



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 34

Auditor's obligations: reporting to ASIC

December 2007

About this guide

This guide provides guidance to help auditors comply with their obligations under s311, 601HG and 990K to report contraventions and suspected contraventions of the *Corporations Act 2001* (the Corporations Act) to ASIC.

This guide also includes guiding examples of suspected contraventions and how an auditor may deal with them.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 20 December 2007 and is based on legislation and regulations as at 20 December 2007.

This document can also be referred to as Practice Note 34 Auditor's obligations: reporting to ASIC (PN 34). Paragraphs in this document can be referred to by their regulatory guide number (e.g. RG 34.1) or their practice note number (e.g. PN 34.1).

Previous versions:

- Superseded Regulatory Guide 34, issued 21 December 2004, rebadged as a regulatory guide 5 July 2007
- Superseded Practice Note 34 proof version [SPN 34], issued 1 July 2004
- Superseded Practice Note 34 [SPN 34], issued 5 July 1993 and amended 6 December 2004.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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A Overview

Key points

This guide provides guidance to help auditors to:

- comply with their obligation under s311 and 601HG of the Corporations Act
- determine what an auditor must report to ASIC
- comply with their obligations under s990K of the Corporations Act

This guide includes examples of suspected contraventions for guidance purposes only: see Appendix 1.

Note: This guide does not discuss auditor obligations to notify us of any circumstances that amount to an attempt to unduly influence, coerce, manipulate or mislead a person involved in the conduct of the audit and auditor obligations to notify us of any circumstances that amount to an attempt to otherwise interfere with the proper conduct of the audit.

Obligations of the auditor under s311 and 601HG

- RG 34.1 Under s311 and 601HG of the Corporations Act, an auditor is obligated to report to us matters that they have reasonable grounds to suspect amount to a significant contravention of the Corporations Act or, in the case of matters that are not a significant contravention, the auditor believes that the matter will not be adequately dealt with.
- RG 34.2 In this guide, we explain our view of the obligations of the auditor and why we consider the auditor's reporting obligations are a significant aspect of the auditor's role in conducting an audit: see RG 34.6–RG 34.23.

What an auditor must report to ASIC under s311 and 601HG

- RG 34.3 In this guide, we have set out what we consider are:
- 'reasonable grounds to suspect' a contravention (see RG 34.24–RG 34.28);
 - a 'significant contravention' (see RG 34.29–RG 34.34); and
 - a suspected contravention not 'adequately dealt with' (see RG 34.35–RG 34.37).

Obligations under s990K—contraventions relating to AFS licensees

RG 34.4 Under s990K of the Corporations Act, an auditor is obligated to report to us certain matters including certain contraventions and suspected contraventions of the provisions of the Corporations Act: see RG 34.38–RG 34.46.

Examples of suspected contraventions

RG 34.5 In Appendix 1 of this guide, we have set out some examples of suspected contraventions for the purposes of s311 and s601HG in two categories. First, those that we consider would likely to be significant and, secondly, those that we consider would not likely be significant: see RG 34.47–RG 34.60.

B Obligations of the auditor under s311 and 601HG

Key points

This section explains the background to the obligation on auditors to report contraventions and suspected contraventions and provides guidance to help auditors to comply with their obligations under s311 and 601HG of the Corporations Act.

This section also provides guidance on:

- how quickly an auditor must report to ASIC
- how to lodge notices
- the qualified privilege attaching to reports made by auditors
- the consequences of failure by an auditor to comply with their reporting obligations.

