Committee	Parliamentary Joint Committee on Corporations and Financial Services
Inquiry	Oversight of ASIC, the Takeover Panel and the Corporations Legislation
Question No.	064
Topic	Capital raising
Reference	Spoken, 3 November 2023, Hansard page 17
Committee member	Senator Deborah O'Neill

Question

CHAIR: No. But, given concerns about the quality of audit—which is fundamental to: 'This is the product. Our product has been verified by these auditors, who say that this is a true and accurate record of the viability of the business or its current financial state, and the value of the offering is therefore considered on the back of those numbers'—can I ask again about recent cases where companies have faced penalties or legal actions due to violations in capital-raising activities?
Mr Longo: I can't think of many, offhand.
Ms Aldridge: Can we take that one away? It may be that there are some examples in the secondary raising that we can point to, as opposed to: in that primary capital raising through the IPO process.

Answer

In IPO fundraisings, it is customary for an Investigating Accountants Report (IAR) to provide a limited assurance opinion over both the historical and forecast financial information provided in a prospectus. This opinion is not required by law but is normal practice for IPOs in Australia. The role of the investigating accountant is separate to that of the company's auditor. The investigating accountant provides a lower level of assurance than a full audit in accordance with *Standard on Assurance Engagements ASAE 3450 Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*. The investigating accountant's role is particularly important in relation to forecasts. The investigating accountant will review the forecasts and consider whether:

- the directors' best-estimate assumptions do not provide reasonable grounds for the forecast financial information;
- the forecast financial information is presented fairly in accordance with the recognition and measurement principles contained in Australian Accounting Standards and the Company's accounting policies; and
- the Forecast Financial Information itself is unreasonable.

The historical financial accounts disclosed in a prospectus are audited because of the operation of the Corporations Act, ASIC regulatory guidance and ASX listing rules requirements. The investigating accountant's engagement is separate and additional to the audit of the historical accounts. The auditors are often a separate firm and play no direct role in the capital raising.

Secondary capital raisings do not usually involve assurance engagements by independent accountants (or the auditors), as the issuer is already subject to continuous disclosure obligations.

We have investigated the role of investigating accountants in IPOs, but we have not taken action against them.

As referenced at this hearing[1], an example of action in relation to capital raising activities is the action ASIC took recently against Australia and New Zealand Banking Group Limited (ANZ). On 13 October 2023 the Federal Court determined that ANZ breached continuous disclosure laws when undertaking a $2.5 billion institutional share placement in 2015 by failing to disclose material placement

[1] Hansard, Corporations and Financial Services Joint Committee, 3 November, pages 27 and 28

subscriptions allocated to underwriters. This is not an action about a prospectus, rather it focuses on continuous disclosure, but goes to fundraising conduct.

ASIC is now to make submissions as to appropriate penalties, with the Court yet to set a date for judgment on the issue of penalties.

ASIC's general approach to capital raising is, instead, to act before investments are able to be made by retail investors[2]:

Outcome	**2022/23**	**2021/22**
Interim stop orders and final stop orders on disclosure documents	21	18

[2] Extract from ASIC Annual Report 2022/23, page 21