4.8 Section 6 of this submission outlines 22 cases where auditors have identified missing or incomplete financial records of listed public companies emerging from Part 5.3A.

5 CASE STUDIES OF LATE AND MISSING PART 2M.3 FINANCIAL REPORTS FOR LISTED PUBLIC COMPANIES SUBJECT TO PART 5.3A

5.1 Objectif Telecommunications Limited – Late and Missing Accounts

| | |
|--------------------|--|
| VA Begins | 31 January 2003 |
| DOCA Ends | 30 March 2004 |
| Administrators | A. Duncan and B. Cotter of Knights Insolvency |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2003 released 12 May 2004. |
| Missing Financials | Half year financial report for 31 December 2002 not prepared |

5.2 Stockford Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 24 February 2003 |
| DOCA Ends | 26 June 2009 |
| Administrators | M. Mentha and M. Korda of KordaMentha |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2007 financials onwards |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2003 not prepared Half year financial report for 31 December 2003 not prepared |

5.3 Integra Medical Imaging Limited – Late Accounts

| | |
|--------------------|--|
| VA Begins | 14 March 2003 |
| DOCA Ends | 28 November 2003 |
| Administrators | D. Lockwood and L. Fitzgerald of Horwath |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2003 released 3 February 2004 |

5.4 Black Range Minerals Limited – Late Accounts

| | |
|--------------------|---|
| VA Begins | 31 March 2003 |
| DOCA Ends | 22 September 2004 |
| Administrators | A. McGrath and J. Hayes of KPMG |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2004 financials |
| Next Financials | 30 June 2003 released 20 November 2004 |

5.5 Australian Growth Limited – Missing Accounts

| | |
|----------------------|---|
| VA Begins | 2 July 2003 |
| DOCA Ends | 28 April 2005 |
| Administrators | S. Read and J Herbert of PPB |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2003 financials onwards |
| Next Financials | 30 June 2005 released 30 September 2005 |
| Missing Financials | Annual financial report for 30 June 2003 not prepared |
| Audit report extract | The consolidated entity was in administration from 1 July 2003 to 29 April 2005 and the financial report of the consolidated entity was not audited during this period. It has not been practicable for us to carry out normal audit procedures relating to the confirmation of certain assets and liabilities as at 30 June 2004 or to the statement of financial performance and cash flow statement for the year then ended. |

5.6 Western Metals Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 18 July 2003 |
| DOCA Ends | 18 November 2005 |
| Administrators | M. Jones and G. Trevor of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2003 financials issued September 2004 and ongoing exemptions for 30 June 2004 financials onwards |
| Next Financials | 30 June 2006 released 29 September 2006 |
| Missing Financials | Annual financial report for 30 June 2003 not prepared |
| Audit report extract | <p>As disclosed at Note 1a, annual financial statements have not been prepared or audited since the 30 June 2002 financial report. Accordingly, no comparative financial information has been prepared in respect of the year ended 30 June 2005.</p> <p>In addition we have been unable to determine whether the 1 July 2005 opening balances for the year ended 30 June 2006 are fairly stated. As these opening balances enter into the determination of the income statement and the statement of cashflows for the year ended 30 June 2006 we are unable to determine whether any adjustment to the statement of income, statement of cash flows or related notes may be necessary for the year ended 30 June 2006.</p> |

5.7 P.O.S. Media Online Limited – Late Accounts

| | |
|--------------------|---|
| VA Begins | 10 September 2003 |
| DOCA Ends | 22 April 2005 |
| Administrators | R. Elliott and R. Albarran of Hall Chadwick |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 December 2003 released 27 June 2005 |

5.8 Jacobsen Entertainment Limited – Late Accounts

| | |
|--------------------|---|
| VA Begins | 30 September 2003 |
| DOCA Ends | 16 August 2004 |
| Administrators | M. Korda and M. Mentha of KordaMentha |
| Class order relief | Yes – Deferral relief for 30 June 2003 financials until 30 March 2004 |
| Individual relief | No |
| Next Financials | 30 June 2003 released 31 May 2004 |

5.9 Federation Group Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 23 October 2003 |
| DOCA Ends | 30 May 2005 |
| Administrators | B.Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2004 and 31 December 2004 financials to 30 September 2005 |
| Next Financials | None – Company in liquidation from 30 May 2005 |
| Missing Financials | Half year financial report for 31 December 2003 not prepared |

5.10 Poltech International Limited – Late and Missing Accounts

| | |
|--------------------|---|
| VA Begins | 13 November 2003 |
| DOCA Ends | 6 July 2004 |
| Administrators | J. Lindholm and G. Georges of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2004 financials until 16 March 2005 |
| Next Financials | 30 June 2004 released 20 December 2004 |
| Missing Financials | Half year financial report for 31 December 2003 not prepared |

5.11 Southern Pacific Petroleum NL – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 13 February 2004 |
| DOCA Ends | 28 May 2008 |
| Administrators | P. Geroff, W. Colwell and A. Love of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2007 financials |
| Next Financials | 31 December 2008 released 25 March 2009 |
| Missing Financials | Annual financial reports for 31 December 2003 and 31 December 2004 not prepared Half year financial report for 30 June 2004 not prepared |
| Audit report extract | As disclosed at note 1, annual and interim financial statements of the company have not been prepared for reporting periods 1 July 2003 to 31 December 2007Consequently, no comparative financial information has been . . . presented as comparatives in respect of the financial year ended, and as at 31 December 2008. |

