



**ASIC**  
Australian Securities &  
Investments Commission

<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of ASIC, the Takeover Panel and the Corporations Legislation
<b>Question No.</b>	065
<b>Topic</b>	Auditors/Nuix
<b>Reference</b>	Spoken, 3 November 2023, Hansard pages 17 and 18
<b>Committee member</b>	Senator Deborah O'Neill

## Question

CHAIR: How much is materiality related to inaccurate audit work or declarations made by auditors that were inaccurate?

Ms Court: I'll have to take that on notice. I don't recall the audit element or reliance on an audit being a material part of the allegations in the Nuix case.

CHAIR: There was some discussion about delayed reporting and inaccurate reporting, which were part of our questioning.

Mr Longo: The nub of the allegations all go to whether the company and the directors complied with their continuous disclosure obligations. As Deputy Chair Court says, the allegation that goes to the heart of the case is that there was a material departure from the forecasts and that triggered a disclosure obligation. That was, it's alleged, knowledge the directors had and failed to disclose to the market.

CHAIR: How did they have that knowledge, Mr Longo?

Mr Longo: It's their business to run.

CHAIR: Who would they normally rely on to provide them with the knowledge?

Mr Longo: Any company will have its own books and records and its own resources to manage its business. That's something in their knowledge. That is an obligation of the—

CHAIR: But they have internal auditors, too, if it's a large scale company?

Mr Longo: As Deputy Chair Court says, I'm not able to say what role, if any, auditors—whether internal or external—played. The critical allegation, or the nub of the case, is really testing the obligation the directors have and the company has to disclose material information to the market. That's what the case is about; it's not about the quality of an audit.

CHAIR: I understand, but the quality of audit is part of this ecosystem. Decisions are made by boards based on the audit.

Mr Longo: We're not making that allegation.

Ms Court: Because the case is before the court and going to trial this month, perhaps we could table the concise statement in the case to the committee, which sets out clearly the nature of the case ASIC's alleging. Would that be of assistance?

CHAIR: I understand how you're trying to thread a needle here, and I don't want to do anything that will compromise the case. But the reality is that we're right back at the beginning with the quality of audit, the quality of the audit companies and what they do, professional integrity and the materiality that follows. If audit companies face conflicts of interest about other work that they want to do for these companies and if they can go backwards and forwards, on multiple occasions, to boards with reports and have them altered—because the boards consider themselves as the purchaser of a product—that is at odds with the ethical requirements of the auditor.

I've put it to you that we are hearing about that kind of coercive practice happening in businesses in this country far too often and about failures to act ethically in response to that sort of pressure by people who are auditors. In doing so, it becomes a fundamental threat to the integrity of the entire ecosystem. I'll just put my concern to you with regard to that. I'd be interested in any thought leadership that you have on it, any international experiences that you have, Mr Longo, of the way in which this has been dealt with in other jurisdictions and any research that you might have that would be of use to the committee about the intersections between ethical practices, professionalism in audit, the tying of audit companies to consultancy companies and the conflicts of interest that are now pretty well aerated, certainly in Australia.

Ms Court: I think I understood your perspective. I should make clear, though, just in case I confused things earlier, that I don't have any understanding that the issue of audit is relevant to the case that we're filing in NuiX. I'll put that on the record, but I understand the broader point you're making to us.

CHAIR: Yes. We disagree on that because whistleblowers have put forward the argument on previous occasions—

Mr Longo: Just so there's no misapprehension about what we might come back with, the NuiX case is about information in the possession, it is alleged—

CHAIR: But not provided to the market.

Mr Longo: information about the business of NuiX that didn't go as well, it is alleged, as forecast, and that information was in the possession of the company and its financial officers and the directors. It's that kind of case. But, as Deputy Chair Court said, we'll share with the committee the concise statement of facts, which are the allegations that are being made. It's not an audit case, but we're happy to say what we can say about the broader issues.

## **Answer**

In September 2022, ASIC commenced civil proceedings in the Federal Court against NuiX Limited (**NuiX**) for alleged continuous disclosure breaches and misleading or deceptive conduct, and against members of the NuiX board for breaches of their directors' duties.

ASIC's allegations in the proceedings include that during the period 18 January 2021 to 21 April 2021, NuiX reaffirmed its Prospectus financial year 2021 forecasts for statutory revenue and for annualised contract value (**ACV**) in circumstances where at the time, NuiX was aware of, and failed to disclose, information that its revenue and ACV were likely to be materially below what it had forecast in its Prospectus.

ASIC's case does not relate to allegations of inaccurate audit work or declarations made by auditors that were inaccurate.

ASIC's proceedings do not involve any allegation of false or misleading conduct in relation to forecasts contained in the NuiX Prospectus which was published in November 2020. PricewaterhouseCoopers (**PwC**) were appointed investigative accountants for the purposes of the NuiX Prospectus. As previously stated, after a thorough investigation, ASIC found no evidence of a lack of a reasonable basis for the revenue forecast. ASIC was therefore of the view that no further investigation or action in relation to the original issuing of the prospectus was warranted.

A copy of the concise statement in relation to ASIC's proceedings against NuiX and its directors is available here: <https://download.asic.gov.au/media/txgodwd0/concise-statement-28-september-2022.pdf>