

ASIC Fails to Catch the Big Ones

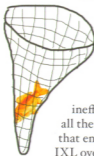
Stephen Mayne assesses ASIC's glacial speed when it comes to holding corporations accountable



The controversial decision by the Australian Stock Exchange to allow Frank Lowy's Westfield Group to vote its stake in the recent carve up of General Property Trust has once again raised the vexed issue of corporate regulation in Australia. Just who is responsible? New ASX CEO Tony D'Aloisio is hell-bent on slashing costs and further increasing profits at the conflicted monopoly stock exchange and wants to vacate the field on corporate regulation.

It costs money to regulate and the ASX, which has delivered close to a 200-fold return over the past eight years for its lucky 606 stockbroker members, wants out. But is the Australian Securities Commission up to the job? Scanning through the list of 266 people that ASIC has jailed over the past 15 years, there really is a preponderance of the proverbial "two-bit financial planner from Tootgarook" and not much action at the big end of town.

Looking back on Australia's major corporate scandals over the years, there are plenty of instances where regulators have either been missing in action or



ineffective. For all the scandals that engulfed Elders IXL over the years, how is it that no regulatory charge ever stuck? When it comes

to investigations involving the likes of James Hardie or even Steve Vizard's share dealings, ASIC is moving at glacial speed.

US regulators have thrown the book at Wall Street for their conduct during the dotcom boom but we have done very little indeed on the question of analyst independence, investment bank conflicts of interest and the corrupt way shares in float and placements are often allocated. Unlike New York Attorney General Eliot Spitzer, our corporate plods tend to hail from the big end of town and harbour ambitions to return there one day to make a buck. That's what former ASIC chairs Tony Hartnell, Alan Cameron and David Knott are all doing right now.

Current ASIC chairman Jeff Lucy is an Adelaide establishment figure and a colourless accountant who hails from PricewaterhouseCoopers. On the rare occasion that someone high profile is jailed, he reads monotone statements about the importance of upholding the law and sending a message. Whilst Lucy can't be blamed for things like ASIC's failure to charge anyone over the Yannon scandal at Coles Myer in the mid-1990s, you do get a sense that he could be doing more with his \$175 million annual budget.

Rather than regulating, ASIC behaves more like a revenue collection body because the Federal Government requires it to collect about \$500 million a year in fees from companies, directors and the like. Whilst having a publicly listed monopoly like the ASX as a regulator is obviously worse, you get the sense that ASIC dodges the really big fights against the wealthy and the well-connected because it could cost it too much money. Throwing the book at some small time fraudsters is much easier than tackling a Rene Rivkin or a Rodney Adler when each was at the height of their powers. Sure, each eventually went down, but action should have been taken years earlier.

While the US Securities & Exchange Commission has completed more than \$6 billion worth of settlements with the likes of JP Morgan and Citibank, ASIC drags its feet and rarely extracts anything from the corporate carcasses that litter the landscape from time to time. The few \$100 million-plus legal settlements after Australian collapses have all involved private litigation, whether it be by GIO's minority shareholders or the victims of collapses like Bond Corp and Tricontinental, extracting some restitution from the auditors who declared that everything was rosy.

Four years after One-Tel and HIH collapsed, various ASIC actions are still winding their way through the courts. A bigger test will be over whether the corporate plod is prepared to take action against a billionaire like John Roberts, given the market in Multiplex shares appeared to be very poorly informed ahead of the shock losses revealed on the redevelopment of Wembley stadium.