



**ASIC**

Australian Securities & Investments Commission

## REPORT 421

# ASIC enforcement outcomes: July to December 2014

January 2015

### **About this report**

This report outlines enforcement outcomes achieved by ASIC during the period 1 July 2014 to 31 December 2014 (the relevant period). The report identifies the entities and individuals enforcement action was taken against, and highlights examples of conduct targeted during this period.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Previous reports on ASIC's enforcement outcomes

Report number	Report date
REP 402	July 2014
REP 383	January 2014
REP 360	July 2013
REP 336	April 2013
REP 299	September 2012
REP 281	March 2012

### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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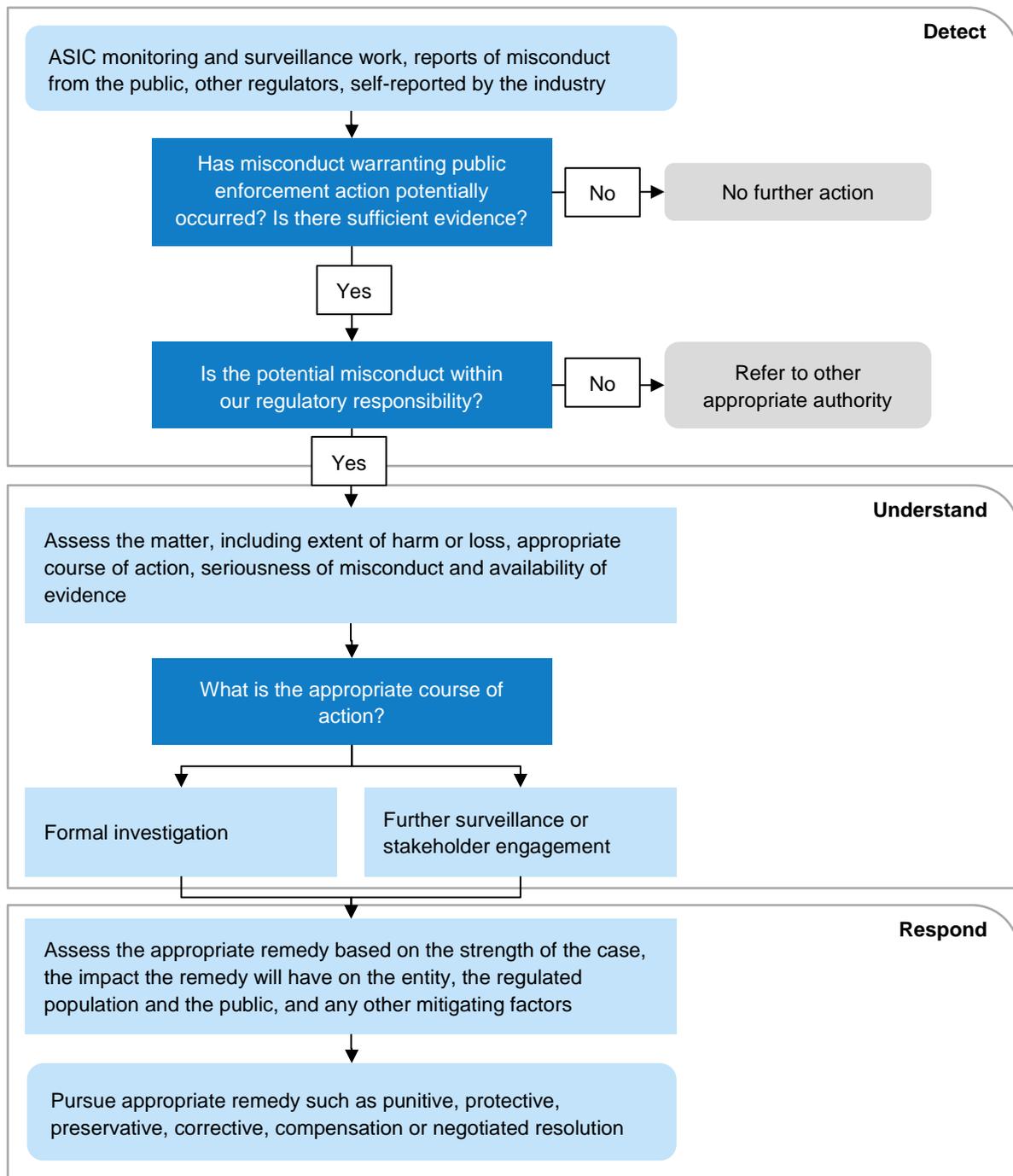
# Overview

## ASIC's role

- 1 ASIC investigates and enforces the law to give effect to our strategic priorities of:
  - (a) promoting investor and financial consumer trust and confidence;
  - (b) ensuring fair, orderly and transparent markets; and
  - (c) providing efficient and accessible registration.
- 2 ASIC is a law enforcement agency; 70% of our regulatory resources are devoted to surveillance and enforcement. In line with our strategic priorities, and within our available resources and powers, we will detect and take action against those who break the law. For those who intentionally break the law, we will do all that we can to ensure the ramifications are severe.
- 3 Over the last six months we commenced 94 investigations. We also completed 94 investigations, charging 14 individuals with a total of 173 criminal charges. In addition to this we banned and suspended individuals from the financial services industry, accepted enforceable undertakings and disqualified 16 directors. All these actions help to give effect to our strategic priorities.

### Enforcement activities

- 4 ASIC enforces the law through using our 'detect, understand, respond' approach. Figure 1 shows the flow of an enforcement activity through ASIC. It demonstrates the steps ASIC will go through before commencing enforcement action.

**Figure 1: Enforcement activity using the 'detect, understand, respond' approach**

## Purpose and scope of this report

- 5 This report considers our enforcement activities and outcomes achieved during the period from 1 July 2014 to 31 December 2014 (the relevant period). This report demonstrates both enforcement outcomes achieved and the views that we have on particular types of conduct.

- 6 The report is organised according to our strategic priorities:
- (a) promoting investor and financial consumer trust and confidence (Section A);
  - (b) ensuring fair, orderly and transparent markets (Section B); and
  - (c) providing efficient and accessible registration (Section C).
- 7 The examples in this report highlight the actions that we have taken to enforce the law and, in a number of instances, the role played by gatekeepers in promoting sound investment practices, preventing and detecting market failures, and promoting market integrity.
- 8 We are committed to transparency about our enforcement work. This is the seventh of our six-monthly enforcement reports. Previous reports are available at [www.asic.gov.au/reports](http://www.asic.gov.au/reports).

## Significant enforcement outcomes for the relevant period

- 9 In the relevant period, we achieved a total of 348 enforcement outcomes. This figure includes criminal, civil and administrative actions, as well as outcomes resulting in an enforceable undertaking, a negotiated outcome or the issue of a public warning notice. These outcomes were achieved across our ‘market integrity’, ‘corporate governance’, ‘financial services’ and ‘small business compliance and deterrence’ areas.
- 10 Six notable enforcement outcomes during the relevant period were:
- (a) Former Genetic Technologies Ltd (GTG) chief executive Dr Mervyn Jacobson was sentenced to a total term of two years and eight months imprisonment after being convicted of 35 charges relating to his involvement in the manipulation of GTG shares over a six-month period. This is the largest penalty ever imposed for a market manipulation in Australia: see Example 35.
  - (b) Mark Ronald Letten was sentenced to five years and eight months imprisonment after pleading guilty to 27 charges under the *Corporations Act 2001* (Corporations Act), including operating 21 unregistered managed investment schemes relating to property development: see Example 22.
  - (c) Five former directors of Australian Property Custodian Holdings Ltd (APCHL) who breached their directors’ duties by making an illegal related party payment of more than \$30 million were disqualified from managing a company for a combined total of 25 years and three months and fined a total of \$310,000: see Example 28.
  - (d) The High Court of Australia unanimously dismissed an appeal by Wellington Capital Limited (Wellington) challenging a decision of the

Full Court of the Federal Court of Australia that found Wellington had acted in a way that was not in accordance with the constitution of a fund for which it acts as the responsible entity: see Example 21.

