



ASX Markets Supervision (ASXMS) Quarterly Activity Report – March 2010

Activity	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Total company announcements	26,635	35,024	30,791	26,000	25,268
Number of new listings	21	38	12	3	8
Number of delistings	24	28	39	20	16

- New listing activity in Q3 FY10, while 45% lower than the highs achieved in the previous quarter, was still approximately 162% greater than the previous corresponding period (pcp).

As at end of quarter	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Listed entities supervised	2,102	2,106	2,095	2,121	2,138
Participants ¹ – ASX, ACH, ASTC	182	189	188	182	179
Participants – SFE, SFECC	37	37	37	37	37

- There were 2,102 listed entities supervised as at 31 March 2010, largely in line with the figure at the end of Q2 FY10. The number of Participants (ASX, ACH, ASTC, SFE and SFECC) supervised in Q3 FY10 also remained steady compared to previous periods.

Waivers granted	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Listing Rules	167	344	328	194	169
ASX Market Rules	0	0	0	2	0
ASTC and ACH Rules ²	13	1	8	7	10
SFE Operating Rules	5	11	23	5	15
SFE Clearing Rules	0	1	1	4	2

- There were 167 Listing Rule waivers granted in Q3 FY10, in line with the pcp but 51% lower than the previous quarter. This was due to the lower number of waivers granted to entities undertaking capital raisings through share purchase plans or accelerated entitlement offers, as overall secondary capital raising activity was lower in Q3 FY10 than in preceding quarters³.

¹Total number of active Participants only.

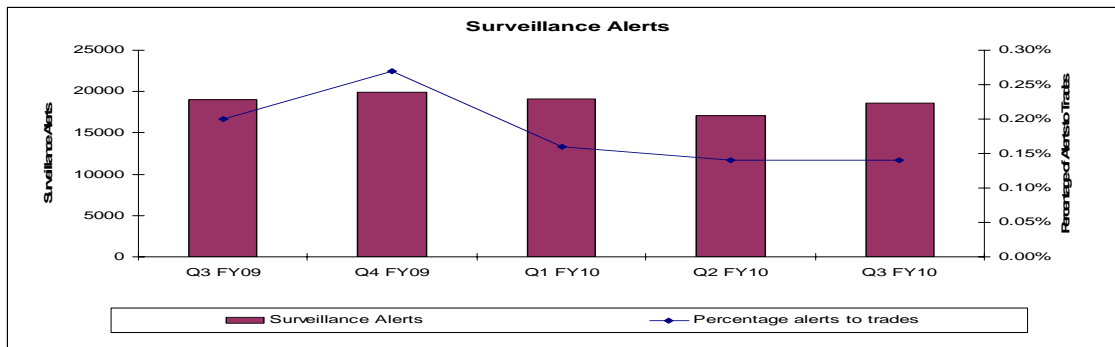
²Statistics for waivers under the ASTC Rules granted to listed entities are from 1 January 2009.

³As an indicator, total value raised in secondary capital in Q3 FY10 was approximately 76% lower than the previous quarter.

- 13 ASTC rule waivers were granted during the quarter - 12 to foreign-domiciled entities listed on multiple exchanges to accommodate differences in corporate action timetables prescribed by different exchanges.
- There were 5 exemptions from SFE Operating Rules approved during Q3 FY10, the majority (4) of which related to extensions to the submission of Financial Returns (OR.2.2.18). No exemptions were approved from SFE Clearing Rules.

Market surveillance

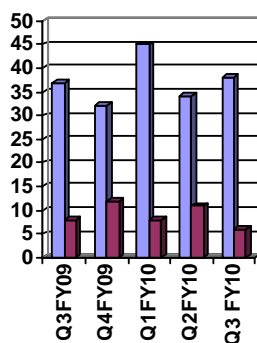
Real-time



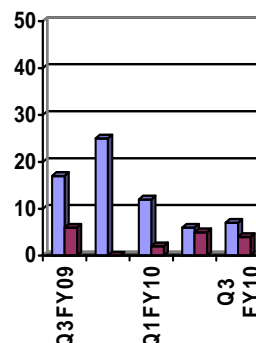
- There were 18,638 alerts in Q3 FY10, slightly higher than the previous quarter. The All Ordinaries Index traded in a range of over 500 points, from a quarterly high of 4983 on 11 January, falling to a low of 4483 on 9 February, before recovering almost 500 points. There were over 6,100 alerts in January, which is high given that historically January is a relatively quiet month. Overall, the percentage of alerts to trades was steady.