History

- RG 34.6 Auditor reporting requirements have been part of Australian company law for many years. They originated from the Company Law Advisory Committee's First Interim Report to the Standing Committee of Attorney-General on Accounts and Audit in 1970 (the Eggleston Committee Report). The Eggleston Committee sought to strengthen the position of auditors by requiring timely reporting of infringement of the corporations legislation to regulatory authorities and affording auditors qualified privilege for such reporting.
- RG 34.7 The auditor's obligation for the timely reporting of contraventions and suspected contraventions of the corporations legislation has been strengthened on a number of occasions.
- RG 34.8 In particular, the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (the CLERP 9 Act) amended the auditor reporting obligations. Under the amended provisions, with the exception of s990K, an auditor is obliged to report a 'significant' contravention of the Corporations Act directly to us: see RG 34.29–RG 34.34.
- RG 34.9 The Explanatory Memorandum to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 (the CLERP 9 Bill) recognised the important role that auditors play as the principal external check on the veracity of companies' financial statements. Auditors have a

particular opportunity to determine whether there has been a contravention of the law. The auditor reporting obligations encourage the timely disclosure of possible breaches of the law.

What to report under s311 and 601HG

- RG 34.10 The auditor reporting obligations under s311 and 601HG require an auditor, as soon as practicable, and in any case within 28 days, to notify us in writing of certain circumstances. In particular, this guide deals with the obligation to report to us if the auditor conducting an audit of a company, registered scheme or disclosing entity is aware of circumstances that give the auditor reasonable grounds to suspect that there has been a contravention of the Corporations Act: see RG 34.24–RG 34.28. This obligation applies if the contravention:
- (a) is significant (see RG 34.29–RG 34.34); or
 - (b) is not significant, but the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or by bringing it to the attention of the directors (see RG 34.35–RG 34.37).
- RG 34.11 We believe that the auditor reporting obligations are a significant aspect of the auditor's role in conducting an audit and should be included in the audit plan and program for each entity subject to audit. We expect auditors to be vigilant and to make appropriate inquiries where the circumstances warrant inquiry
- RG 34.12 While we do not expect auditors to engage in a systemic search for all possible contraventions of the Corporations Act, auditors should be alert to matters that come to their attention that may indicate such contraventions. The auditor reporting obligations are not limited to matters that have arisen from audit or review. Information may come to the auditor's attention during the audit or review, or otherwise, which gives rise to reasonable grounds to suspect that a contravention of the Corporations Act has occurred.
- RG 34.13 In addition, staff reporting to an auditor should be made aware of the extent of the auditor's duty. The auditor reporting obligations apply to:
- (a) the individual auditor, if the auditor is a natural person (including where the audit is conducted by a member of an audit firm);
 - (b) the audit company; or
 - (c) the lead auditor (defined in s324AF).

Review of a financial report under s311

- RG 34.14 The auditor's duty described in s311 applies to an audit of a financial report for a financial year and to the audit or review of a half-year financial report conducted for the purposes of the Corporations Act.

Review of a compliance plan under s601HG

- RG 34.15 Under Chapter 5C of the Corporations Act, all registered managed investment schemes are required to have a compliance plan that meets the requirements of Part 5C.4. The Corporations Act also requires certain audit work for the compliance plan to be carried out by a registered company auditor (the auditor of the compliance plan).
- RG 34.16 The auditor of the compliance plan has to examine the compliance plan and provide a report to the responsible entity for the scheme within three months after the end of the financial year stating whether, in the auditor's opinion, the responsible entity complied with the scheme's compliance plan and the plan continues to meet the requirements under Part 5C.4 of the Corporations Act.
- RG 34.17 The auditor of the compliance plan has an obligation under s601HG similar to that applying under s311 to an auditor who conducts an audit or review of a financial report. The auditor must make a report to us in the circumstances described in RG 34.10. The report must be made as soon as practicable, and in any case within 28 days.

When must an auditor report to ASIC under s311 or 601HG?

- RG 34.18 After an auditor becomes obliged to notify us under s311 or 601HG, the notification must be given as soon as practicable, and in any case within 28 days. An auditor should not wait until the conclusion of an audit to report a matter.
- RG 34.19 If, after notifying us of a particular suspected contravention, the auditor has reasonable grounds to suspect other contraventions of the Corporations Act, including new breaches of the same provision, these should also be notified under s311 or 601HG.