- (e) The Full Court of the Federal Court of Australia upheld our appeal in which we sought the removal and replacement of the liquidators of the Walton Construction group on the grounds of a perceived lack of independence: see Example 33.
- (f) Lukas James Kamay and Christopher Russell Hill pleaded guilty to multiple charges relating to insider trading activity that occurred between August 2013 and May 2014 and resulted in profits of approximately \$7 million: see Example 37.

## Serious corporate fraud

- 11 ASIC is a law enforcement agency and pursues substantial criminal remedies for the most serious misconduct—for example, misconduct that has had a widespread negative impact on investors or creditors. We will consider criminal action for offences involving serious conduct that is dishonest, intentional or reckless, where there is sufficient admissible evidence. One such offence is fraud by company officers and directors, committed against the companies they serve.
- 12 While not defined in the Corporations Act, fraud usually refers to a person, often through deception, obtaining an unlawful gain or causing detriment. ASIC recently completed several enforcement actions after detecting serious fraud by company directors and officers. These frauds were dishonest and deliberate and show complete disregard for the companies and entities involved.
- 13 The consequences for those who steal and deceive are significant and should serve as a lesson for anyone in a position of authority who may be tempted to act fraudulently. ASIC will take on tough, complex matters, such as those demonstrated in Example 1 and Example 2.

### Example 1: Fraud and deception

Former chief executive officer of biotechnology company Phosphagenics Ltd, Dr Esra Ogru, and two men involved in the theft of millions of dollars from the listed company, were sentenced to a combined 12.5 years imprisonment.

#### **Dr Esra Ogru**

Dr Ogru was sentenced to six years imprisonment for her role in the theft of more than \$6.1 million. Dr Ogru was ordered to serve a minimum of two years before being eligible for parole.

Following an ASIC investigation, Dr Ogru pleaded guilty to seven charges of obtaining a financial advantage by deception from Phosphagenics and its subsidiary Vital Health Sciences Pty Ltd (VHS).

The personal monetary benefit obtained by Dr Ogru from the false invoices and credit card reimbursements was nearly \$3.9 million.

#### **Dr Robert Gianello**

Dr Gianello, a former Phosphagenics employee, was sentenced to four years imprisonment for his role in the theft of more than \$4.6 million from the company. Dr Gianello was ordered to serve a minimum of two years before being eligible for parole.

Dr Gianello pleaded guilty to three charges of obtaining money by deception from Phosphagenics and VHS.

Dr Gianello joined Phosphagenics as an employee in July 2008 and, until August 2012, agreed to the submission of the false invoices by a company associated with Dr Woei-Jia Jiang.

#### **Dr Woei-Jia Jiang**

Dr Jiang was sentenced to two years and six months imprisonment for his role in the theft of more than \$4.3 million from the company. Dr Jiang was ordered to serve a minimum of 12 months before being eligible for parole.

Dr Jiang pleaded guilty to three charges of obtaining money by deception.

Dr Jiang was the director of two companies that submitted false invoices to Phosphagenics and VHS for goods and services that were never provided.

### **Example 2: Fraud and reckless statements**

An ASIC investigation led to Carlo Cini, a former director of C Cini & Company Pty Ltd (in liquidation), being sentenced to five years and three months imprisonment. Mr Cini was ordered to serve a minimum of three years and three months before being eligible for release.

Mr Cini pleaded guilty in March 2014 in relation to a \$1 million fraud, along with other charges.

Our investigation found he raised more than \$1 million from seven investors based on representations that the money would be used for property development being undertaken by the company. The majority of the funds were subsequently used for other purposes, including to meet payments on multiple vehicle leases (including several Mercedes-Benz cars and a Ferrari), a deposit to purchase a family home, family-related mortgage repayments and payments to other investors.

Mr Cini also obtained a financial advantage for the company by evading debts due to the investors. This related to the issuing of valueless cheques to the investors worth more than \$700,000.

A further charge related to an investor agreeing to enter into a loan agreement on the basis of reckless statements made by Mr Cini, which helped Mr Cini avoid a debt payable to the investor of \$420,000.

Investigations revealed that at the time of the conduct the company was facing significant financial difficulties and Mr Cini was in no realistic position to meet investor repayments.

ASIC commenced investigations into Mr Cini following a liquidator's report to ASIC. The liquidator received funding from the Assetless Administration Fund (AA Fund), a fund that ASIC administers. The AA Fund provides funding for a preliminary investigation and a report to ASIC by liquidators into a failed company's affairs where that company has few or no assets. ASIC can then determine whether to commence enforcement action.

## Loan fraud

- 14 Responsible lending is one of the obligations central to the national consumer credit regime. Responsible lending is about ensuring consumers are not simply put into any loan, but that they only enter loans they can afford given their financial situation and broader requirements and objectives. This is fundamentally linked to consumer confidence.
- 15 We have a clear commitment to tackling loan fraud involving false loan applications and related documents. We have had a number of successful cases in this area recently and, since becoming the national regulator of consumer credit in July 2010, ASIC has achieved significant loan fraud outcomes—including:
- (a) obtaining six criminal convictions;
  - (b) permanently banning or obtaining enforceable undertakings to permanently refrain from engaging in credit activities from 15 individuals or companies;
  - (c) banning 14 individuals from providing credit for periods between three and 10 years; and
  - (d) suspending or cancelling 10 Australian credit licences (including three outcomes where the licence was cancelled by the entity following a negotiated outcome with ASIC).

### Example 3: Falsifying loan documents

Shashi Kanta Prasad pleaded guilty to four charges of fraud after an ASIC investigation found she created false loan documents for seven clients to attempt to secure home loans totalling more than \$3.6 million.

Mrs Prasad pleaded guilty to making seven false statements. She also pleaded guilty to producing 41 fake documents and instruments and using those statements, documents and instruments with the intention to obtain a financial advantage for her employer in the form of commissions.

The offences were committed between February 2008 and March 2011, while Mrs Prasad was employed by Raj Prasad & Co Pty Ltd trading as Premium Financial & Retirement Solutions.

Of the more than \$3.6 million in loans applied for, approximately \$1.55 million worth were granted. Upfront and ongoing commissions of \$11,857 were obtained by Raj Prasad & Co Pty Ltd.

Mrs Prasad was convicted and required to enter into a good behaviour bond for 18 months.

## Civil penalty proceedings

- 16 We are able to pursue civil penalties in court for certain breaches of the law. ASIC will use civil penalty proceedings where we consider the conduct engaged in is contrary to the law and there is either insufficient evidence to criminally prosecute, the conduct falls short of criminality or criminal proceedings are otherwise not available. Civil penalty proceedings provide a way of enforcing the law when it is not possible to bring criminal actions against corporations and their officers.
- 17 We have recently obtained outcomes through using civil penalty proceedings: see Example 4 and Example 5. In the relevant period courts have imposed civil penalties totalling \$3.01 million in response to proceedings commenced by ASIC.
- 18 ASIC has several civil penalty proceedings in progress and will continue to use these proceedings to seek enforcement outcomes.

