

ASIC Sues Rex Airlines for Misleading Financial Claims

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The Australian Securities and Investments Commission (ASIC) has initiated legal action against Rex Airlines in the Supreme Court of New South Wales, alleging the carrier engaged in misleading and deceptive conduct and failed to meet essential disclosure requirements. This significant move underscores ASIC's commitment to enforcing transparency and accountability within Australia's aviation industry.

In a press release issued on December 11, 2024, ASIC Chair Joe Longo revealed that four board directors of Rex Airlines—Lim Kim Hai, John Sharp AM, Lincoln Pan, and Siddharth Khotkar—were accused of neglecting their duty to ensure the market received accurate information regarding the company's financial health. Longo stated, "Rex's directors had a responsibility to take reasonable steps to ensure the company complied with the law and we will seek to hold them to account."

The core of ASIC's case centers on a misleading announcement Rex made on the Australian Securities Exchange (ASX) on February 28, 2023. In this statement, Rex declared optimism about achieving positive operating profits for the full fiscal year of 2023, barring any unforeseen external shocks. However, ASIC contends that this claim lacked a reasonable basis, as Rex had already incurred operating losses during the financial year and had not prepared a financial forecast for FY23 before making the announcement.

ASIC further alleges that Rex breached its continuous disclosure obligations by failing to reveal a material downgrade in its financial outlook. Despite being aware that achieving an operating profit was unlikely, Rex did not update the market until June 20, 2023, when it projected a \$35 million operating loss for the fiscal year ending June 30, 2024. This delay in disclosure is a central point of contention in ASIC's legal proceedings.

The regulator accuses Lim Kim Hai of violating his directors' duties between February 28, 2023, and June 28, 2023, by authorizing the misleading ASX announcement and not taking appropriate measures to prevent Rex from breaching disclosure rules. Additionally, ASIC claims that starting in April 2023, the other three directors had access to financial information that should have prompted them to ensure Rex fulfilled its continuous disclosure obligations but failed to act accordingly.

"Directors of listed entities play a critical role in ensuring companies comply with their continuous disclosure obligations," Longo emphasized. "Failing to take reasonable steps to ensure a company is compliant is not acceptable." In light of these allegations, ASIC intends to seek a declaration of contravention against Rex Airlines. While the regulator is not pursuing financial penalties against the company itself, it plans to seek declarations, pecuniary penalties, and disqualification orders against the four directors involved.

Rex Airlines, a prominent player in Australia's regional aviation market, has faced increasing scrutiny over its financial practices. The allegations by ASIC come at a time when the airline industry is navigating post-pandemic recovery challenges, making transparency and accurate financial reporting more crucial than ever.

This legal action by ASIC serves as a stern reminder to all publicly listed companies in Australia about the importance of maintaining truthful and timely financial disclosures. Ensuring that investors and the market receive accurate information is fundamental to upholding the integrity of the financial markets and protecting investor interests.

Rex Airlines has yet to issue an official response to ASIC's allegations. As the case progresses, it will be closely watched by industry stakeholders and investors, highlighting the ongoing efforts to enhance corporate governance and accountability within Australia's aviation sector.

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