5.12 Quiktrak Networks Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 11 May 2004 |
| DOCA Ends | 25 July 2005 |
| Administrators | J. Lord and J. Morgan of PKF |
| Class order relief | No |
| Individual relief | Not applicable |
| Next Financials | 30 June 2006 released 29 September 2006 |
| Missing Financials | Annual financial report for 30 June 2004 not prepared Half year financial report for 31 December 2004 not prepared |
| Audit report extract | The comparative financial information for the period ended, and as at, 30 June 2005 were not previously reported by the company and the consolidated entity and accordingly were not subject to audit. It has not been practicable for us to carry out normal audit procedures relating to the confirmation of certain assets and liabilities as at 30 June 2005 or to the income statement, cash flow statement and associated disclosures for the period ended 30 June 2005. |

5.13 CMC Power Systems Limited – Late Accounts

| | |
|--------------------|-----------------------------------|
| VA Begins | 8 July 2004 |
| DOCA Ends | 28 November 2005 |
| Administrators | P. Krejci and M. Green of GHK |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2004 released 18 May 2005 |

5.14 Lach Drummond Resources Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 9 July 2004 |
| DOCA Ends | 9 May 2005 |
| Administrators | B.Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2004 and 31 December 2004 financials until 15 September 2005 |
| Next Financials | 30 June 2005 (2 month accounts) released 27 September 2005 |
| Missing Financials | Annual financial report for 30 June 2004 not prepared Half year financial report for 31 December 2004 not prepared |

5.15 Flowcom Limited – Missing Accounts

| | |
|--------------------|--|
| VA Begins | 14 July 2004 |
| DOCA Ends | 14 November 2005 |
| Administrators | A. Duncan and R. Whitton of Lawler Partners |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2004 financials onwards |
| Next Financials | 31 December 2005 released 16 March 2006 |
| Missing Financials | Annual financial report for 30 June 2004 not prepared |

5.16 Wytomic Limited – Missing Accounts

| | |
|----------------------|---|
| VA Begins | 31 August 2004 |
| DOCA Ends | 7 July 2006 |
| Administrators | B.Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 31 December 2005 financials until 15 September 2006 Yes – Exemption relief for 30 June 2006 financials |
| Next Financials | 31 December 2006 released 16 February 2007 |
| Missing Financials | Annual financial report for 30 June 2005 not prepared Half year financial report for 31 December 2005 not prepared |
| Audit report extract | The financial report does not include comparatives. The company has obtained reporting relief from ASIC regarding the Company's failure to prepare financial statements since 31 December 2003 half yearly report. [NOT TRUE] |

5.17 RMG Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 28 April 2005 |
| DOCA Ends | 28 April 2006 |
| Administrators | W. Benton and R. Slattery of PPB |
| Class order relief | No |
| Individual relief | Not applicable |
| Next Financials | 30 June 2006 released 13 September 2006 |
| Missing Financials | Annual financial report for 30 June 2005 not prepared Half year financial report for 31 December 2005 not prepared |
| Audit report extract | <p>As disclosed at note 1(a), annual financial statements have not been prepared or audited since the 30 June 2004 financial report. No comparative financial information has been prepared in respect of the year ended 30 June 2006.</p> <p>In addition, we have been unable to obtain sufficient appropriate audit evidence to satisfy ourselves as to the carrying amount of assets and liabilities at 1 July 2005 (opening balances).</p> |

5.18 TVSN Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 28 October 2004 |
| DOCA Ends | 23 January 2007 |
| Administrators | P. Billingham and T Pogroske of Grant Thornton |
| Class order relief | No |
| Individual relief | Yes – Exemption for 30 June 2006 financials |
| Next Financials | 31 December 2006 released 28 February 2007 |
| Missing Financials | Half year financial report for 31 December 2004 not prepared Annual financial report for 30 June 2005 not prepared |
| Audit report extract | <p>As disclosed in note 1(a), annual and interim financial statements of the company have not been prepared, audited or reviewed for the reporting periods from 1 July 2004 to 30 June 2006. Consequently, no comparative financial information has been prepared in respect of the half year ended 31 December 2006.</p> <p>In addition, and as a consequence of the absence of comparatives for the company, we have been unable to obtain sufficient appropriate audit evidence to satisfy ourselves as to the carrying amounts of assets, liabilities and equity as at 1 July 2006 which comprise opening balances for the period.</p> |

5.19 Media World Communications Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 22 September 2004 |
| DOCA Ends | 17 May 2005 |
| Administrators | C. Crosbie of PPB |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None – Company in liquidation from 17 May 2005 |
| Missing Financials | Annual financial report for 30 June 2004 not prepared Half year financial report for 31 December 2004 not prepared |

5.20 Didasko Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 5 May 2005 |
| DOCA Ends | 2 December 2005 |
| Administrators | R. Elliott, G. McDonald and R. Albarran of Hall Chadwick |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2005 not prepared Half year financial report for 31 December 2005 not prepared |