### Example 4: False and misleading representations in credit

The Federal Court of Australia made declarations and ordered consumer credit provider GE Capital Finance Australia (GE Capital), which trades as GE Money, to pay a penalty of \$1.5 million for making false or misleading representations to more than 700,000 of its credit card customers.

The court found that at various times between 5 January and 27 May 2012, GE Capital told certain credit card customers that to activate their credit card, or to apply for or obtain an increased credit limit, the customer also had to consent to receiving invitations to apply for credit limit increases.

These representations were false or misleading because GE Capital did not require such consent for credit cards to be activated or for credit limits to be applied for or increased. GE Capital engaged in the conduct shortly before the Government's prohibition on unsolicited invitations to increase credit card limits came into effect.

In determining the penalty the court said: 'The principal purpose of the imposition of a pecuniary penalty is to act as a specific deterrent and as a general deterrent to others who might be tempted to contravene the law.'

The court also made orders requiring GE Capital to pay ASIC \$50,000 for legal costs and to advise cardholders what the decision means for them by sending emails or letters to approximately 210,000 affected cardholders and by publishing a notice on its website.

#### Example 5: Continuous disclosure breaches

The Federal Court imposed a \$1.2 million penalty on Newcrest Mining Limited (Newcrest) for contravening its continuous disclosure obligations by briefing analysts on price-sensitive information ahead of it being disclosed to the market.

From 28 May 2013, Newcrest disclosed information about their expected gold production for the 2013–14 financial year in a series of briefings to analysts, and on 5 June 2013 disclosed information regarding Newcrest's expected capital expenditure for the 2013–14 financial year. This information was price sensitive and Newcrest was obliged to disclose it to the ASX.

Newcrest admitted the contraventions and the parties filed a joint application for civil penalties to be imposed.

The court heard a joint submission from ASIC and Newcrest as to the appropriate penalties. The parties jointly proposed a penalty of \$1.2 million for two contraventions.

The court accepted these submissions.

Our investigation in relation to persons who received this information is ongoing.

### Magnitude of penalties

- 19 Despite the result in Newcrest, one of the largest monetary penalties imposed in an ASIC civil penalty case, Justice Middleton commented that the current level of penalties may not be a sufficient deterrent for large organisations, noting that:

It could be argued that even a \$1,000,000 penalty for each contravention (the maximum this Court could impose) may not be sufficient specific deterrence, in view of Newcrest's size and financial position.<sup>1</sup>

- 20 Earlier last year ASIC released Report 387 *Penalties for corporate wrongdoing* (REP 387). It found that Australian non-criminal penalties for corporate wrongdoing were inconsistent with those of comparative international jurisdictions. In particular, REP 387 found that many overseas non-criminal penalties, at a minimum, are designed to remove the financial benefit from the wrongdoing and may be a multiple of three times the benefit.

<sup>1</sup> *Australian Securities and Investments Commission v Newcrest Mining Limited* [2014] FCA 698 at [73].

- 21 ASIC does not currently have any equivalent penalties for civil penalty proceedings. This has a direct impact on the effectiveness of civil proceedings and the deterrent message we can send through using them.
- 22 The Financial System Inquiry also noted that current penalties are unlikely to act as a credible deterrent against misconduct by large firms.<sup>2</sup> It recommended that the maximum civil and criminal penalties for contravening ASIC legislation should be substantially increased to act as a credible deterrent.
- 23 Our view is that breaking the law in the financial sector is often a trade-off between fear and greed. Penalties need to amplify the fear of prosecution to outweigh the greed.

## Current and future areas of focus

- 24 While we focus on detecting, understanding and responding to misconduct in all areas we regulate, we do have particular areas of focus. These areas have been targeted because we see them as potential risk areas that may impede ASIC's ability to achieve our strategic priorities.

### Financial market benchmark rates

- 25 In Report 402 *ASIC enforcement outcomes: January to June 2014* (REP 402), we noted that ASIC has been focusing on the possible manipulation of the Australian bank bill swap rate (BBSW). The BBSW is the primary benchmark used in Australian financial markets and is administered by the Australian Financial Markets Association (AFMA).
- 26 This is part of larger ASIC inquiries into conduct surrounding financial markets benchmark rates, which also include inquiries into trading in foreign currency, such as conduct surrounding the WM/Reuters fix rate. The WM/Reuters fix rate is the foreign exchange rate that is used as a standard rate for portfolio valuation and performance measurement. Where we find evidence of misconduct relating to any benchmark rate we will take action: see Example 40.

### Illegal phoenix activity

- 27 We are targeting company directors with a history of being involved in failed companies as part of a surveillance program to combat illegal phoenix activity. Illegal phoenix activity is the fraudulent act of transferring the assets of an indebted company into a new company to avoid paying

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<sup>2</sup> Financial System Inquiry, *Financial System Inquiry final report*, November 2014, p. 252.

creditors, tax or employee entitlements. The new company, usually operated by the same director, continues the business having avoided its responsibilities to its creditors.

- 28 Research compiled for the Fair Work Ombudsman puts the cost of this activity to the Australian economy at more than \$3 billion annually.<sup>3</sup> Illegal phoenix activity has far-reaching and unfair consequences. Employees lose wages and entitlements, and creditors—many of whom are small businesses—are left with debts. There are significant unpaid tax liabilities, which have a detrimental impact on tax revenue. ASIC action to combat illegal phoenix activities includes removing directors who have been involved in two or more failed companies from the industry.

### **Retail margin foreign exchange trading**

- 29 There has been a rise in the number of businesses seeking Australian financial services (AFS) licences to set up as retail margin foreign exchange brokers in Australia. Many of these businesses have a particular emphasis on operating in the Asian market place. Foreign exchange trading often involves leverage and is an extremely risky form of retail investment. We are continuing to investigate the retail foreign exchange industry and have completed several investigations in the last 18 months: see Example 18 and Example 19.
- 30 A particular focus for us is the practice in many businesses of running an ‘A’ book and a ‘B’ book. The ‘A’ book contains trades that the broker facilitates between its clients and a counterparty, while the ‘B’ book contains trades that the broker has taken on itself—that is, the trades are not passed on to a counterparty. In these circumstances the broker is betting against its client’s trading pattern and style.
- 31 Our emphasis is on ensuring that margin foreign exchange brokers are adequately disclosing the risks of trades to their clients, as well as ensuring that they are capable of managing their own risks and any conflicts of interest. We have also undertaken proactive surveillance to ensure foreign exchange brokers are meeting their financial requirements. In addition we are continuing to educate retail investors about the risks involved in foreign exchange trading.

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<sup>3</sup> PricewaterhouseCoopers, *Phoenix activity: Sizing the problem and matching solutions*, report, Fair Work Ombudsman, July 2012, [www.fairwork.gov.au/About-us/news-and-media-releases/2012-media-releases/July-2012/20120704-phoenixing-report](http://www.fairwork.gov.au/About-us/news-and-media-releases/2012-media-releases/July-2012/20120704-phoenixing-report).

## Enforcement report data

- 32 Appendix 1 provides statistics about our enforcement outcomes and an explanation of the methodology used: see Table 1, Table 2 and Table 4.
- 33 We have also included aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports: see Table 3. Comparisons between individual enforcement reports have some limitations. This is because no two enforcement actions are the same. For example, there may be differences in the complexity or seriousness of the allegations. However, over a two-year period, it is possible to identify the types of conduct or sectors that are the focus of our enforcement activity in the longer term.
- 34 Table 5 provides information on actions, that do not involve formal enforcement proceedings, undertaken by ASIC to achieve positive regulatory outcomes. Examples of these include corrective disclosure, amended advertising, changes to internal compliance controls, improving liquidator disclosure and having liquidators submit to a peer review.
- 35 Appendix 2 provides a schedule of media releases that corresponds to the enforcement outcomes in this report.

