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The regulator's broken compass

Michael West
January 30, 2012 - 1:46PM

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ASIC needs to take a closer look at the insolvency sector. *Photo: Jim Rice*

Readers may recall **revelations late last year** about Compass Resources' stealthy disclosure on Melbourne Cup day.

On this memorable day, the director of Compass Resources, Richard Swan, and the audit firm Grant Thornton, quietly submitted to the A Securities Exchange a half-yearly financial report which spanned, not the six months which half yearly reports are wont to do, but rather, 4

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Here was the world's first 11.5 per cent of the year "half year" financial report. And there were no comparatives, so any interested observe forgiven for inquiring as to what had come before, in the wake that is of one of this country's ugliest corporate train wrecks.

Swan and his helpers from Grant Thornton argued that this slither of a financial report was justified because the Australian Securities & In Commission (ASIC) had given the company an accounting exemption order for the prior reporting period.

The story surrounding ASIC's relief order for Compass is yet another case of regulatory failure in the insolvency area. ASIC issued the ord to its own policies in Regulatory Guide 174, because ASIC knew that the Compass administrators were "very confident" that a company reconstruction would be effected.

Memo to ASIC staff: Read your organisation's policies on accounting exemption orders before you sign off on them.

ASIC mystery

ASIC issued the order subject to the condition that on or around February 8, 2010, the ASX would be notified. For reasons unknown howe announcement for the exemption order did not appear until April 9, 2010.

Memo to Compass administrators Ferrier Hodgson: April 9, 2010, is not on or around 8 February 2010. Compass, its insolvency spec Hodgson and ASIC all seem prepared to pretend that the exemption order is still good even if its conditions have not been satisfied.

It is not uncommon for strange events like these to occur when listed public companies in administration are being regulated by ASIC. The casualty of administrations is usually the transparency and accountability for company affairs set out in the law.

Memo to Federal Government: Administrators frequently ignore the law and do not prepare required annual accounts. ASIC often helps administrators to paint over the cracks by issuing an accounting exemption order when the company is being prepared for its return to the management of directors. Only then the accounts begin to flow again yet the period when the company was managed by administrators is hole. There is no information about the income and expenses for these periods. There is no way of knowing how the financial position of th has changed during the course of the administration. There is no way of knowing what the administrators are up to.

The public exposure of the Compass Melbourne Cup 42-day financial report may have rallied ASIC into some rearguard action, however, t itself from further embarrassment.

Christmas surprise

There came another Compass surprise on the day before Christmas Eve. The news this time was a replacement set of half-yearly accou Compass. These accounts actually covered the full six months to June 30, 2011 - a significant improvement over 42 days.

And it was nice to finally have some meaningful disclosure about the cost of the Compass administration - a cool $771,573 for six months

The Ferrier's bill since Compass's controversial collapse in 2009, and subsequent controversial restructure, remains in the dark. Nor was insolvency firm responding to questions for this article.

Wrong numbers

Not to worry. The reissued Compass accounts, unfortunately, are still wrong. They are wrong because the assets of the company are ass the basis of liquidation values from before January 1, 2011.

Memo to ASIC: Liquidation values from before January 1, 2011, are not appropriate for a balance sheet at June 30, 2011, when it is know the accounts are signed that the company is not being liquidated. If ASIC and Compass Resources again reissue the Compass half-year June 30, 2011, may we suggest Maundy Thursday as a suitable lodgement day?

The Compass Christmas Eve half-year accounts also included another head-spinning disclosure but this time about the company's audito

On October 18, 2011, Martin Jones of Ferrier Hodgson in Perth advised that he had negotiated Grant Thornton to do the audit for the Com report noting that the appropriate form to have KPMG removed as auditors had been lodged with ASIC.

According to a document supplied to shareholders of Compass by Martin Jones in July 2011, the move to Grant Thornton was expected to Compass in excess of $200,000 on the audits of the annual accounts for December 31, 2008, and half-year accounts for June 30, 2011.

Shareholders appear not to have been told the full story by Ferrier Hodgson on this matter though. The claimed audit savings were based old audit quotes for the annual accounts.