Lodgement of notices

- RG 34.20 Notices under s311 may be emailed to auditor.notification.team@asic.gov.au or posted to the Auditor Notification Team, Compliance Directorate, Australian Securities and Investments Commission, GPO Box 9827, Brisbane QLD 4001. Notices under s601HG(4) may be forwarded to any of

our offices and should be marked for the attention of 'FSR Regulatory Operations'.

Protection of auditors: qualified privilege

- RG 34.21 An auditor making a report to us has qualified privilege: see s1289, 601HG(8) and 990L(1)(a). Section 89 defines 'qualified privilege' as protection from proceedings for defamation. In essence, the protection is available if an auditor has acted in good faith and solely for the purpose of discharging the statutory obligation to report to us. An auditor must not have acted maliciously or for any other improper purpose. Statutory privilege does not displace any privilege that the auditor may be entitled to rely on under the common law.

What happens when an auditor fails to report?

- RG 34.22 An auditor who fails to comply with s311, 601HG or 990K (as applicable) is guilty of an offence. The relevant criminal penalties (fine and/or term of imprisonment) are set out in the Corporations Act and, in particular, Schedule 3.
- RG 34.23 If, in our view, an auditor has failed to adequately and properly carry out or perform their duty to report circumstances to us under s311, 601HG(4) or 990K(2), we may apply to the Companies Auditors and Liquidators Disciplinary Board for the cancellation or suspension of the auditor's registration under s1292(1) of the Corporations Act.

C What an auditor must report under s311 and 601GH

Key points

An auditor is obliged to report where he or she has reasonable grounds to suspect that there has been or is a significant contravention of the Corporations Act. This section provides more detailed information to help auditors to determine:

- what are 'reasonable grounds'
- what is a 'significant' contravention.

It also explains what an auditor should do when a suspected contravention is not 'significant' by has not been 'adequately dealt with'.

What are 'reasonable grounds to suspect' a contravention?

- RG 34.24 Under s311 and 601HG an auditor is required to notify us if the auditor has 'reasonable grounds to suspect' there has been a significant contravention of the Corporations Act. Establishing 'reasonable grounds to suspect' requires both a suspicion and a just cause for that suspicion.
- RG 34.25 In its unanimous judgment in *George v Rockett* (1990) 170 CLR 104 the High Court held (at 112) that: 'When a statute prescribes that there must be "reasonable grounds" for a state of mind—including suspicion and belief—it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person'. The test is satisfied by circumstances that would create in the mind of a reasonable auditor an actual apprehension or fear that a contravention has occurred. The suspicion has to be honest and reasonable. The suspicion must be based upon facts that would create suspicion in the mind of the reasonable auditor.
- RG 34.26 In *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266, Kitto J described a suspicion of something (at 303) as being 'more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust amounting to a slight opinion, but without sufficient evidence'. This case was applied by the High Court in *George v Rockett* (1990) 170 CLR 104 at 106.
- RG 34.27 A reasonable suspicion can exist without the auditor having conducted exhaustive and conclusive investigations into the matter. A reasonable suspicion does not have to be based solely on evidence that would be admissible in judicial proceedings. The grounds for suspicion may be based

on the auditor's professional judgment, past experience, knowledge of a particular industry and information collected, or matters that have come to the auditor's attention during the course of the audit. The auditor does not need evidence such as to satisfy them that a contravention of the Corporations Act has actually occurred. The grounds for suspicion should be documented in the auditor's working papers. If in doubt, the auditor should consider obtaining legal advice before notifying us.

RG 34.28 Notice to ASIC under s311 or 601HG does not have to be given unless the auditor also believes that the suspected contravention is either significant or, if it is not significant, that it has not been or will not be adequately dealt with either by:

- (a) commenting on it in the auditor's report; or
- (b) notifying the directors of the relevant entity.