## A Promoting investor and financial consumer trust and confidence

### Key points

Making sure Australians have trust and confidence in the financial system is at the heart of everything we do. Markets cannot achieve their fundamental purpose in funding the real economy if investors, consumers and issuers do not have trust and confidence in them.

In the relevant period we achieved seven criminal outcomes, 15 bannings, 19 licence cancellations and suspensions, and 17 infringement notices.

### Credit providers and credit assistance providers

#### Loan fraud

- 36 Example 6 and cases similar to it demonstrate our commitment to crack down on loan fraud and ensure that consumers can have trust and confidence in the lending industry.

#### Example 6: Loan fraud charges

Two Melbourne men were arrested and charged following an ASIC investigation into the use of false documents in support of loan applications valued at approximately \$110 million.

The men have been charged with one count each of common law conspiracy to defraud. The charges relate to the men's roles at Myra Home Loan Pty Ltd trading as Myra Financial Services (no longer trading) (Myra).

It is alleged that between April 2008 and December 2011, the men conspired to defraud banks and other financial institutions by creating and using false documents to support loan applications submitted on behalf of Myra clients.

The false documents included bank statements, payslips, citizenship certificates and statutory declarations. These were predominantly used in support of applications for home loans for house and land packages as well as for the purchase or refinance of existing homes. During the period in which it is alleged the conspiracy occurred at least 350 loans valued at approximately \$110 million were submitted and approved on behalf of Myra clients.

The alleged conspiracy involves submission of false documents for more than 300 loan applications to numerous banks and financial institutions.

The offence carries a maximum penalty of 15 years imprisonment.

In addition, one woman was charged with obtaining a financial advantage through deception, in connection with this matter. It is alleged that the woman submitted false documents in support of a loan application for a home loan, in her own name, in September 2009.

### Unconscionable conduct in relation to credit

- 37 A systemic practice designed to exploit vulnerable consumers may constitute unconscionable conduct. When entities engage in such conduct ASIC will take action. Example 7 demonstrates where ASIC took action against entities engaging in systematic mis-selling of inappropriate add-on insurance.

#### Example 7: Unconscionable conduct in credit

The Federal Court found that payday lender, The Cash Store Pty Ltd (in liquidation) (TCS), and loan funder, Assistive Finance Australia Pty Ltd (AFA) both breached consumer credit laws and engaged in unconscionable conduct in the sale of insurance, following proceedings launched by ASIC.

The court ruled that TCS and AFA failed to comply with their responsible lending obligations in relation to their customers, the majority of whom were on low incomes or receiving Centrelink benefits. The court held that TCS acted unconscionably in selling consumer credit insurance in relation to these loans when it was unlikely that that insurance could ever provide any benefit to their customers.

The Federal Court found there was ‘a systemic failure on the part of TCS’ and AFA to comply with their responsible lending obligations.

TCS was also criticised for its role in actively encouraging staff to sell consumer credit insurance that was almost invariably inappropriate to offer to payday lending customers and which was useless for unemployed customers—a fact that, according to the court, ‘must have been known to TCS’.

Penalties for these breaches will be handed down this year.

### Credit advertising

- 38 It is important that all firms ensure financial promotions are fair, clear and not misleading so that consumers can make informed decisions. Obtaining credit is a very big step in a person’s life and claims about the cost of obtaining credit can dramatically affect that decision, so it is vital that these are accurate and truthful.
- 39 We have indicated in previous enforcement reports that the advertising of financial products is an area of focus for ASIC. We will continue to take action where we believe firms have not provided clear and consistent information in their advertising.

**Example 8: Misleading advertisements**

National Australia Bank (NAB), AFS licensee for UBank, paid \$40,800 in penalties after ASIC issued four infringement notices for potentially misleading advertisements. The penalties relate to potentially misleading advertising of a UBank home loan product. Each infringement notice imposed a penalty of \$10,200.

The misleading representations were made in an advertising campaign that promoted an offer of a \$2,014 EFTPOS gift card for consumers who obtained a home loan with UBank. The advertisements with headline statements, including 'The BEST \$2014 EVER' and 'Own \$2014' appeared in newspapers, radio and online from late December 2013 to early March 2014 and in digital screens on escalators from late January 2014 to February 2014.

We were concerned that some details of UBank's offer were not disclosed in some of the advertisements and, in others, were not disclosed in a clear and prominent manner. These included:

- a minimum loan amount of \$350,000;
- a requirement to use an electronic settlement process for refinanced loans;
- a requirement that all documents be provided within five days; and
- a cap on the number of consumers eligible to receive the offer.

Our concerns led to UBank providing a \$2,014 gift card to all consumers who applied for a loan during the relevant period and subsequently settled their loan.

**Unlicensed credit representatives**

- 40 The requirement to be licensed when undertaking credit activity is of foremost importance in protecting consumers of credit. We will act where we uncover unlicensed credit activity.
- 41 The law recognises that the ability to facilitate credit is essential to the functioning of some businesses that would not ordinarily be considered 'credit providers'. As such there are exemptions for businesses, such as car dealerships, known as point of sale (POS) exemptions.
- 42 The POS exemption allows car dealerships to provide assistance to consumers to obtain finance from licensed credit providers. The proceeds of the finance can only be used to pay for goods and services supplied by the dealership. Exemptions must be used lawfully. Where industry participants seek to bend the rules, they will be penalised.

**Example 9: Unlicensed credit activity**

Betar Prestige Cars Pty Ltd, trading as Audi Centre Parramatta (ACP), a car dealership, was issued with a \$42,500 infringement notice. The

infringement notice relates to conduct that ACP engaged in when it did not hold an Australian credit licence.

ACP will also refund 49 consumers a total of \$36,250. The refund is a result of consumers paying between \$300 and \$750 in dealer administration fees.

ACP does not hold an Australian credit licence and operates under a POS exemption.

We found that between May 2011 and August 2013, ACP assisted 75 consumers to obtain finance for cars that were not being supplied by their dealership or for refinancing of existing car loans.

## Payday lending

43 Consumers who access small amount loans are often vulnerable and cannot afford to be short changed. Payday lenders and their advisers need to ensure they comply with their obligations and the small amount lending provisions. We will take action where we see business models or arrangements being used that are designed to avoid obligations imposed by the consumer credit legislation.

### Example 10: Excessive fees

PAID International Ltd (PAID) (formerly First Stop Money Ltd) will refund approximately \$1.1 million to customers who were charged an excessive fee after taking out loans of up to \$5,000, including small amount loans. The refunds to 6,650 consumers in relation to 20,273 loans will be made as part of an enforceable undertaking accepted by ASIC.

The enforceable undertaking was offered to ASIC by PAID, a licensed credit provider that mainly offers small amount loans to consumers, after our investigation found that between 1 July 2011 and 30 June 2013, PAID:

- unlawfully charged its customers in New South Wales and the Australian Capital Territory a fee of up to \$59.50 to pay the loan money into their bank accounts by electronic funds transfer (EFT) (instead of by cheque); and
- had failed to comply with its general conduct, responsible lending, advertising and disclosure obligations.

The EFT fee was added to the loan amount as an additional amount repayable by consumers, and it significantly exceeded the actual fees that PAID incurred in arranging an EFT. ASIC was concerned that, as well as breaching the *National Consumer Credit Protection Act 2009* (National Credit Act), charging the EFT fee contravened NSW and ACT legislation, which imposed a limit on the total fees and charges allowable under consumer credit contracts.