Insider trading and market manipulation

Activity	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Insider trading enquiries commenced	38	34	45	32	37
Market manipulation enquiries commenced	7	6	12	25	17



■ Insider trading enquiries opened
■ Insider trading matters referred to ASIC



■ Manipulation enquiries opened
■ Manipulation matters referred to ASIC

- The number of insider trading and market manipulation matters commenced during Q3 FY10 (38 and 7 respectively) were consistent with the numbers in the previous quarter (34 and 6 respectively). In Q2 FY10, there were a number of large-cap takeovers which led to insider trading referrals to ASIC. While takeover activity remained solid in Q3 FY10, fewer proposals led to referrals to ASIC and some matters remain under investigation.

- Without suggesting a causal relationship, it has been observed that the number of insider trading enquiries undertaken by ASXMS is usually higher and manipulation enquiries fewer when markets are stronger. That observation was evident in Q2 and Q3 FY10 as the All Ordinaries Index recovered its value.

Issuer monitoring

Continuous disclosure (CD)⁴

Activity	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
CD queries made by ASXMS	170	175	191	224	240
Price queries made by ASXMS	133	219	272	243	211
Total CD and price queries made by ASXMS	303	394	463	467	451
Announcements made following CD query	156	219	233	274	238
Trading halts at company's request	274	373	366	323	206
Trading halts following query by ASXMS	18	24	21	23	17
Suspensions at company's request	39	38	41	30	28
Suspensions imposed by ASXMS for breach of the Listing Rules	17	25	5	8	32
Aware letters ⁵ sent by ASXMS	34	24	16	21	27

- There were 274 trading halts applied during the quarter of which 18 trading halts were applied following a query by ASXMS. A lower number of trading halts in the quarter could be attributed to a lower number of material capital raisings during the quarter.
- ASXMS made 170 queries in relation to compliance with the continuous disclosure requirements and there were 133 price queries made of entities.
- In addition to Aware letters issued as a result of day-to-day continuous disclosure monitoring activity, the Issuers unit reviewed financial results announced during February and issued Aware letters to a number of companies (Gunns, Toll Holdings, Cleanseas Tuna, Jetset Travel) as there had been material variations in the results they had reported⁶. Where appropriate, referrals to ASIC were made.
- The Issuers unit released the results of its latest review of securities trading by directors during the 'blackout' period in January 2010. This review was based on all Directors' Interest Notices lodged between 1 July 2009 and 30 September 2009 (Q3 2009), and examined trading by directors during this period for possible contraventions of the publicly disclosed trading policy of the entity concerned.

The results of the Q3 2009 review showed that 0.7% (or 5 trades) of the 713 active (i.e. on-market) trades by directors in Q3 2009 were confirmed to have contravened the trading policies of the entities concerned, in that permission from the relevant chairman of the board had not been granted for the trading. The confirmed contraventions involved 4 individual directors in the securities of 4 different entities, none of which were in the All Ordinaries Index or the S&P/ASX 200 Index.

⁴ASXMS raises continuous disclosure queries with listed entities when it has concerns that the entity may not be in compliance with its continuous disclosure obligations as set out in Listing Rule 3.1. Examples include queries made following broker or media reports. Price queries are a specific category of queries which are raised as a result of unusual movement in a listed entity's share price or trading volume that has been detected by ASXMS's market surveillance systems.

⁵Aware letters are letters sent by ASXMS following an announcement by a listed entity where ASXMS asks for details of when the listed entity became aware of the material information contained in the announcement.

⁶Listed companies are required to make an appropriate announcement immediately they become aware that there is expected to be a material difference in the financial results..

The result for Q3 2009 may be compared to 8 confirmed contraventions (0.8%) by 6 directors in the securities of 6 entities in Q1 2009, and 15 confirmed contraventions (1.1%) by 12 directors in the securities of 9 entities in Q3 2008.

