

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

28 February 2023

RE: Inquiry into ASIC investigation and enforcement

Dear Committee,

My name is Lachlan Walden and I am a professional full-time ASX investor and trader. I specialise in smaller companies and this submission primarily relates to illegality in ASX securities with a market capitalisation of under \$300 million. Over the past eight years, I have spent many thousands of hours observing and participating in live ASX trading, so have developed a sophisticated understanding of how the ASX works. In recent years I have witnessed hundreds of instances of criminal conduct. A very conservative estimate would be that at least \$500 million annually is wrongly transferred from investors in small ASX companies to criminals that flagrantly break the law. Despite my best efforts to report to ASIC blatant illegal market manipulation, fraudulent upcoming IPOs and clear instances of insider trading, there seems to have been no tangible enforcement action taken on any matter. My confidence in the regulator to uphold the law and its own ASIC Market Integrity Rules is now severely lacking.

I have increasingly observed systemic criminal on-market conduct from other market participants. From 2020, I started compiling detailed evidence to make it straightforward for ASIC to understand the intricacies of the often complicated manipulation techniques deployed. I routinely report it to the facilitating brokers as well, who also seem to take no action. ASIC is no doubt inundated with complaints from inexperienced retail investors notifying them of supposed market manipulation (bots, algos, short selling, etc). From my experience, this is usually normal efficient trading and legal. What I outline below is anything but legal and easily goes unnoticed.

The following illegal conduct is endemic on the ASX, within the remit of ASIC and is almost always undetected:

- Insider trading when directors and/or management resign with negative price-sensitive information. I have evidence of this with two ASX companies in the last six months alone, where the insiders quickly sold large personal holdings after resignation, in advance of unexpectedly poor financial reports being released thus reducing the share price.
- Insider trading on material positive news where the nature and/or timing of announcements is leaked in advance by employees and consultants of the company. For example, a ~\$10 million ASX company tripled in the weeks before a \$100+ million contract announcement.

- Insider trading around capital raisings where large shareholders are made aware — often weeks and sometimes months in advance — so that they can sell their existing holdings at a premium to then subsequently take placement shares at a discount.
- Manipulation of closing share prices on a recurring basis over extended time periods. In one recent example, the monetary value of the trades were only 5-10 cents on most days over a seven month period. Often the manipulator has a large position they are selling — or planning on selling — so want the share price to seem to be holding up.
- Systemic market manipulation by professional traders using large-scale sophisticated spoofing techniques, regularly deploying ~\$200-500k and sometimes into seven figures. This is a clear breach of part 5.7 of the ASIC Market Integrity Rules and should be straightforward to detect, yet the same market participants do it hundreds of times without consequence.
- Non-disclosure of material negative news over a prolonged period. For example, a ~\$10 million ASX company largely unaffected by COVID withheld that it received ~\$2.5 million of JobKeeper receipts from investors for more than a year. This artificially inflated reported quarterly results and concealed that the underlying business was running at a significant loss.
- Non-disclosure of material changes to previous positive announcements where deals and agreements (often ‘binding’) don’t proceed as first indicated. This practice is endemic with smaller ASX companies and so the most egregious cases need to be made an example of to stamp it out.
- Delayed release of material negative news. For example, bad drilling results from the lab are held back for a few weeks while being ‘processed’ to be conveniently released with another positive announcement.
- Investor and trader syndicate pump and dump schemes, often taking place after a discounted ‘mates’ capital raising. The same groups do this over and over without intervention by ASIC.
- Approval of IPOs with a misleading prospectus making deceitful claims. In one instance a blatantly fraudulent financial services business model was allowed to list.
- Breaches of directors’ statutory duties whereby directors/management/insiders collude amongst themselves as large shareholders to award themselves free/discounted equity. This progressively dilutes the majority of investors into owning a smaller percentage of the company. Common examples range from excessive to retrospective awarding of ‘performance’ shares.
- Breaches of directors’ statutory duties whereby the majority of company funds are loaned to directors whilst capital is raised on multiple occasions at severe discounts. This recently happened with an ASX company that went bankrupt with the director loans unpaid; the director loans were supposedly a current asset on the balance sheet but always rolled over for another 12 months to the fatal detriment of shareholders.
- Breaches of directors’ statutory duties whereby an acquisition takes place from a related entity (directors or management) on non-commercial unreasonable terms. For example, a flailing property development purchased from a related party loses more than \$1 million (material for a ~\$10 million ASX company) which then isn’t announced until many months after the loss becomes definite on sale, and buried in the notes of a financial statement.
- Non-disclosure of directors’ interests where shares are held in entities controlled by directors but in the name of close family members (siblings, parents, etc.) allowing directors to trade at whim with no disclosure to the market.