5.21 Chameleon Mining NL – Late Accounts

| | |
|--------------------|------------------------------------|
| VA Begins | 18 July 2005 |
| DOCA Ends | 28 April 2006 |
| Administrators | J. Vouris of Vouris & Bell |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2005 released 29 June 2007 |

5.22 Australis Mining Corporation Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 31 October 2005 |
| DOCA Ends | Still subject to DOCA |
| Administrators | R. Elliott and R. Albarran of Hall Chadwick |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2005 not prepared Annual financial report for 30 June 2006 not prepared |

5.23 Giants Reef Mining Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 27 January 2006 |
| DOCA Ends | 3 October 2006 |
| Administrators | B. Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials |
| Next Financials | 31 December 2005 released 29 November 2006 |
| Audit report extract | The Administrator has not received or had made available all of the accounting records of the company and has no indication of their existence or otherwise. |

5.24 McKinley Company Limited – Missing Accounts

| | |
|----------------------|---|
| VA Begins | 31 January 2006 |
| DOCA Ends | 23 August 2006 |
| Administrators | M. Holzman of Holzman Associates |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials |
| Next Financials | 31 December 2006 released 8 February 2007 |
| Missing Financials | Half year report for 31 December 2005 not prepared |
| Audit report extract | As disclosed in Note 1, audited financial statements have not been prepared since 30 June 2005 financial report. Accordingly, no comparative financial information has been prepared in respect of the half year ended 31 December 2005 or at 30 June 2006. |

5.25 Global Seafood Australia Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 16 February 2006 |
| DOCA Ends | 23 August 2006 |
| Administrators | A. Birch and A. Fielding of PPB |
| Class order relief | Yes – Deferral for 31 December 2005 financials until 16 August 2006 |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials and onwards |
| Next Financials | 31 December 2006 released 22 February 2007 |
| Missing Financials | Half year financial report for 31 December 2005 not prepared |
| Audit report extract | As disclosed in Note 1, audited financial statements have not been prepared since the 30 June 2005 financial report. Accordingly, no comparative financial information has been prepared in respect of the half-year ended 31 December 2005 or as at 30 June 2006. |

5.26 Comdek Limited – Missing Accounts

| | |
|----------------------|--|
| VA Begins | 21 February 2006 |
| DOCA Ends | 29 November 2006 |
| Administrators | B. McMaster and O. Zohar of KordaMentha |
| Class order relief | Yes – Deferral for 31 December 2005 Financials until 21 August 2006 |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials onwards |
| Next Financials | 31 December 2006 released 28 February 2007 |
| Missing Financials | Half year financial report for 31 December 2005 not prepared |
| Audit report extract | <p>As disclosed in Note 1, audited financial statements have not been prepared since the 30 June 2005 financial report. Accordingly, no comparative financial information has been prepared in respect of the half year ended 31 December 2005 or at 30 June 2006.</p> <p>In addition we have been unable to determine whether the 1 July 2006 opening balances for the half year ended 31 December 2006 are fairly stated. Had we been able to complete our review of these balances, matters might have come to our attention indicating that adjustments might be necessary to the financial report for the half year ended 31 December 2006.</p> |

5.27 Croesus Mining NL – Late Accounts

| | |
|--------------------|---|
| VA Begins | 23 June 2006 |
| DOCA Ends | 17 April 2008 |
| Administrators | B. Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials |
| Next Financials | 30 June 2007 released 10 December 2007 with no comparative financial information for 30 June 2006 |

5.28 Cape Range Wireless Limited – Late Accounts

| | |
|--------------------|---|
| VA Begins | 11 October 2006 |
| DOCA Ends | 20 March 2008 |
| Administrators | B. Hughes and C. Munday of Pitcher Partners |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 December 2006 released 18 April 2008 |

5.29 Green X Global Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 17 November 2006 |
| DOCA Ends | Still subject to DOCA |
| Administrators | R. Whitton of Lawler Partners |
| Class order relief | Yes – Deferral relief for 31 December 2006 financials until 17 May 2007 |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2006 not prepared Annual financial report for 30 June 2007 not prepared |

5.30 Green Pacific Energy Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 24 May 2007 |
| DOCA Ends | 4 April 2008 |
| Administrators | G. Hall of PWC |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2007 financials until 31 January 2008 |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2007 not prepared Half year financial report for 31 December 2007 not prepared |

5.31 Chemeq Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 30 May 2007 |
| DOCA Ends | Still subject to DOCA |
| Administrators | B. McMaster and D. Winterbottom of KordaMentha |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2007 not prepared Half year financial report for 31 December 2007 not prepared |

5.32 View Resources Ltd – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 8 February 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | A. Saker and D. Weaver of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2007 not prepared Annual financial report for 30 June 2008 not prepared |

5.33 Reeltime Media Ltd – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 6 March 2008 |
| DOCA Ends | 12 April 2010 |
| Administrators | M. Jones, A. Saker and D. Weaver of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2008 not prepared Half year financial report for 31 December 2008 not prepared |