A 2009 quote from KPMG and a 2010 quote from Grant Thornton. BusinessDay has obtained a copy of the KPMG quote. It shows that KP range from $138,000 to $168,000 to complete the audit for the annual accounts.

In order to save $200,000 on this basis, Grant Thornton would have to pay Compass to do the audit instead of the other way around. Perha and his former partner Adrian Brown, who is now the senior executive leader of insolvency practitioners at ASIC, could have a chat about h Compass shareholders might have been better informed on this matter.

Two heads

It turns out that Grant Thornton signed the audit review report on the Melbourne Cup half-year accounts while KPMG was still nominally the the company. Is this Australia's first company with two auditors?

These irregularities can only mean further distress for Compass shareholders who lost so severely and reprehensibly in the company's cr rehabilitation.

Here we have KPMG as the incumbent auditor of the company but they do not do the review of the Melbourne Cup half-year accounts. Rat auditor hand-picked by Ferrier Hodgson comes in and signs off on a set of half-year accounts that conveniently ignore 139 days that Ferrie was in-charge of the company.

Memo to ASIC: ASIC Regulatory Guide 26 states that "Opinion Shopping" is the practice of searching for an auditor willing to support a pr accounting treatment. It is unlikely that a Big Four audit firm such as KPMG would associate itself with a 42-day financial report with zero comparatives.

So the Compass Melbourne Cup half-year accounts are audited by Grant Thornton yet - in a storyline redolent of the Twilight Zone - the au Company is KPMG. The Compass Christmas Eve disclosure states that KPMG and Grant Thornton are joint auditors of the Compass Me half-year accounts.

Truly, facts are stranger than fiction. The Corporations Act does not allow two firms to be jointly appointed auditor. The Act refers to the ap "a firm" - not "a firms" plural.

If KPMG and Grant Thornton were the joint auditors for the Compass Melbourne Cup half-year accounts, then how come Grant Thornton a the audit review report?

Memo to litigation funders IMF Australia: could shareholders of Compass Resources sue both KPMG and Grant Thornton at the same negligent joint audit?

Memo to KPMG and Grant Thornton: Does any of the following ring a bell? A Member in Public Practice who is asked to replace an exis or to accept nomination as a replacement auditor shall request in writing of the existing auditor all information which ought to be available t Member to make a decision as to whether the Audit Engagement or the nomination should be accepted.

Free advice

How about this as a suggested piece of correspondence? "Hello Grant Thornton this is KPMG here and we are still the auditor of Compas resignation as auditor has not been approved by ASIC yet. Whatever you do, don't start doing the audit work or sign the audit review report have resigned."

The Compass Christmas Eve disclosure notes that ASIC gave its approval for KPMG to resign as auditor on December 1, 2011. ASIC gav approval to the resignation knowing that the shareholders of Compass had not been properly put in the picture about company auditor sav August 2011 meeting.

Memo to ASIC: You cannot be serious (apologies to J McEnroe).

ASIC Regulatory Guide 26 states that ASIC will not normally consent to an application that is in the nature of opinion shopping. The Guide a that ASIC will not consent to an audit resignation which does not take effect at a company's AGM unless there are exceptional circumstan ASIC policies don't seem to matter when it comes down to exemptions and other favours for insolvency mates.

Memo to Federal Government: Are you beginning to understand why the 2011 Senate Inquiry into administrators and liquidators recomm ASIC be stripped of some its regulatory powers?

Neil Guest the CFO and company secretary of Compass Resources when all the above happened resigned from his positions effective 1 2012. Neil is not the only one who should be out of a job.

The regulator's failure of proper record keeping exacerbates things to the level of a scandal. (See item here about **the purging of public documents**.) Many of the exemption orders for insolvency practitioners - favours in layman's language – vanished from the public data ba the time of the Senate inquiry into the insolvency industry and its regulation.

ASIC's disappearing act for accounting exemption orders includes the highly dubious exemption order it issued for Compass Resources.

Memo to Office of the Australian Information Commissioner: we still await your response on this matter of high public importance.

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