Note: The auditor reporting obligations require an auditor to notify us of known contraventions as well as those merely suspected on reasonable ground.

What is a 'significant' contravention?

RG 34.29 The Corporations Act includes factors that an auditor must consider in determining whether a suspected contravention is a significant one for the purposes of s311 and 601HG. These factors are:

- (a) the level of penalty for the contravention;
- (b) the effect that the contravention has, or may have on:
 - (i) the overall financial position of the company, registered scheme or disclosing entity; or
 - (ii) the adequacy of the information available about the overall financial position of the company, registered scheme or disclosing entity; and
- (c) any other relevant matter.

RG 34.30 The auditor reporting obligations specifically direct the auditor to have regard to any 'other relevant matter' in determining whether a contravention of the Corporations Act is a significant one and so should be reported. The auditor should determine these 'other relevant matters' by considering all the facts and circumstances of the particular situation.

RG 34.31 The Explanatory Memorandum to the CLERP 9 Bill also included some types of suspected contraventions that could be considered by an auditor to be significant. They are:

- (a) insolvent trading;

- (b) a breach of accounting standards or the 'true and fair view' requirements;
- (c) a breach of Div 2, Pt 2 of the *Australian Securities and Investments Commission Act 2001* (the ASIC Act);
- (d) suspected dishonest or misleading and deceptive conduct; and
- (e) a breach that may cause a significant loss to any person or class of persons.

RG 34.32 To provide some additional guidance for auditors, we have identified some factors that we believe an auditor could consider in deciding whether a contravention is significant, depending on their relevance in the particular circumstances. These are:

- (a) whether contraventions of the same or similar nature are suspected to have occurred in more than one area of the audited body (e.g. an area might include a discreet department, segment or unit of the entity);
- (b) whether the suspected contraventions are systemic, multiple or continuing;
- (c) the seniority of the people involved in the suspected contravening conduct (e.g. officers or senior managers) and
- (d) whether the audited body or any of its officers or senior managers have previously contravened the Corporations Act by engaging in similar conduct.

RG 34.33 This list of factors is not exhaustive, and is not a checklist. The auditor reporting obligations require the auditor to make their own reasonable judgment about whether a suspected contravention is significant and so should be reported.

RG 34.34 Examples of suspected contraventions and discussion as to whether they would be significant are provided in Appendix 1 at RG 34.48–RG 34.60.

When will a suspected contravention not be 'adequately dealt with'?

RG 34.35 If the suspected contravention is not significant, s311 and 601HG of the Corporations Act require an auditor to form a belief as to whether the matter will be dealt with adequately by commenting on it in the auditor's report or by bringing the matter to the attention of the directors. While some matters may be noted in the auditor's report to members, and as part of the auditor's feedback to directors, this does not necessarily mean that such matters have been dealt with *adequately*. Thus, where an auditor remains of the belief that a matter will not be dealt with adequately, despite having brought the matter

to the attention of the directors and/or noted the matter in the auditor's report, we must be notified.

- RG 34.36 It is a matter of opinion, based on the facts as known to an auditor, whether the contravention will be adequately dealt with by commenting on it in the auditor's report or by bringing the matter to the attention of the directors. As circumstances vary from case to case, it is not possible to lay down definitive rules about how an auditor will decide whether a suspected contravention has been, or will be, adequately dealt with. If the auditor does not believe that the matter has been, or will be, adequately dealt with, the auditor reporting obligations require the auditor to report the matter to us.
- RG 34.37 The auditor should not delay notification for further consultation with the directors if a contravention is such that bringing it to the attention of the directors or commenting on it in the auditor's report will not adequately deal with the matter.

D Obligations of the auditor under s990K relating to AFS licensees

Key points

This section explains the obligations of an auditor of an AFS licensee under s990K of the Corporations Act to report contraventions or suspected contravention of the licence conditions and other obligations of the AFS licensee and other matters.