5.34 Guilford Investments Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 30 April 2008 |
| DOCA Ends | 19 December 2008 |
| Administrators | R. Cauchi and P. Gountzos of CJL Partners |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2008 financials until 27 February 2009 |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2008 not prepared Half year financial report for 31 December 2008 not prepared |

5.35 Harvest Living Limited – Late Accounts

| | |
|--------------------|--|
| VA Begins | 6 June 2008 |
| DOCA Ends | 27 May 2009 |
| Administrators | S. Longley, D. McEvoy & T. Cuming of PWC |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2008 released 15 October 2009 |

5.36 Ellect Holdings Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 10 June 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | M. Ryan of Taylor Woodings |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2008 not prepared Half year financial report for 31 December 2008 not prepared |

5.37 Monarch Gold Mining Company Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 17 July 2008 |
| DOCA Ends | 26 February 2010 |
| Administrators | B. Hughes and C. Munday of Pitcher Partners |
| Class order relief | Yes – Deferral relief for 30 June 2008 financials until 17 January 2007 |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial reports for 30 June 2008 and 30 June 2009 not prepared Half year financial report for 31 December 2008 not prepared |

5.38 Asset Loans Ltd – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 9 September 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | J. Greig and R. Hughes of Deloitte |
| Class order relief | Yes – Deferral relief for 30 June 2008 financials until 9 March 2009 |
| Individual relief | Yes – Deferral relief for 30 June 2008 financials until 16 September 2009 |
| Next Financials | None |
| Missing Financials | Annual financial reports for 30 June 2008 and 30 June 2009 not prepared Half year financial report for 31 December 2008 not prepared |

5.39 Octaviar Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 13 September 2008 |
| DOCA Ends | 4 August 2009 |
| Administrators | J. Greig and N. Harwood of Deloitte |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial report for 30 June 2008 not prepared Half year financial report for 31 December 2008 not prepared |

5.40 Oz Brewing Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 17 September 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | K. Judge of Judge Constable |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Annual financial reports for 30 June 2008 and 30 June 2009 not prepared Half year financial report for 31 December 2008 not prepared |

5.41 Optima ICM Limited – Late and Missing Accounts

| | |
|--------------------|--|
| VA Begins | 6 November 2008 |
| DOCA Ends | 22 October 2009 |
| Administrators | D. Mansfield and R. Porter of Moore Stephens |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2009 released 25 November 2009 |
| Missing Financials | Half year financial report for 31 December 2008 not prepared |

5.42 Matilda Minerals Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 21 October 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | M. Jones, A. Saker and D. Weaver of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2008 not prepared Annual financial report for 30 June 2009 not prepared |

5.43 Apollo Life Sciences Limited – Late Accounts

| | |
|--------------------|--|
| VA Begins | 24 October 2008 |
| DOCA Ends | 2 October 2009 |
| Administrators | D. Young and A. Elkerton of Pitcher Partners |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 December 2008 released 5 October 2009 |

5.44 A.B.C. Learning Centres Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 6 November 2008 |
| DOCA Ends | Still subject to VA |
| Administrators | P. Walker and G. Moloney of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2008 not prepared Annual financial report for 30 June 2009 not prepared |

5.45 Allco HIT Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 12 November 2008 |
| DOCA Ends | 18 March 2010 |
| Administrators | G. Singleton and C. Hill of PPB |
| Class order relief | No |
| Individual relief | No |
| Next Financials | None - Company in liquidation from 18 March 2010 |
| Missing Financials | Half year financial report for 31 December 2008 not prepared Annual financial report for 30 June 2009 not prepared |

5.46 Portland Orthopaedics Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 2 December 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | R. Whitten and B. Tonks of Lawler Partners |
| Class order relief | Yes – Deferral relief for 31 December 2008 financials until 2 June 2009 |
| Individual relief | No |
| Next Financials | None |
| Missing Financials | Half year financial report for 31 December 2008 not prepared Annual financial report for 30 June 2009 not prepared |

5.47 Compass Resources Limited – Missing Accounts

| | |
|--------------------|---|
| VA Begins | 29 January 2009 |
| DOCA Ends | Still subject to DOCA |
| Administrators | M. Jones, S. Sherman and D. Weaver of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2009 financials onwards |
| Next Financials | None |
| Missing Financials | Annual financial report for 31 December 2008 not prepared Half year financial report for 30 June 2009 not prepared |

6 **CASE STUDIES OF DEFICIENT FINANCIAL RECORDS OF LISTED PUBLIC COMPANIES SUBJECT TO PART 5.3A**

6.1 Australian Visual Communications Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 18 February 2003 |
| DOCA Ends | 2 December 2005 |
| Administrators | Geoff McDonald and Richard Albarran of Hall Chadwick |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2003 released November 2005 |
| Audit report extract | The “New Directors” have not been able to obtain all the records required for the period prior to and during the administration. |