- Non-disclosure by substantial shareholders of legally mandated notification of changes in interest over extended time periods.

Over the past two years, my personal definitive losses from the above-outlined criminal conduct which ASIC has failed to deter, prevent or detect are now in seven figures. This may seem like an exaggeration, but just four specific instances of insider trading (for which I have evidence and where ASIC could easily move to prosecute) make up the majority of this seven figure loss.

Regarding manipulation of closing prices, over a period of approximately seven months in 2022, an ASX listed security with a market capitalisation of ~\$30 million had its final closing price manipulated upwards by ~2-7% most days using transactions of literally 1-2 shares worth 5-10 cents. The same broker shows up as facilitating these trades on every occasion. Yet ostensibly this broker and the underlying individual/entity responsible for the trades has attracted no attention from ASX/ASIC. Blatant market manipulation like this is 'low hanging fruit'. ASIC should be making an example with criminal prosecution on each and every occasion.

ASIC is entirely incompetent at enforcing its own Market Integrity Rules. The problem at ASIC doesn't seem to just be a lack of resourcing. They clearly lack market professionals who can think like an elite trader would and understand the often complex intricacies involved. Any passive filters they may have established for detecting market manipulation are entirely ineffective. They need to focus on real-time (or at least t+2) analysis of the small-cap stocks with the highest trading volumes. Particular attention needs to be paid when looking at large orders, especially those that are placed without any genuine intention to buy/sell at a price (the spoofer usually deletes within a few minutes), whilst simultaneously making trades in the opposing direction in the same or related party trading account/s.

An example where I communicated with ASIC and was left severely disappointed was in early 2022, when I presented ASIC with extensive information and conclusive evidence that an upcoming IPO had a fraudulent financial services business model. I pointed out that the prospectus was misleading and didn't disclose anywhere near enough information about the insidious mechanics of the business. For the first time, employees at ASIC actually responded quite quickly with personalised non-generic emails and we spent a few weeks liaising. They asked for more and more evidence, investigated over the course of weeks, seemed to agree with the evidence of fraud presented, intervened with the ASX by delaying the IPO several months, and then, much to my surprise, after the company made some very minor disclosure improvements that didn't negate the central fraud element, they allowed the IPO to proceed. They even sent me an email thanking me for my time, saying they had concluded their investigation and were not going to take any further action with stopping the IPO or getting another division of ASIC to look into the fraud (the business model itself, not just the IPO, relates to fraudulently deceiving inexperienced ASX investors). This was obviously very disappointing for me after spending more than twenty hours helping them. Investors are now down ~85% losing millions collectively as the business model is unviable. This IPO was always just a play on inexperienced retail investors to steal their money and live the high life (excessive salaries, luxury Sydney CBD office, etc) at their expense for a few years.

Recommendations to improve ASIC's regulation of the Australian sharemarket:

- Start enforcing the existing ASIC Market Integrity Rules to the letter. Take action against the individuals/entities and facilitating brokers (breaching part 5.11.1 — notification requirement for suspicious activity reporting). This may involve consulting with and/or employing skilled market professionals to understand the intricacies of the advanced manipulation techniques.
- Make simple logical changes to the ASIC Market Integrity Rules to prevent manipulation of share prices. For example, no trades permitted allowing price changes greater than 2% of ASX securities from transactions worth less than \$1000.
- Preventative monitoring of all ASX securities by a market professional (with elite trading experience) in real-time for market manipulation. There are hundreds of blatant breaches each week that can be immediately stopped. Once the main culprits are gone from all brokers, there will be minimal ongoing egregious illegal conduct to detect.
- Monitoring for insider trading where large unusual accumulation/distribution takes place before a material announcement.
- High-level analysis of company announcements and financial statements for breaches of directors' statutory duties.

If you have further interest in any of the above, I can provide you with ASIC email correspondence, detailed evidence of market manipulation and insider trading, etcetera.

The Australian sharemarket is currently barely being regulated and ASIC has proven to be incompetent and ineffective at enforcing its own Market Integrity Rules. All market participants need a fair and orderly market to regain confidence in the law. The dysfunctional current paradigm will not end until the regulator makes profound changes to better detect, deter and punish illegal conduct.

Yours sincerely,

Lachlan Walden