Note: This guide does not discuss an auditor's obligation to report conduct referred to in s990K(2)(c).

- RG 34.38 Section 990K requires the auditor of an AFS licensee to report certain matters, contraventions and suspected contraventions of provisions of the Corporations Act to ASIC. The auditor must report to ASIC within 7 days of becoming aware of a matter, contravention or suspected contravention covered by s990K(2).
- RG 34.39 Because s990K(2)(b) obliges an auditor to report each matter that in their opinion 'constitutes or may constitute a contravention', the auditor is required to report *suspected* as well as *known* contraventions to ASIC. Auditors should also refer to RG 34.12–RG 34.13.
- RG 34.40 Paragraph 990K(2)(a) requires an auditor only to report a matter that "has adversely affected, is adversely affecting or may adversely affect the ability of the licensee to meet the licensee's obligations as a licensee" and applies to matters not covered by s990K(2)(b) (such as the obligations in s912A). Matters must be reported to ASIC if they:
- (a) are contraventions or suspected contraventions specifically itemised in s990K(2)(b); or
 - (b) have adversely affected, are adversely affecting or may adversely affect the ability of the licensee to meet their obligations as a licensee.
- RG 34.41 Unlike s311, 601HG and 912D(1)(b), s990K(2)(b) does not include a "significance" test, and so all matters must be reported to ASIC irrespective of materiality or significance. Section 990K(2)(b) is, however, a more restricted obligation than that in s311 or 601HG as the auditor is only obliged to report contraventions or suspected contraventions of specified provisions of the Corporations Act (see s990K(2)(b)(i)–(iii)) or of a condition of the licensee's licence (s990K(2)(b)(iv)—see RG 34.42–RG 34.43). In addition, the matters that must be reported under s990K(2)(a) are limited to those that have an "adverse effect" on the licensee's ability to meet

its obligations. Having regard to the "adversely affects" criteria, auditors can comply with their obligations in reporting those matters that are contraventions that are covered only by s990K(2)(a) by focussing on the effect or possible effect of the matter.

- RG 34.42 Under s990K(2)(b)(iv), an auditor must report contraventions and suspected contraventions of conditions of a licensee's licence. These licence conditions have two sources—those imposed by us under s914A(1) (see ASIC Pro Forma 209 *Australian financial services licence conditions*) and those included by regulations made under s914A(8). Unless the context indicates otherwise a reference to a condition in relation to a licence includes a restriction (see definition of "condition" in s9 of the Corporations Act). However ASIC considers that merely carrying on a financial service business outside the restrictions to the financial services that the licence permits is not a contravention of a licence condition for s990K(2)(b)(iv).
- RG 34.43 An example of not complying with a restriction that is *not* the contravention of a condition for s990K(2)(b), is a licensee providing a custodial or depository service in relation to an investor directed portfolio service (IDPS) when the licensee has a provision in its licence that the licensee is authorised to provide a custodial or depository service other than in relation to an IDPS. In this case the licensee would be contravening the Corporations Act by carrying on an unlicensed financial services business but there would be no contravention of a licence condition for the purposes of s990K(2)(b)(iv). However, if the auditor is also auditor of the AFS licensee for the purposes of Chapter 2M of the Corporations Act, the auditor may regard the contravention of the Corporations Act as significant and have to report the matter under s311 of the Corporations Act.
- RG 34.44 As noted in RG 34.41, the licensee has an obligation to report significant breaches of specific obligations to ASIC under s912D. However, even though a matter has already been, or appears to have been, adequately reported to ASIC by the licensee, the Corporations Act does not exempt an auditor from reporting the same matter.
- RG 34.45 The reporting of contraventions and suspected contraventions under s990K is an important element of the effective regulation of AFS licensees and protecting persons who rely on, or transact with or through, an AFS licensee. We may take appropriate action in relation to auditors who fail to report contraventions and suspected contraventions as required by s990K.