6.2 W C Penfold Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 8 March 2004 |
| DOCA Ends | 13 May 2005 |
| Administrators | J. Greig and D. Lombe of Deloitte |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2004 released 21 January 2005 |
| Audit report extract | <p>Due to events outlined in note 1 to the financial statements we have not received all the information and explanation we required and therefore we cannot attest to the completeness and accuracy of the following specific items contained within the consolidated statement of financial performance:</p> <ul style="list-style-type: none"> • Revenue from ordinary activities • Finished goods used • Inventory obsolescence and shrinkage • Employee benefit expenses • Occupancy costs • Distribution costs • Telecommunication costs • Other expenses from ordinary activities <p><u>Note 1</u> During the financial year, the completeness and accuracy of the consolidated entities financial records were impaired due to:</p> <ul style="list-style-type: none"> • Relocation of head office resulting in misplacement of files and records <p><u>Report to Creditors dated 26 May 2004</u> In our opinion the books and records of both WCP and WCPL have been maintained in accordance with the requirements of Section 286 of the Act.</p> |

6.3 Heat Exchangers International Limited – Late Accounts

| | |
|----------------------|---|
| VA Begins | 29 September 2003 |
| DOCA Ends | 28 October 2004 |
| Administrators | J. Lindholm and G Georges of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2003 released 6 July 2004 |
| Audit report extract | As reported in 2001 the source books and records maintained by the company were previously removed by the receiver and manager [M. Mentha of Arthur Andersen] and have been stored in a manner that inhibited the sorting and searching for records made these tasks impractical to complete. Due to the state of the financial records as described, we were unable to access evidence supporting the amounts and other disclosures in the financial report. |

6.4 Kaefer Technologies Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 23 April 2004 |
| DOCA Ends | 18 March 2005 |
| Administrators | J. Herbert and C. Rocke of PPB |
| Class order relief | Yes – Deferral relief for 30 June 2004 financials until 29 October 2004 |
| Individual relief | Not applicable |
| Next Financials | 30 June 2004 released 10 February 2005 |
| Audit report extract | The administrators and directors of the company and the controlled entities have been unable to provide us with adequate accounting records to support the current and non-current provision balances of \$873,000 and \$425,000 respectively shown on the Statement of Financial Position. The provisions consist of employee annual leave of \$873,000 and long service leave entitlements of \$425,000. |

6.5 Transol Corporation Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 14 July 2005 |
| DOCA Ends | 1 September 2006 |
| Administrators | S. Dixon and L. Fitzgerald of Horwath |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2005 released 29 September 2006 |
| Audit report extract | <p>As noted in the directors declaration due to the Parent Entity being subject to external administration and Receiver & Manager appointed for the period 15 July 2005 to 7 February 2006 and the associated disposal of the US based Red Light Camera business, complete records have not been able to be located.</p> <p>The management and affairs of the Company were not under the control of Directors during the period in which the affairs were under the control of the Receiver & Manager. During that period books and records of the economic entity required for the preparation of the financial reports were either not preserved or made available to the Company and its accountants.</p> |

6.6 Advanced Energy Systems Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 31 August 2004 |
| DOCA Ends | 28 September 2007 |
| Administrators | B. McMaster of KordaMentha |
| Class order relief | No |
| Individual relief | Yes – Deferral relief for 30 June 2004 financials until 16 May 2005 |
| Next Financials | 30 June 2004 released 29 June 2005 |
| Audit report extract | <p>There did not exist sufficient appropriate audit evidence for us to form an opinion on the following areas of the financial statements and accompanying notes, and as such, we do not express any opinion on these areas:</p> <ul style="list-style-type: none"> • The Statement of Financial Performance • The Statement of Cash Flows • Cash Assets • Payables • Note 2 – Revenue from ordinary activities • Note 3 – Expenses and Losses/(Gains) |

6.7 Environmental Solutions International Limited – Late and Missing Accounts

| | |
|----------------------|--|
| VA Begins | 19 November 2004 |
| DOCA Ends | 15 December 2005 |
| Administrators | B. Hughes and V. Smith of Pitcher Partners |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2004 released 10 February 2005. |
| Missing Financials | Half year financial report for 31 December 2004 not prepared. |
| Audit report extract | <p>As a result of the Company going into administration in November 2004, entering into the Deed of Company Arrangement executed on 6 January 2005 and the Reconstruction Deed executed on 25 August 2005, the previous directors of the company and the deed administrators were responsible for maintaining the financial records of the company and consolidated entity during the financial year. As a result of these events, we have been unable to obtain sufficient appropriate audit evidence to enable us to form an opinion on the classification and measurement of revenues and expenses between the various line items presented in the statement of financial performance and notes thereto, or the gross cash inflows and cash outflows presented in the statement of cash flows and notes thereto, in respect of the financial year ended 30 June 2005. We have however obtained sufficient appropriate audit evidence to satisfy ourselves as to the overall net loss, and the overall net decrease in cash held, for the financial year ended 30 June 2005.</p> <p>Note 27 to the financial statements discloses details of transactions with related parties. As a result of the events discussed in qualification paragraph (a), we have been unable to obtain sufficient appropriate audit evidence to enable us to form an opinion as to the accuracy and completeness of the disclosed transactions with related parties, and accordingly, whether the requirements of Accounting Standards AASB 1017 <i>Related Party Disclosures</i> and AASB 1046 <i>Director and Executive Disclosures by Disclosing Entities</i> have been complied with.</p> |