We accepted an enforceable undertaking that requires PAID to:

- refund the EFT fee charged to consumers by 31 March 2015;

- pay, by 10 April 2015, the balance of any money unable to be refunded to consumers to Financial Counselling Australia for the purpose of funding financial literacy programs and research in Australia; and
- engage an independent compliance expert to audit the refund process and report to ASIC by 30 April 2015.

The independent expert will also review PAID's policies and procedures to ensure compliance with the credit legislation in relation to its general conduct, responsible lending, advertising and disclosure obligations, and make recommendations about any required changes.

### Example 11: Responsible lending laws

Payday lender Abaz Pty Ltd (Abaz), which offers loans nationally through the website [www.moneyplus.com.au](http://www.moneyplus.com.au), paid a \$42,500 penalty after we issued it with an infringement notice for failing to obtain required account statements from consumers.

In March 2013, new laws commenced that enhanced the responsible lending rules for payday lenders. This includes a requirement that lenders must obtain and consider consumers' account statements, covering at least the last 90 days, from banks, credit unions and building societies where income payable to the consumer is credited.

Abaz has updated its responsible lending policies and procedures to comply with the new requirements and has appointed an independent compliance expert to review these practices.

## Credit card surcharges

- 44 Merchants need to be transparent about fees and charges where credit card surcharges apply so that consumers can consider using other payment methods. For example, at some stores, payment by EFTPOS by selecting the 'savings' or 'cheque' option does not attract a surcharge.
- 45 Consumers should also be mindful that payments by contactless or 'tap and go' cards are currently treated as credit card transactions, meaning that fees may apply where there are surcharges in place, even where they are using a debit card. We urge merchants to ensure consumers are aware of any surcharges that may apply for payments using these cards.

### Example 12: Credit card and contactless payment surcharges

ALDI undertook to improve signage and other point-of-sale communication about the disclosure of credit card surcharges in its supermarkets following action by ASIC.

We were concerned that ALDI did not:

- consistently disclose in all of its stores that there is a 0.5% surcharge for consumers paying by credit card, and

- specifically disclose that transactions made using ‘tap and go’ contactless payment systems are also subject to the 0.5% surcharge, which applies in ALDI stores where either a credit card or debit card is used.

Under the *Australian Securities and Investments Commission Act 2001* (ASIC Act), a failure to adequately disclose surcharges, or creating the impression that surcharges do not apply, may be misleading or deceptive.

A review of signage in a select number of ALDI supermarkets found that the 0.5% credit card surcharge was disclosed in some stores by a sign above the registers and in others by a sticker at the registers. In two stores there were no signs or stickers.

For credit card payments where a personal identification number is used, disclosure of the 0.5% surcharge is made on the credit card terminal screen after customers insert or swipe their card to pay for their purchase. ASIC considered that this was too late, particularly in stores where there was no other disclosure.

We were also concerned that for all contactless payment transactions, which are currently treated as credit card transactions for all merchants, there was no specific disclosure at all in ALDI stores that these transactions also attract the 0.5% surcharge irrespective of whether customers used a debit or credit card.

In response to our concerns, ALDI introduced a number of measures to improve disclosure of the 0.5% surcharge across all of its stores, including improved signage in stores (e.g. at the entrance to the store and at the registers), and further educating its cashiers to communicate the surcharge to customers before finalisation of the transaction.

## Financial advisers

- 46 One in five Australians gets financial advice. It is essential that these Australians have trust and confidence in financial advisers. We will act where advisers do not comply with their obligations to financial consumers and investors.

### Dishonest conduct

- 47 The investing public needs to have trust in those who provide professional advice. Anyone who acts dishonestly and places their own interests ahead of those they advise will be removed from the financial services industry and may face criminal conviction.

#### Example 13: Dishonest conduct

Todd Michael King, a former financial adviser, was jailed for two years for stealing almost \$1.5 million worth of shares. Mr King was sentenced to two years imprisonment and was made eligible for parole.

In September 2014, following a four-week trial, a jury found Mr King guilty of stealing two parcels of Wesfarmers Ltd shares valued at approximately \$1.5 million from a client's account to meet margin calls on Mr King's mother's margin lending account.

This followed our investigation into Mr King's conduct between late 2007 and early 2008.

#### Example 14: Fraudulent conduct

William John Jones was sentenced to 18 months imprisonment with a 10-month non-parole period after pleading guilty to committing a \$260,000 fraud, following our investigation.

Mr Jones was charged with two counts of fraudulently misappropriating a total of \$260,000 that he obtained from two investors in 2006 for the purpose of share trading.

We alleged that Mr Jones told the investors that he had set up a safe share trading investment scheme that would provide them with reliable returns of between 12% and 30% per annum. Mr Jones did not invest the \$260,000 for investment purposes but instead used the funds for his own personal benefit.

### Monitoring and supervision

- 48 AFS licensees must ensure they have appropriate resources and procedures in place when providing financial services to retail clients. These arrangements should be reviewed when licensees increase their numbers of representatives, particularly where representatives have come from other licensees.
- 49 Licensees need to assess the competence of representatives at the time of appointing them and put in place rigorous checks to ensure financial services provided by them are of the expected standard.

#### Example 15: Supervision arrangements

We accepted an enforceable undertaking from PGW Financial Services Pty Ltd (PGW) after surveillance found deficiencies in its advice to clients and arrangements for supervising its authorised representatives.

Our surveillance followed PGW's appointment of a number of ex-representatives of AAA Financial Intelligence Limited and AAA Shares Pty Ltd after their AFS licences were cancelled by ASIC in February 2013.

We identified numerous instances where financial product advice provided by PGW to clients did not demonstrate:

- a reasonable basis for the recommendations made; and
- compliance with disclosure obligations applying to advice on switching financial products.

We also had concerns regarding the alleged failure of PGW to maintain adequate:

- human and technological resources; and
- records of financial services provided to clients.

Regarding the supervision of its authorised representatives, we were concerned that PGW failed to:

- assess the competency of representatives before their appointment;
- ensure the adequate training of representatives; and
- respond to failures identified during the licensee's audit process.

In response to our concerns, PGW has agreed to implement a regime of supervision, review and audit, by an ASIC-approved compliance expert, for a period of at least 15 months. This will incorporate the implementation and review of any remedial action plans that are developed to resolve any deficiencies identified by the compliance expert.

## Self-managed superannuation funds

50 The self-managed superannuation fund (SMSF) sector is growing rapidly. More Australians than ever before are either considering or operating an SMSF. ASIC closely monitors financial advisers who provide advice on SMSFs to ensure that they have the processes in place to provide consistently good financial advice.

### Example 16: Advice on self-managed superannuation funds

Interprac Financial Planning Pty Ltd (Interprac), an AFS licensee, has agreed to address our concerns relating to advice provided to some clients about SMSFs.

Our surveillance of Interprac identified concerns about the appropriateness of advice provided to clients on the establishment of an SMSF. In particular, there were concerns relating to:

- the advice not being sufficiently tailored to the needs of each client; and
- inadequate comparison of clients' existing superannuation to the recommended SMSF.

In response to our concerns, Interprac has agreed to undertake a number of measures to improve its advice processes and to ensure clients receive appropriate financial advice. These include:

- appointing a compliance expert to review, assess and, if necessary, make recommendations regarding SMSF advice provided by Interprac to clients;
- writing to all clients who may have received poor advice to inform them of their internal dispute resolution and external dispute resolution rights;
- requiring advisers to undertake additional training with particular emphasis on replacement product disclosure and the best interests duty;

- requiring all advisers providing SMSF advice to clients to complete specialist SMSF training; and
- employing an additional compliance resource.