ASX Markets Participant monitoring

Matters commenced	Q3 FY10	Q2 FY 10 ⁷	Q1 FY10	Q4 FY09	Q3 FY09
ASX Participant-related enquiries ⁸ commenced	146	163	247	190	180
ASX Participant-related investigations commenced	5	13	17	13	24

- The change in the number of participant-related enquiries during the quarter is a reflection of both the cyclical nature of the compliance function and the commitment of ASX resources to preventative measures.
- As part of the ASXMS Education and Research Program, the national roll-out of *Compliance and Risk Fundamentals for ASX, ACH and ASTC Participants* workshops commenced in Q3 FY10. These workshops explore the fundamental elements of a supervisory, risk and compliance framework and provide an overview of the obligations of the ASX Operating Rule framework. Using practical applications with case studies, attendees increase their awareness of strategic compliance initiatives to mitigate the emerging risks inherent in their business processes. See the ASXMS Education and Research Program section at the end of this report for other details.

Futures supervision and capital monitoring

Matters commenced	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
SFE Participant-related matters ⁹ commenced	7	19	18	12	12
SFE Participant-related investigations commenced	16	24	22	18	28

- All futures contract expiries, in particular the bonds and SPI futures expiring in March 2010, were conducted in an orderly manner.
- Industry training sessions on the use of the new Return Lodgement and Monitoring (RLM) system were held during the quarter. RLM has been designed to replace the existing paper-based submission by Participants subject to the Net Tangible Asset test and the current ASX Returns software used by Participants subject to risk-based capital requirements. The system is expected to go into production in Q4 FY10.

⁷Numbers as at 23 December 2009.

⁸Matters include ad hoc queries, on-site reviews, self assessments, spot reviews and queries arising from complaints made against a Participant.

⁹Includes inspections, exemption requests, financial return reviews, self assessments and other ad hoc and administrative reviews.

Enforcement

Referrals to ASIC	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Total referrals ¹⁰ to ASIC	23	21	18	22	21
Which include the following breaches:					
Continuous disclosure	5	2	4	4	5
Market manipulation	5	5	2	0	6
Insider trading	6	11	8	12	8
Other	8	12	6	8	5

- There were 23 referrals relating to 24 potential breaches of the Corporations Act made to ASIC this quarter. This is approximately 10% more than the previous quarter (21 referrals).
- The role of the Enforcement group within the existing supervision regime at ASX includes preparation of cases of alleged rule contraventions by Market Participants for determination by the ASX Disciplinary Tribunal. In this quarter the matters received by Enforcement related to a range of alleged rule contraventions including ASX Market Rule 14.4.1 (Disorderly Markets), various SFE Operating Rules, Unprofessional Conduct, reporting and liquid capital requirements, and Market Rule 13.4.1(b) (iii) (false or misleading appearance).

Disciplinary Tribunal

Matters commenced	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Matters received by the Disciplinary and Appeal Tribunal during the period	11 ¹¹	16	9	12	7
Disciplinary Circulars released during the period	6	9	11	4	3
Disciplinary matters in progress as at the end of the period	28 ¹²	21	13	18	10
Fines imposed during the period (excl GST)	\$400,000	\$335,000	\$1,625,000	\$290,000	\$80,000

- The Disciplinary and Appeal Tribunal imposes sanctions in exercise of its powers under the Disciplinary Processes and Appeals Rulebook by reference to the monetary limits in place at the time of the relevant contravening conduct. For contraventions occurring after 31 March 2008, the maximum penalty applicable has been increased to \$1,000,000 regardless of when the relevant proceedings are commenced.

Disciplinary Circulars released in Q3 FY10 were in relation to:

- **ANZ Trustees Limited (P2010/080)** - The Tribunal determined a fine of **\$20,000** (plus GST) be imposed and the release of a Disciplinary Circular. ANZ Trustees was found to have contravened ASTC Settlement Rules 6.1.1 and 6.3.1 in that it did not satisfy the technical and performance requirements prescribed by the Rules.