6.8 Sam's Seafood Holdings Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 20 May 2005 |
| DOCA Ends | 30 August 2007 |
| Administrators | A. Fielding and J. Williams of PPB |
| Class order relief | Yes – Deferral relief for 30 June 2005 financials until 20 December 2005 |
| Individual relief | Yes – Exemption relief for 30 June 2006 onwards |
| Next Financials | 30 June 2005 released 2 April 2008 |
| Audit report extract | The execution of the deed of company arrangement resulted in the company retaining only certain specified assets and settling all existing creditor claims. No persons previously employed by the company remained at this date and accounting records to support all transactions and balances, including those relating to assets not retained and liabilities settled, are not readily available. |

6.9 Knights Insolvency Administration Limited – Late Accounts

| | |
|----------------------|---|
| VA Begins | 29 August 2005 |
| DOCA Ends | 15 June 2006 |
| Administrators | T. Sims and G. Sparks of Sims Partners |
| Class order relief | Yes – Deferral relief for 30 June 2005 financials until 30 February 2006 |
| Individual relief | No |
| Next Financials | 30 June 2005 released 14 December 2006 |
| Audit report extract | The execution of the deed of company arrangement occurred prior to our appointment as auditor and resulted in the company retaining only specified assets and settling all existing creditor claims. No previous persons employed by the company remained at this date and accounting records to support all transactions and balances, including those relating to assets not retained and liabilities settled, are not readily available. |

6.10 G Retail Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 28 November 2005 |
| DOCA Ends | 15 August 2006 |
| Administrators | P. Yates and D. Lombe of Deloitte |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 July 2006 released 24 January 2007 |
| Audit report extract | As the accounting records maintained during the period in which the companies in the consolidated entity were under Administration are not adequate to permit the application of necessary audit procedures we are unable to obtain all the information and explanations we require in order to form an opinion on the financial report. |

6.11 Worldaudio Limited

| | |
|----------------------|--|
| VA Begins | 21 March 2006 |
| DOCA Ends | 20 December 2006 |
| Administrators | Geoff McDonald and Richard Albarran of Hall Chadwick |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2006 financials |
| Next Financials | 30 June 2007 released 19 September 2007 |
| Audit report extract | The income statement and cashflow statement have been prepared for the 24 month period ended 30 June 2007. As discussed at Note 1 to the financial statements the Company was under external administration from 21 March 2006 to 20 December 2006 and as such has been unable to separate the loss as disclosed in the income statement and movements in the cash balances as disclosed in the cashflow statement into two discrete 12 monthly reporting periods as required by section 323D of the Corporations Act, 2001. |

6.12 Cumminscorp Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 17 November 2006 |
| DOCA Ends | 20 April 2009 |
| Administrators | G. Collins and M. Joiner of JCJ Partners |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 December 2006 released 16 January 2008 |
| Audit report extract | We have been advised that the company did not conduct a stock take at half year ended 31 December 2006. The company does not maintain perpetual stock records or sufficient other supporting records to enable us to determine the reliability of the stock figures presented to us as the appropriate carrying value of stock at half year end. |

6.13 Computronics Holdings Limited – Late Accounts

| | |
|----------------------|---|
| VA Begins | 4 December 2006 |
| DOCA Ends | 17 October 2007 |
| Administrators | M. Conlan and N. Cribb of RSM Bird Cameron |
| Class order relief | Yes – Deferral relief for 31 December 2006 financials until 4 June 2007 |
| Individual relief | Yes – Deferral relief for 31 December 2006 financials until 16 July 2007 |
| Next Financials | 30 June 2007 released 21 December 2007 |
| Audit report extract | The Administrators of the company did not undertake a count of physical inventories at 30 June 2007 and we were not provided with sufficient supporting details to satisfy ourselves in relation to inventory quantities at 30 June 2007. |

6.14 White Sands Petroleum Limited

| | |
|----------------------|---|
| VA Begins | 20 December 2006 |
| DOCA Ends | 2 July 2008 |
| Administrators | G. Collins of JCJ |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2006 financials, 30 June 2007 financials and 31 December 2007 financials |
| Next Financials | 2 July 2008 released 30 September 2008 |
| Audit report extract | <p>Administrators were appointed to the Company on 20 December 2006 and the Company remained in Administration until 2 July 2008. Additionally no audited financial statements were prepared for the year ended 30 June 2007.</p> <p>As the accounting records maintained during the period in which the Company was under Administration were not adequate to permit the application of necessary audit procedures we are unable to obtain all the information and explanations we require in order to form an opinion on the financial report for the previous financial year and on the performance of the Company for the current year.</p> |

6.15 Gleneagle Gold Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 3 May 2007 |
| DOCA Ends | 10 March 2008 |
| Administrators | A. Birch, S. Read and S. Theobald of PPB |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2007 released 4 April 2008 |
| Audit report extract | <p>As the accounting records maintained during the period in which the Company was under Administration were not adequate to permit the application of necessary audit procedures we are unable to obtain all the information and explanations we require in order to form an opinion on the financial report.</p> |