Interprac is required to report back to ASIC regarding the implementation of the agreed measures to confirm our concerns have been addressed.

## Remediation

- 51 Remediation processes allow clients who believe they have been given poor advice to raise their concerns with the entities involved. Clients who suffer financial loss due to bad advice should be properly compensated.

### Example 17: Macquarie Equities Limited financial advice remediation

Macquarie Equities Limited (MEL) wrote to current and former clients about possible remediation for flawed financial advice. The advice was provided by MEL's financial adviser network, Macquarie Private Wealth (MPW).

This remediation process is part of ASIC's enforceable undertaking with MEL, which was imposed in January 2013. The enforceable undertaking was the result of ASIC surveillance of MPW, which identified concerns about MPW's compliance processes and its risk framework.

The enforceable undertaking is being overseen by an independent expert, accounting group KPMG.

The enforceable undertaking requires MEL to identify advisers with poor compliance. Where MEL identifies that a client has been affected due to an MEL adviser's failure, MEL must remediate the client, including compensation. MEL will send out more than 160,000 letters to its clients, inviting them to raise concerns about the quality of advice. The letters will be sent to all people who have been clients at any time since MEL obtained its AFS licence on 1 March 2004.

The remediation process will be subject to additional independent scrutiny by accounting firm Deloitte. It will report to MEL and ASIC.

## Foreign exchange trading

- 52 Over the past two years, we have seen an increase in the number of entities applying for an AFS licence authorising the entity to operate a retail margin foreign exchange trading business. We have conducted and are continuing to conduct surveillances of this industry. We currently have several investigations into foreign exchange trading businesses in progress. We will continue to take action against entities and individuals who are not appropriately licensed to provide foreign exchange services.

### Example 18: Unlicensed foreign exchange business

We took action in the Supreme Court (NSW) to permanently shut down unlicensed foreign exchange business, Vault Market Pty Ltd (Vault Market), and to remove its sole director, Mr MD Anamul Amin, from the financial services industry.

Our investigation found that Mr Amin was running an unlicensed foreign exchange business through a website with the domain name 'www.kiwifxbank.com'. The operation of the website was partly conducted from Bangladesh and had almost \$1.1 million in funds from more than 800 investors. No Australian investors were identified.

Justice Brereton found that from 1 July 2013 to 3 July 2014, Vault Market carried on a financial services business without holding an AFS licence and that it claimed that it had an AFS licence.

The court found that Vault Market had engaged in misleading and deceptive conduct by publishing numerous statements on its website, including its Product Disclosure Statement (PDS), Financial Services Guide (FSG), and terms and conditions, that:

- Vault Market was authorised by ASIC;
- client funds would be placed into trust accounts;
- a fictitious person, by the name of 'Alex Edward', was the Managing Director; and
- Vault Market was an Australian bank.

In declaring that Mr Amin was an officer of Vault Market when it contravened the law and failed to take reasonable steps to prevent the contravention, Justice Brereton said, 'Mr Amin's preparedness to facilitate the conduct of an unlicensed financial services business, and to participate in extensive misleading and deceptive conduct, manifests a need for protection of the public.'

Mr Amin was banned from providing financial services for eight years and from managing a corporation for five years. The website has been permanently shut down.

### Example 19: Cancellation of margin foreign exchange company's AFS licence

We cancelled the AFS licence of Global Derivative Services Pty Ltd (GDS) after an investigation found it failed to comply with a number of its AFS licence obligations.

According to its website, GDS describes itself as a leader in the field of foreign exchange, binary options and contracts for difference (CFDs). The company's only director, Brenton Ganesh Nair, lives in South Africa.

Our investigation found GDS failed to comply with conditions of its AFS licence concerning:

- the appointment and ongoing competence of the key person on the AFS licence;

- notification of changes to the responsible person;
- lodgement of accounts;
- payment of debts;
- adequacy of financial and human resources, by failing to maintain an Australian resident director and registered office; and
- failing to provide up-to-date details with the Financial Ombudsman Service (FOS) and on its website.

## Insurance brokers

- 53 We recently released Report 415 *Review of the sale of home insurance* (REP 415) and Report 416 *Insuring your home: Consumers' experiences buying home insurance* (REP 416), which explored consumer experiences with the sale of home building insurance.
- 54 These reports make it clear that the insurance industry can implement measures that will meaningfully improve consumers' understanding of their policy and help ensure consumers buy a product that meets their needs. Where we find evidence of misconduct in insurance broking we will investigate and, if necessary, take action.

### Example 20: Dishonest conduct

We permanently banned Leslie Allan Gentle, a former insurance broker, from providing financial services after an investigation found he engaged in dishonest conduct in relation to the use of client funds.

Our investigation found that between March 2013 and October 2013, Mr Gentle deposited client cheques for his own use into his personal bank account without their permission on multiple occasions. This included:

- insurance claim payments for his clients, who he then deceived by failing to advise them of the payment; and
- insurance premium payments from clients that he then used for his own purposes.

## Product issuers

- 55 AFS licensees who issue financial products and manage investor funds occupy a position of trust. In managing the money of investors they need to be sure they are careful and diligent. We will take action where product issuers do not meet their obligations.

## Compliance with constitutions

- 56 ASIC expects responsible entities to exercise their powers in accordance with their constitution and the law. Where appropriate we will take action to enforce this.

### Example 21: Acting beyond constitution

The High Court of Australia dismissed an appeal by Wellington Capital Limited (Wellington) challenging a decision of the Full Court of the Federal Court of Australia that found Wellington acted improperly in distributing shares in Asset Resolution Limited (ARL) to unit holders in the Premium Income Fund (PIF), for which it acts as the responsible entity.

In a unanimous decision handed down on 5 November 2014, the High Court agreed with ASIC that under the fund's constitution Wellington could only lawfully make distributions to the PIF unit holders in cash and not in shares.

On 5 September 2012, Wellington announced that ARL had acquired \$90.75 million in assets of the PIF, representing approximately 41% of the assets of the PIF, in return for which the PIF acquired all issued shares in ARL. Wellington also announced that immediately after the issuing of shares to the PIF, Wellington took steps to have the ARL shares distributed to PIF unit holders. Wellington did not consult with or obtain the consent of unit holders prior to undertaking these transactions.

We were concerned that Wellington acted beyond the powers set out in the PIF constitution by distributing the ARL shares to PIF unit holders.

In October 2012, we unsuccessfully challenged the distribution of ARL shares to PIF unit holders in the Federal Court.

We appealed the decision to the Full Court of the Federal Court, which in May 2013 overturned the original decision and declared that Wellington had acted without power in distributing the ARL shares to PIF unit holders.

## Registering managed investment schemes

- 57 The managed investment scheme regime empowers ASIC to monitor operators of schemes to check whether they are acting within the law. New managed investment schemes must be registered with ASIC before they can operate. To register a scheme, the proposed responsible entity must be a registered Australian public company and hold an AFS licence authorising it to operate a managed investment scheme.

### Example 22: Operating unregistered managed investment schemes

Mark Ronald Letten, the former director of LGH Holdings Ltd (in liquidation) and the principal of the accounting firm Lettens Pty Ltd, formerly the Letten Group, pleaded guilty and was sentenced to 27 criminal charges following an ASIC investigation.