ANZ Trustees had a mix of Direct CHESS Holdings and Participant Sponsored CHESS Holdings under its control. This requires ANZ Trustees having a recording and reporting system that could establish and maintain both Direct Holdings and Participant Sponsored Holdings in the CHESS Subregister. However, within the recording and reporting system used by ANZ Trustees, the default Holder Type for all Holdings established and maintained within

¹⁰A single referral may comprise more than one potential breach.

¹¹This figure includes 1 Disciplinary Appeal and 2 Listing Rules appeals received.

¹²This figure includes 2 Disciplinary Appeals and 2 Listing Rules appeals; matters are considered in progress until the Tribunal receives notice that the fine has been paid.

its system was "Participant Sponsored". This Holder Type field could not be amended. Consequently, 194 Direct Holdings established and maintained by ANZ Trustees in the CHESSE Subregister were incorrectly established as Participant Sponsored Holdings.

- **Citigroup Global Markets Australia Pty Ltd (CGMA) (076/10)** - The Tribunal determined a fine of **\$30,000** (plus GST) be imposed and the release of a Disciplinary Circular. CGMA contravened ASX Market Rule 14.1.1 (markets must remain fair and orderly) with respect to an Order it entered into the Trading Platform to Cross a quantity of fully paid ordinary shares of James Hardie Industries N.V. (JHX). CGMA's Designated Trading Representative (DTR) intended to enter the Order at \$4.85 but inadvertently entered the price as \$1.85. Despite receiving ITS¹³ price warnings, the DTR entered the Order and the price of JHX fell 62% and led to a number of trade cancellations. The Tribunal found that the Order resulted in a market for JHX that was not both fair and orderly. The Tribunal stressed the strict obligation of Rule 14.1.1 and the importance of DTRs to review and present orders to a requisite high standard.
- **Citigroup Global Markets Australia Pty Ltd (080/10)** - The Tribunal determined a fine of **\$20,000** (plus GST) be imposed and the release of a Disciplinary Circular. CGMA contravened SFE Operating Rules 3.1.10(a) and 3.1.13 in that CGMA disclosed to one of its clients information about an intention that CGMA had to place an order to exit an error position; and CGMA pre-arranged the details of a potential trade between CGMA and one of its clients.
- **RBS Equities (Australia) Limited (102/10)** - The Tribunal determined a fine of **\$40,000** (plus GST) be imposed and the release of a Disciplinary Circular. RBS contravened ASX Market Rule 5.7.3 in that it failed to ensure that 67 Cash Market Transactions to which it was a party were settled on the third Business Day following the date that the transactions were created on or reported to the Market. The matter was contested by RBS at an oral hearing on liability only. The Tribunal found that the contravention was made out and emphasised the strict obligation imposed on Trading Participants under the Rule is fundamental to ensure the integrity and efficiency of the system for the settlement of Market Transactions. The Tribunal also noted that the internal escalation of the matter by RBS was inadequate.
- **Deutsche Bank AG (DBAG) (105/10)** - The Tribunal determined a fine of **\$10,000** (plus GST) be imposed and the release of a Disciplinary Circular. DBAG was fined for contravening SFE Operating Rule 3.3.5(a) and it was censured for contravening Rule 2.2.10 on self-reporting, which occurred in unique circumstances. The 'unique circumstances' relate to DBAG making the decision with regards to SFE Bulletin 55/04. The Tribunal found that the advice in SFE Bulletin 55/04 was conscientiously followed, in good faith, by DBAG in this instance. Thus, SFE Bulletin 55/04 significantly contributed to DBAG making the decision not to self-report.

The Tribunal determined that while Rule 2.2.10(b) affords no discretion in self-reporting breaches, Bulletin 55/04 caused confusion in the market place regarding that obligation. However, this has since been rectified in Bulletin 011/09. No Participant should henceforth be in any doubt that they are obliged to report all breaches to the Sydney Futures Exchange. The Tribunal would take a very different view of a breach of SFE Operating Rule 2.2.10(b) in future circumstances.

- **Findlay & Co Stockbrokers Limited (111/10)** - The Tribunal determined a fine of **\$280,000** (plus GST) be imposed and the release of a Disciplinary Circular. The Tribunal found that Findlay contravened a number of ASX Market Rules. The misconduct involved failing to settle transactions on time, engaging in unauthorised short selling, failing to satisfy the Risk Based Capital Requirements, and inadequate reporting that amounted to Unprofessional Conduct.