6.16 Australian Waterwise Solutions Limited – Late Accounts

| | |
|---|--|
| <p>VA Begins DOCA Ends Administrators Class order relief Individual relief Next Financials</p> | <p>23 May 2007 14 December 2007 M. Jones, A. Saker and D. Weaver of Ferrier Hodgson Yes – Deferral relief for 30 June 2007 financials until 23 November 2007 No 30 June 2007 released 9 January 2008</p> |
| <p>Audit report extract</p> | <p>Against this background and as noted in more detail below a number of accounting records and supporting documents were not provided by management relating to the year ended 30 June 2007.</p> <ul style="list-style-type: none"> • No stocktake was performed at 30 June 2007, to support the recorded balance of \$3.65 million (disclosed under assets held for sale), and therefore no stock sheets were available • The following accounting records and supporting documentation were not provided to PKF: <ul style="list-style-type: none"> ○ Subsequent receipts and invoices at 30 June 2007 to support recoverability of the wholesale division trade debtors balance of \$601,326 out of a total recorded trade debtors balance of \$1,442,832; ○ 12 inventory purchase invoices from 26 transactions selected for audit; ○ 24 general expense invoices from 35 transactions selected for audit; ○ Invoices to support plant and equipment additions selected for audit; and ○ Bank statements from July 2006 to December 2006. |

6.17 Evans and Tate Limited – Late Accounts

| | |
|-----------------------|--|
| VA Begins | 21 August 2007 |
| DOCA Ends | 20 June 2008 |
| Administrators | M. Jones and B. Carter of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2007 financials onwards |
| Next Financials | 30 June 2008 released 9 June 2009 |
| Directors declaration | The financial records for the company in respect of all periods prior to 20 June 2008 being the date of settlement of the deed of company arrangement previously governing the company (Pre-DOCA Records) were delivered to McWilliams Wines by the company's administrator as part of the sale of the company's former wine business and, notwithstanding, the directors' best efforts the pre-DOCA Records have not been able to be accessed by the directors in order to prepare the documents referred to in paragraph 1.1 [the financial statements and notes to the financial statements for 30 June 2008] |

6.18 Lafayette Mining Limited – Late Accounts

| | |
|----------------------|---|
| VA Begins | 18 December 2007 |
| DOCA Ends | 26 August 2009 |
| Administrators | R. Sutton and P McCluskey of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2008 released 17 August 2009 |
| Audit report extract | The Company did not have access to the financial records of the subsidiary companies in preparing the financial report up until the date of their disposal on 22 April 2008. As the accounting and statutory records have been unavailable we are unable to obtain all the information and perform the required procedures we require in order to form our opinion on both the company and the group. |

6.19 Agri Energy Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 12 September 2008 |
| DOCA Ends | 1 October 2009 |
| Administrators | K. Stout of Boutique Corporate Advisory |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 31 December 2008 financials |
| Next Financials | 30 June 2009 released 12 December 2009 |
| Audit report extract | <p>As a result of the administration process and the circumstances relating to the prior year financial report there are not adequate books and records sufficiently capable of audit or verification available to the directors to present comparative financial information for the Company of consolidated entity.</p> <p>In addition, these circumstances have caused the directors to be unable to present the consolidated income statement, statement of changes in equity and cash flow statement for the period up until control was lost for those subsidiaries during 2009.</p> <p>Further we have been unable to obtain sufficient appropriate audit evidence to satisfy ourselves as to the completeness of information presented in the above statements or related notes for the year ended 30 June 2009.</p> |

6.20 Monto Minerals Limited

| | |
|----------------------|---|
| VA Begins | 29 August 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | I. Hall and D. McEvoy of PWC |
| Class order relief | No |
| Individual relief | Yes – Exemption relief for 30 June 2008 |
| Next Financials | 30 June 2009 released 30 September 2009 |
| Audit report extract | <p>On 29 August 2008 the company entered voluntary administration. On 30 September the company was granted relief by the Australian Securities and Investments Commission from the requirement to prepare, have audited and lodge a financial report and directors' report for the year ended 30 June 2008.</p> <p>The comparative disclosures in the financial report have not been audited. We have been unable to obtain sufficient appropriate audit evidence to satisfy ourselves as to the comparative information contained in the financial report and are not in a position to express an opinion on the comparative information</p> |

6.21 Macmin Silver Ltd – Late Accounts

| | |
|----------------------|--|
| VA Begins | 3 November 2008 |
| DOCA Ends | 13 October 2009 |
| Administrators | B. Hughes and C. Munday of Pitcher Partners |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 31 December 2008 released 10 November 2009 |
| Audit report extract | As a result of the company and group being in administration, certain audit procedures could not be conducted which has limited the scope of our work in relation to verification and classification of income and expense amounts recorded in the income statement and the classification of items between operating and investing activities in the cash flow statement. |

6.22 Western Kingfish Limited – Late Accounts

| | |
|----------------------|--|
| VA Begins | 2 December 2008 |
| DOCA Ends | Still subject to DOCA |
| Administrators | M. Jones, G. Trevor and A. Saker of Ferrier Hodgson |
| Class order relief | No |
| Individual relief | No |
| Next Financials | 30 June 2009 released 30 October 2009 |
| Audit report extract | The company was placed in administration from 2 December 2008 which resulted in an inability to locate all the books and records of the Company. Whilst the books and records have been reconstructed to the maximum extent possible we are unable to satisfy ourselves as to the completeness of the general ledger and relevant disclosures within the financial report. |