Between 1998 and 2010, more than 1000 investors placed more than \$100 million in investment property schemes in Australia and New Zealand. Mr Letten managed and promoted the projects through a number of companies, including LGH Holdings Ltd.

The companies and unregistered schemes were wound up following a number of applications by ASIC in the Federal Court, commencing in 2010.

Mr Letten pleaded guilty to 27 charges:

- 21 counts of operating unregistered managed investment schemes;
- one count of carrying on a financial services business without an AFS licence; and
- five counts of breaching directors' duties.

Mr Letten was sentenced to five years and eight months imprisonment. He must serve three years before being eligible for release.

## Misleading or deceptive conduct

- 58 Investors have a right to be confident and informed. We will take action against individuals who attempt to disrupt this right by engaging in misleading or deceptive conduct.

### Example 23: Misleading and deceptive conduct

The Administrative Appeals Tribunal (AAT) affirmed ASIC's decision to permanently ban former Astarra Asset Management Pty Ltd (AAM) director Eugene Liu from providing financial services.

In affirming our decision, AAT Senior Member Jan Redfern said, 'There is no evidence to suggest that Mr Liu has reformed or that he admits and is remorseful about his conduct. He takes no responsibility for the significant losses of investors in Astarra Strategic Fund.'

The AAT upheld ASIC's decision following Mr Liu's request for a review of his ban.

We removed Mr Liu from the financial services industry in March 2013 for his role in the collapse of AAM in December 2009. Mr Liu was AAM's chief investment strategist.

Our investigation found Mr Liu engaged in dishonest conduct and conduct that was misleading or likely to mislead.

## Disclosure documents and advertisements

- 59 It is important that consumers are in a position where they can understand and compare financial products. We will act to ensure firms provide clear and accurate information to consumers about their financial products.

**Example 24: Misleading statements**

Westpac Banking Corporation (Westpac) paid \$20,400 in penalties after we issued two infringement notices for potentially misleading statements contained in a PDS and other promotional material. Each infringement notice imposed a penalty of \$10,200.

The statements were made from July 2013 to May 2014 and related to the investment returns on the Westpac Annuity Deposit, a product offered to retail investors planning for retirement.

We were concerned that Westpac potentially misled consumers by representing that the interest rate—known as the ‘earnings rate’—was calculated on the principal amount invested. In reality, the rate only applied to the balance of the principal, which could reduce throughout the term of the investment. The representations appeared in:

- the PDS dated 1 July 2013;
- the booklets titled *Westpac Annuity Deposit investor guide/FAQ* and *Build a brighter future with Westpac Retirement Deposits*, both dated 1 July 2013; and
- a webpage titled ‘Westpac Annuity Deposits’.

Westpac has issued a new PDS and promotional materials following our concerns.

## Fair compensation

- 60 ASIC’s regulatory role does not involve preventing the risk of all consumer losses or ensuring full compensation for consumers in all instances where losses arise. However, where the opportunity exists we will be active in obtaining compensation for consumers and investors who suffer losses because of improper conduct.

**Example 25: Travel cards**

Our concerns led to the Commonwealth Bank of Australia (CBA) agreeing to release \$2.2 million for approximately 45,000 customers who had money left on expired CBA Travel Money Cards.

CBA also made changes to all its Travel Money Cards so consumers will not forfeit any funds left on expired cards. Instead, any expired funds will be held by the CBA for three years and, if they remain unclaimed by consumers, will be treated as unclaimed money. This will allow consumers to retrieve the money at any time in the future.

Before these changes, funds left on CBA Travel Money Cards for 12 months after card expiry could be forfeited to CBA.

We are reviewing 13 products from nine issuers as part of our broader work in this area. In particular, we are looking at how consumer funds on expired multi-currency or single-currency travel cards are dealt with by card

issuers. In many cases, other card issuers charge fees that can whittle away balances over time.

#### Example 26: Compensation

We welcomed an agreement with the Bank of Queensland Limited (BOQ) for BOQ to pay approximately \$17 million as compensation for losses suffered on investments made through Storm Financial Limited (receivers and managers appointed) (in liquidation) (Storm). The compensation will be available to BOQ customers who borrowed from the bank to invest through Storm.

Following compensation payments made by CBA (of up to \$136 million) and Macquarie Bank Limited (Macquarie Bank) (of approximately \$75 million), the settlement with BOQ will bring to an end the existing litigation brought by ASIC to obtain compensation for Storm investors.

We developed a compensation model in conjunction with external forensic accountants to calculate Storm investors' losses. The model calculated the estimated loss for each investor (or investor group, where two or more investors invested jointly in the Storm model). It allocated each investor's loss between the banks that funded investments in the Storm model.

BOQ's compensation is intended to ensure each BOQ investor (or investor group) who takes part in the settlement will be able to get compensation of approximately 45% of that part of their total loss allocated to BOQ under our compensation model. This calculation takes into account compensation BOQ has already provided to some investors in accordance with FOS determinations.

## B Ensuring fair, orderly and transparent markets

### Key points

Our fundamental objective is to allow markets to fund the real economy and, in turn, economic growth. This contributes to improved standards of living for all Australians. In order to achieve this objective, gatekeepers such as directors, auditors, insolvency practitioners and market participants all have a role to play.

In the relevant period we achieved 15 criminal outcomes and five civil outcomes in this space. In addition eight infringement notices were paid, totalling \$494,400.

### Directors and officers

- 61 Directors should ensure that their companies have strong internal audit and compliance functions. A compliance function is meaningless if it is not backed up by supervision and review, and reflected in the company's culture. Both ASIC and directors have oversight roles in this respect.
- 62 Shareholders and institutional investors have expectations about the role of directors, including their role in shaping and policing corporate governance practices.

### Directors' duties

- 63 Directors have obligations to exercise their powers and discharge their duties with care and diligence. They are also obliged to act in good faith in the best interests of the corporations they serve. Both ASIC and the investing public expect these duties to be upheld.

### Example 27: Dishonestly misusing position as director

Mr Ali Hammoud, the director of a company that now operates a NSW chain of beauty salons, pleaded guilty to one count of dishonestly misusing his position as a director of ERB International Pty Ltd (ERB) and one count of making a false statement to obtain a financial advantage. This followed an ASIC investigation.

We alleged that between 9 August 2007 and 4 March 2008, Mr Hammoud used his position as a director of ERB dishonestly, with the intention of gaining a financial advantage for himself, namely by misappropriating approximately \$2.6 million from the company for his own use.

We also alleged that between 8 August 2003 and 26 June 2007, Mr Hammoud, with the intent to gain a financial advantage, recklessly

made false statements in workers' compensation insurance forms by understating the estimated and actual wages of the company. It is estimated that ERB obtained a financial advantage of approximately \$339,000 as a result of the false statements.

#### Example 28: Breaches of duties of officers of responsible entity

The Federal Court delivered its penalty judgment against five former directors of Australian Property Custodian Holdings Ltd (APCHL) who breached their directors' duties by making an illegal related party payment of more than \$30 million.

The judgment follows an ASIC investigation into the directors' role in amending Prime Trust's constitution so a \$33 million fee could be paid to the trust's founder and one of its directors, Bill Lewski. ASIC launched its civil penalty proceedings in 2012 and the Federal Court found in December 2013 that the directors breached their corporate duties by failing to act in members' best interest.

The judgement in the Federal Court saw Justice Murphy deliver the following disqualifications and penalties:

- William Lionel Lewski was disqualified from managing a company for 15 years and fined \$230,000.
- Mark Frederick Butler was disqualified from managing a company for four years and fined \$20,000.
- Kim Jaques was disqualified from managing a company for four years and fined \$20,000.
- Dr Michael Wooldridge was disqualified from managing a company for two years and three months and fined \$20,000.
- Peter Clarke was not disqualified from managing a company but was fined \$20,000.