The penalties imposed included \$30,000 for short selling and T+3 breaches; \$100,000 for contravening the Risk Based Capital Requirements; and \$150,000 for Unprofessional Conduct regarding its Liquid Capital and Risk Based Capital Reporting requirements.

Findlay was the subject of a change in management that commenced in October 2008 and was completed in early 2009. As part of the change in management, changes were made to the structure and operations of Findlay and to the roles and responsibilities of senior staff that had been in place prior to the change. The new management at

¹³Integrated Trading System - the ASX equities trading system.

Findlay did not contest these matters and sought an early resolution in that it and ASX lodged joint submissions to the Tribunal in respect of facts, liability and penalty.

Findlay has wound down its operations and given notice to ASX of its intention to relinquish its status as an ASX Market Participant on finalisation of these matters. Findlay's parent company, Investorfirst, made a concurrent announcement to the market when the Disciplinary Circular was released.

ASIC outcomes arising from ASXMS referrals

- On 22 January 2010, Mr Newton Chan a former Melbourne broker was charged with eight counts of market manipulation following an investigation by ASIC. The charges relate to Mr Chan's alleged manipulation of the share price of Bill Express Ltd (BXP) (now in administration) while he was a senior client adviser at Macquarie Equities Ltd. ASIC alleges that Mr Chan used a number of trading accounts held by various individuals and entities with Macquarie Equities Ltd to purchase more than 34 million BXP shares, worth over \$6.1 million through hundreds of transactions. ASIC alleges these transactions created, or were likely to create, an artificial price for BXP.

On 15 March 2010, Mr Chan pleaded guilty to eight counts of market manipulation and to one count of providing false or misleading information to ASIC.

ASIC's investigation into alleged market manipulation of Bill Express shares follows a referral from ASX.

- On 22 January 2010, ASIC banned Melbourne broker, Mr Mark Richard McKenzie, from providing financial services for three years. While employed as a broker with Citigroup Wealth Advisers Pty Ltd, an ASIC investigation found that Mr McKenzie possessed inside information regarding a possible takeover of Vision Systems Limited (VSL), a publicly listed company on ASX, and purchased VSL shares on his own account and advised four of his clients to purchase VSL shares.

Mr McKenzie appealed to the Administrative Appeals Tribunal for a review of ASIC's decision, and the Tribunal has affirmed the three-year banning.

(In a related investigation, Mr Colin Hebbard, a former broker employed in Citigroup's Perth office, was also found to have communicated inside information on VSL shares to Mr McKenzie and three of his clients, and then advised them to purchase the stock. ASIC subsequently banned Mr Hebbard from providing financial services for five years. This matter was determined in February 2009.)

Both these investigations followed referrals from ASX.

- On 15 February 2010, ASIC obtained declarations that the former Managing Director and Chief Executive Officer of listed biotechnology company, Select Vaccines Limited (Select Vaccines), Dr Martin Soust, had engaged in market manipulation and false trading so as to secure a performance bonus from Select Vaccines for himself. The declarations of contravention relate to the purchase of Select Vaccines shares by Dr Soust in his mother's name on 31 December 2007, shortly before the close of the market for the calendar year. This purchase had the effect of increasing the price of the company's shares from 2.0 cents to 2.5 cents (a 25% increase).

The case was referred to ASIC by ASX.

- On 16 February, ASIC brought 10 separate insider trading charges each against Mr Daniel Joffe, formerly employed as an Associate Analyst by Moody's Investor Services Pty Ltd, and Mr Nathan Stromer. ASIC alleges that Mr Joffe passed inside information which he had acquired in the course of his duties with Moody's Investor Services Pty Ltd to Mr Stromer who bought shares, warrants and contracts for difference.

The case was referred to ASIC by ASX.

- On 10 March 2010, former Genetic Technologies Limited (GTG) chief operating officer, Geoffrey Edgar Newing, was sentenced to a total of 22 months imprisonment and was ordered to serve six months of this sentence before

being released on a recognisance release order. The Judge noted that she would have imposed a sentence of two-and-a-half years imprisonment with a minimum of one year to serve if it had not been for Mr Newing's guilty plea. Her honour stressed the importance of market integrity and noted the importance of compliance with all three of the primary rules regulating the share market, being the requirement not to trade with inside information, the requirement not to engage in the manipulation of share prices, and the necessity of companies' timely disclosure of material information.