7 ASIC'S ADMINISTRATION OF SECTION 340 INSTRUMENTS OF SPECIFIC FINANCIAL REPORTING RELIEF TO COMPANIES IN ADMINISTRATION

- 7.1 The financial reporting requirements in Part 2M.3 apply to the company and ASIC's instruments of individual financial reporting relief also apply to the company.
- 7.2 ASIC routinely exempts a company subject to Part 5.3A from financial reporting requirements in the future notwithstanding that the company has missing accounts from the immediate past. Compass Resources Limited at Section 5.47 of this submission is one of numerous examples
- 7.3 Administrators that ignore RG 174 and act in defiance of Part 2M.3 by allowing companies to breach statutory financial reporting requirements are, in effect, requesting ASIC to sanction the non-compliance through making instruments of prospective financial reporting relief.
- 7.4 ASIC has been more explicit about endorsing breaches of financial reporting requirements that have already occurred in some cases. Maverick Drilling International Limited is an example where ASIC issued an exemption instrument on 30 June 2008 in respect of the company's missing accounts for the year ending 30 June 2007.
- 7.5 ASIC also issues instruments of deferral relief but fails to follow up to ensure the accounts are ultimately lodged in accordance with the conditions of the instrument. Green Pacific Energy Limited at Section 5.30 of this submission is one of numerous examples.
- 7.6 ASIC also routinely issues instruments of specific relief in circumstances where the accounts are imminently due for lodgement. One ASIC officer signed a batch of instruments of exemption relief with two for the same administrator as follows:

| Company Name | Accounts | Due Date | Instrument Date |
|-----------------------------|--------------|---------------|-----------------|
| Centralian Minerals Limited | 30 June 2006 | 30 Sept. 2006 | 25 Sept. 2006 |
| Croesus Mining NL* | 30 June 2006 | 30 Sept. 2006 | 28 Sept. 2006 |
| Worldaudio Limited | 30 June 2006 | 30 Sept. 2006 | 26 Sept. 2006 |
| TVSN Limited | 30 June 2006 | 30 Sept. 2006 | 28 Sept. 2006 |

* Application letter from administrator dated 25 September 2006

- 7.7 The Croesus Mining NL example is worthy of further analysis. The administrators are appointed on 23 June 2006 and ASIC exempts the company from preparing its 30 June 2006 accounts on 28 September 2006 some three days after receiving the request for exemption. The ASIC exemption decision is wrong on so many counts but most importantly it is contrary to the scheme of RG 174 which requires that a company subject to Part 5.3A should at first utilise the 6 month deferral available to administrators from the date of their appointment and then before the expiration of that 6 months apply for further deferral relief or exemption relief.

7.8 ASIC's poor recordkeeping of instruments of exemption for listed public companies subject to Part 5.3A is a telltale of malaise and complacency within ASIC when it comes to the regulation and enforcement of laws that impact on insolvency professionals.

7.9 Listed public companies subject to Part 5.3A where ASIC has executed instruments of specific exemption but the instrument document has not been gazetted are as follows:

- Advanced Energy Systems Limited
- Agro Holdings Limited
- Black Range Minerals Limited
- Centralian Minerals Limited
- Comdek Limited
- Computronics Holdings Ltd
- Croesus Mining N.L.
- Evans & Tate Limited
- Federation Group Limited
- Global Seafood Australia Limited
- Golden West Refining Corporation Ltd
- Henry Walker Eltin Group Limited
- ION Limited
- Oceanfast Ltd
- Pasmaico Limited
- Polltech International Limited
- Quiktrak Networks Ltd
- RMG Limited
- Sams Seafood Holdings Limited
- Sons of Gwalia Ltd
- Stockford Limited
- TVSN Limited
- Waivcom Worldwide Limited
- Water Wheel Holdings Limited
- Worldaudio Limited
- Wytomic Limited

7.10 Listed public companies subject to Part 5.3A where ASIC has not included the instrument document on its public database are as follows:

- Asset Loans Ltd
- Australian Growth Limited
- Chemeq Ltd
- Comdek Limited
- Compass Resources Limited
- Computronics Holdings Ltd
- Evans & Tate Limited
- Global Seafood Australia Limited
- Matrix Oil NL
- Sams Seafood Holdings Limited
- Transerv Australia Limited
- Western Metals Ltd
- White Sands Petroleum Limited

7.11 ASIC's subscription service – the ASIC digest – ceases to keep records of the specific exemptions to financial reporting made by ASIC from around 2003 onwards.

7.12 ASIC issues a regular report that outlines decisions on relief applications. ASIC states in the introduction to the report as follows:

The purpose of the report is to improve the level of transparency and the quality of information available about decisions we make when we are asked to exercise our discretionary powers to grant relief from provisions of the Act

These reports have never discussed any of the relief applications made by members of the insolvency profession for financial reporting relief.