Note: See paragraph RG 34.21 for a discussion of the qualified privilege that applies to an auditor reporting to us under s990K. See paragraphs RG 34.22–RG 34.23 for a discussion of what happens if an auditor fails to comply with s990K.

Lodgement of notices

RG 34.46 Notices under s990K(2) may be forwarded to any of our offices and should be marked for the attention of 'FSR Regulatory Operations'.

Appendix 1: Examples of suspected contraventions

RG 34.47 The examples of suspected contraventions provided in this appendix would require an auditor to form a view about how to apply the auditor reporting obligations under s311 and 601HG. The examples include suspected contraventions that we consider would, in most situations, be significant and therefore should be reported to us. We have also included examples of other suspected contraventions that we consider would, in most cases, not be significant. An auditor must consider the particular facts and circumstances of each case when deciding whether to report the suspected contravention to us under s311 or 601HG.

Suspected contraventions that are likely to be significant

RG 34.48 Although we note how an auditor may deal with these suspected contraventions, the suggested treatment may not necessarily be the most appropriate in all circumstances. These examples are not a checklist and their inclusion in this guide does not indicate that we will always consider the suggested treatment to be appropriate in all cases. Each case must be considered on its merits.

Insolvent trading

RG 34.49 Section 588G of the Corporations Act provides that a director of a company may contravene the Corporations Act by failing to prevent the company from incurring a debt when there are reasonable grounds to suspect that the company is insolvent or would become insolvent by incurring the debt. Given the nature of a contravention of s588G and the possible detriment that there may be to creditors or employees, it is unlikely that a suspected contravention could be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors.

RG 34.50 The criteria for determining whether an auditor has an obligation to notify us of suspected insolvent trading under s311 are different from the criteria determining whether an auditor should comment on the uncertainties as to the ability of a company to continue as a going concern in an audit report. Section 311(4)(b) directs the auditor to consider the effect that the contravention has, or may have, on the overall financial position of the entity, or on the adequacy of the information available about the overall financial position of the entity, when determining whether the contravention of the Corporations Act is significant.

RG 34.51 If an auditor has going concern issues, the auditor should perform sufficient work to establish whether there are reasonable grounds to suspect insolvent

trading. The auditor should not delay notifying us of suspected insolvent trading until they have resolved going concern considerations.

- RG 34.52 Suspected insolvent trading may become apparent at any time during the year, including during the conduct of audit or review procedures after balance date and before the signing of the financial report. Where the auditor's suspicion is aroused, the auditor should perform sufficient work to establish whether there are reasonable grounds for suspicion. However, the auditor does not need to be satisfied that an entity is incurring debts while insolvent before notifying us. The notification should not be delayed in the hope that the company will be able to obtain some new support from financiers or others before the signing of the financial report.

Failure to comply with accounting standards

- RG 34.53 The auditor's report under s308 and 309 of the Corporations Act must deal with certain matters. For example, under s308(2) and 309(2) an auditor must report on and quantify (to the extent that it is practicable) the effect on the financial report of a company's failure to comply with the accounting standards under s296(1).
- RG 34.54 Non-compliance with an accounting standard would in many circumstances be significant. Even if the auditor considers that the non-compliance is not significant, it might not be adequately dealt with by commenting on it in the auditor's report or drawing it to the directors' attention and so should be reported.
- RG 34.55 Auditors should notify us of a qualified audit or review report. The specific requirements of s308 and 309 for disclosure in the audit report do not affect the obligation to report under s311.