The sentence related to Mr Newing's involvement in the trading of GTG shares through a share trading account held in the name of his related company, Palamine Pty Ltd. These transactions, according to ASIC, were likely to create or maintain an artificial price for trading in GTG shares.

ASIC's investigation into the alleged market manipulation of GTG shares follows a referral from ASX.

- On 29 March 2010, ASIC succeeded in obtaining a pecuniary penalty order and disqualification order in civil penalty proceedings against Mr Ravi Amrit Narain, former Managing Director and Chief Executive Officer of Citrofresh International Limited, now known as Paragon Care Limited.

This follows findings in the Federal Court that Mr Narain had contravened section 1041H (1) of the Corporations Act 2001 (the Act) by personally making, and by authorising the Company to make, a statement to ASX which was misleading and deceptive, and that by doing so he breached his duty as a director (refer AD10-17).

The Court ordered that Mr Narain pay a pecuniary penalty of \$20,000 and be disqualified from managing a corporation for a period of seven years. Mr Narain was also ordered to pay ASIC's legal costs.

The case was referred to ASIC by ASX.

Update on transfer of supervisory functions to ASIC

- In August 2009, the Government announced that from Q3 2010, ASIC would take over the supervision of trading on all licensed financial markets. Significantly, ASX will continue:
 - Oversight of all listed entities which includes the surveillance monitoring for continuous disclosure and the monitoring of corporate governance disclosure
 - Admittance of new participants to its markets
 - Monitoring and enforcing compliance with the Operating Rules for market, clearing and settlement participants.

As such, ASX will continue to retain staff to undertake these functions.

- In the light of the Government's decision, in February 2010 ASX released its new Operating Rules framework that reflects ASX's new role as a financial market operator with responsibility for monitoring and enforcing compliance with its Operating Rules, rather than as a market supervisor. In re-writing the rules, ASX is taking the opportunity to:
 - Adopt a more logical rule structure
 - Remove duplication and delete unnecessary rules
 - Be more concise (with some material moved to procedures)
 - Achieve consistency between ASX and SFE rules.

The draft of the new ASX and SFE Operating Rules was issued for comment on 1 April 2010 at which time the rules were also informally lodged with ASIC. ASIC also released its Market Integrity Rules for ASX and SFE markets on 28 February 2010 for consultation. Both sets of rules - ASX's and ASIC's - have been based primarily on the current ASX Market Rules and SFE Operating Rules.

- Recognising that there will be a 'run-off' period in respect of disciplinary matters, ASX will maintain responsibility for the investigations and enforcement of all potential breaches of the current ASX Operating Rules that occurred before the transfer of functions, whether they be for potential breaches currently under investigation or for potential breaches detected post-transfer.

- ASX is working closely with ASIC to achieve a seamless transfer of functions.

ASXMS Education and Research Program

- Fines imposed by the Disciplinary Tribunal since 1 January 2007 have been directed to the funding of the ASXMS Education and Research Program. The Program is focused on raising awareness of current supervisory issues and promoting compliance with ASX's Operating Rules. It supplements ASXMS's existing and regular program of presentations, road shows and newsletters to listed entities and ASX Participants.

Program activities	Q3 FY10	Q2 FY10	Q1 FY10	Q4 FY09	Q3 FY09
Events held	8	7	14	52	1
Persons in attendance*	276	140	303	2,197	44

* Actual attendance figures - in some instances estimates are used based upon numbers registered to attend the event.

Educational events

- During the quarter ended 31 March 2010, the compliance and risk course for ASX group participants, developed in association with the Australasian Compliance Institute and piloted in December 2009, was rolled out nationally. See section on Participant Monitoring for details.
- A guide for participants on the ASX Disciplinary Tribunal was published on the ASX website.
- An on-line guide to assist participants in using the ASX Compliance Monitor electronic lodgement facility was released to participants. It will be advertised to participants in the near future.
- Funding was also made available to the Financial Reporting Council for education on financial reporting matters.