Fraud by officers or employees of the entity

- RG 34.56 If information comes to the attention of an auditor that suggests the possibility of fraudulent conduct by officers or employees of the audited body, the auditor should perform sufficient work to establish whether there are reasonable grounds for suspicion. If, after making appropriate inquiries, the auditor has reasonable grounds to suspect that fraudulent conduct has occurred, or is continuing to occur, this conduct should be reported to us by the auditor as a significant contravention.
- RG 34.57 It is unlikely that suspected fraud by officers of the audited body could be adequately dealt with by commenting on it in the auditor's report or drawing it to the director's attention. In particular, if the scale of the fraud is likely to adversely affect the overall financial position of the entity, or the adequacy of the information available about the overall financial position of the entity, it should be reported to us: see s311(4)(b).

Suspected contraventions that are unlikely to be significant

Failing to assist the auditor

- RG 34.58 In an isolated and relatively minor incident of an officer of the audited body failing to assist an auditor as required by s312, the contravention is unlikely to be significant. Bringing the matter to the attention of directors may be an adequate way of dealing with the matter if they take appropriate action.

Non-lodgement of annual statements and financial reports

- RG 34.59 An auditor might deal adequately with an entity's failure to correct an annual statement, in contravention of s346C, or to lodge a full year or half-year financial report or directors' report by its due date, in contravention of s319 or 320, by notifying the directors. However, the auditor is on notice of a possible continuing breach. If the failure continues, the auditor should notify us.

Information accompanying financial reports

- RG 34.60 In reviewing the directors' report for material inconsistencies with the financial report or material misstatements of fact, the auditor may become aware of a failure to include certain required information (e.g. a value for options as part of remuneration of listed company directors and executives in accordance with s300A of the Corporations Act). Such an omission may be adequately dealt with by bringing it to the attention of the directors. However, if the directors do not remedy this omission before the directors' declaration is finalised, the auditor should consider reporting the matter to ASIC under s311.

Key terms

| Term | Meaning in this document |
|-----------------------------------|---|
| AFS licensee | An Australian financial services licensee as defined in s761A of the Corporations Act |
| ASIC | Australian Securities and Investment Commission |
| ASIC Act | The <i>Australian Securities and Investments Commission Act 2001</i> |
| auditor | A registered company auditor or the lead auditor of an authorised audit company |
| auditor reporting obligations | The obligations to report a contravention or suspected contraventions and other matters to ASIC under s311, 601HG or 990K of the Corporations Act |
| CLERP 9 Act | The <i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004</i> |
| CLERP 9 Bill | The Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003 |
| Corporations Act | The <i>Corporations Act 2001</i> |
| director | Where the case requires, includes a director of a responsible entity |
| IDPS | An investor directed portfolio service, consisting of a number of functions including a custody, settlement and reporting system Note: A more detailed definition is contained in [CO 02/294]. |
| Section 311 or s311 (for example) | A section of the Corporations Act (in this example, s311) |

Related information

Headnotes

Auditors' obligations under s311(1)(4), 601HG(4), (4B) and (10), and 990K(1) and (2); contravention; auditor has reasonable grounds to suspect; significant contravention; suspected contravention notifiable to ASIC as soon as practicable; licence conditions; adversely affect; obligations as a licensee; adequately dealt with; examples; penalties; where to lodge notices; qualified privilege

Regulatory guides

Regulatory Guide 26 *Resignation of auditors* [RG 26]

Legislation

Australian Securities and Investments Act 2001, Pt 2, Div 2; *Corporations Act 2001*, Chs 2M and 5C, s9, s89, s296, s308, s309, s311, s312, s319, s320, s324AF, s346C, s588G, s601HG, s912D, s990K, s990L, s1289, s1292; *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*

Cases

George v Rockett (1990) 170 CLR 104

Queensland Bacon Pty Ltd v Rees (1966) 115 CLR 266

Consultation papers

CP 49 *CLERP 9 Bill: Auditor and financial reporting obligations*, April 2004

Media and information releases

Information Release [IR 07/55] *Audit notifications about AFS licensees*

Information Release [IR 04/33] *Audit notifications under CLERP 9*

Information Release [IR 00/12] *Audit of compliance plans of managed investment schemes*