The court also ordered that the defendant directors pay ASIC's legal costs.

In delivering his judgement, Justice Murphy stated that Mr Lewski's conduct was 'central in Prime Trust's suffering a substantial loss' and that he had failed to demonstrate any real understanding of the seriousness of the breaches. He also found that there was a risk of re-offending by Mr Lewski and that 'the lengthy disqualification and significant pecuniary penalty attempt to put a price on his contraventions that will show him that the game is not worth the candle.'

In regards to the other defendant directors, Justice Murphy found that 'rather than acting in the best interests of the Members,' Dr Wooldridge, Mr Butler and Mr Jaques had 'capitulated to the interests of Mr Lewski'.

Each of the five defendants have filed an appeal.

**Example 29: Fraud**

Former director Andy Kay Hooi Lim was convicted of a fraud charge brought by ASIC.

Mr Lim was sentenced to 12 months imprisonment, wholly suspended, having earlier pleaded guilty to one charge of fraudulently inducing an investor to deliver \$100,000 to Andean Securities Pty Ltd, a company of which Mr Lim was the sole director. Mr Lim was also ordered to pay a fine of \$10,000.

Mr Lim was appointed as a director of Aperio Resources Limited, a gold exploration company focusing on mineral deposits in Burkina Faso, in January 2011. Aperio Resources lodged a prospectus with ASIC in October 2011 for an initial public offering. A 70-year-old former client of Mr Lim's expressed an interest in investing \$100,000 in the initial public offering.

Our investigations indicated that Mr Lim had induced this investor to make a cheque for \$100,000 payable to Andean Securities, contrary to the instructions in the prospectus, with the intention that he would then use the \$100,000 at his own will. Mr Lim then transferred these funds into his private bank account and used them for a mixture of business and personal purposes that were unrelated to the initial public offering.

**Director disqualifications**

- 64 Under the Corporations Act a bankrupt individual is automatically disqualified from managing a company unless they obtain court permission or until their bankruptcy ends. This protects shareholders and we will enforce the law where a bankrupt person acts as a director.

**Example 30: Managing a company while disqualified**

Building and construction specialist Michael Vincent Iannello was convicted of managing Vibo Constructions Pty Ltd (Vibo Constructions) while disqualified, and sentenced to 100 hours of community service.

An ASIC investigation found Mr Iannello continued to act as general manager of Vibo Constructions despite declaring bankruptcy on 25 May 2010.

Mr Iannello pleaded guilty to one charge of managing a corporation while disqualified and was convicted in Sydney's Downing Centre Local Court on 7 October 2014.

**Auditors**

- 65 The quality of financial reports is vital in ensuring fair, orderly and transparent markets. The objective of the statutory requirement for the independent audit is to provide confidence in this quality. As a result auditors are essential to our financial system.

**Example 31: Deficient audit of debenture issuer**

We cancelled the registration of the auditor of Gippsland Secured Investments (GSI) following a deficient audit of the since-collapsed debenture issuer.

Under an enforceable undertaking with ASIC, Joanne Keng Yee Loh agreed to never reapply for registration or perform any duties or functions of an auditor.

Ms Loh was the lead auditor responsible for the audits of GSI for the 2011 and 2012 financial years. In September 2013, receivers were appointed to the company.

Our investigation found Ms Loh did not conduct the audits in accordance with the Australian auditing standards. ASIC formed the view Ms Loh failed, among other things, to:

- design and perform audit procedures in relation to loan receivables and obtain sufficient appropriate audit evidence to reduce the risk of material misstatement in the financial reports to an acceptably low level;
- display an appropriate level of professional scepticism when auditing the provision for impairment of loans receivable, and when assessing related party transactions and GSI's ability to continue as a going concern; and
- prepare audit documentation sufficiently to enable an experienced auditor to understand the audit procedures performed and evidence obtained.

**SMSF auditors**

66

We register and monitor SMSF auditors. As the SMSF sector continues to grow in popularity with Australian investors, it is critical that SMSF auditors play their gatekeeping role. ASIC will continue to administer the registration process to assure Australians that SMSF auditors at least meet threshold standards of competence and expertise.

**Example 32: SMSF auditors**

We cancelled the registration of 440 SMSF auditors who did not undertake or pass a competency exam necessary to retain their registration. The exam was required to be completed by 1,421 SMSF auditors.

We also disqualified two SMSF auditors whose application for registration had overstated the number of SMSF audit reports issued by them in the preceding 12 months, thereby avoiding the requirement to sit the competency exam.

Of the 440 auditors whose registration was cancelled, 373 did not attempt the exam and 67 did not pass the exam.

## Insolvency practitioners

- 67 Liquidators are important gatekeepers in the orderly winding up of the affairs of companies. In the case of insolvent companies, liquidators identify transactions that appear to defeat creditors' claims, and act on them.
- 68 Insolvency practitioners must be competent and independent, while avoiding improper gain. It is critical that creditors and the wider public have absolute confidence in liquidators acting, and being seen to act, independently and in the creditors' interests.

### Example 33: Liquidator independence

The Full Court of the Federal Court of Australia's decided to remove and replace the liquidators of the Walton Construction group on the grounds of a perceived lack of independence.

The Federal Court initially rejected our application to remove the liquidators and we appealed the court's decision. The Full Court upheld our appeal.

The decision means new liquidators will replace Stirling Horne, Glenn Franklin and Jason Stone of the firm PKF Lawler (formerly Lawler Draper Dillon).

In its unanimous decision, the Full Court held that a reasonable, fair-minded observer might reasonably apprehend that, because of the liquidators' prior referral relationship with the Mawson Group, who had influenced their appointment as liquidators of the companies, and the liquidator's interest in not jeopardising their future income, they might not discharge their duties with independence and impartiality. The court noted that it was unfortunate that the liquidators did not recognise the conflict of interest at the time it was first raised.

## Takeovers

- 69 Investors are entitled to know the identity of the major shareholders of publicly traded companies. ASIC expects businesses to comply with important takeover laws that promote market integrity and provide significant safeguards when the control of a listed company changes.

### Example 34: Breach of takeover laws

Avestra Asset Management Limited was convicted and fined for breaching takeover laws. The company pleaded guilty to breaching takeover provisions and failing to alert the market it had acquired a substantial stake in AG Financial Limited over five months in 2013.

Avestra was fined \$40,000.

Avestra was charged with three counts of breaching s606 of the Corporations Act (unlawfully acquiring a relevant interest in voting shares)

and three counts of breaching s671B of the Corporations Act (failing to lodge substantial shareholder notices).

Section 606 states that a person must not acquire a relevant interest in issued voting shares in a company if to do so would take that person's voting power from 20% or below to more than 20%, or from a starting point that is above 20% and below 90%.

The law also sets out that a shareholder in a publicly traded company must notify the market if its holding reaches 5%, and it must give details of any arrangements with third parties that affect control of the shares. The shareholder is also required to update the market every time there is a 1% change in the holding.

In March 2013 Avestra's interest in AG Financial increased from 0% to 22.17% through its acquisition of shares from AG Financial's former chief executive, in breach of s606. Over the following five months, Avestra broke the law by increasing its shareholding in AG Financial to 56.28%. Following discussions with ASIC, Avestra divested most of its interest in AG Financial to bring it under the 20% threshold.

## Market manipulation

- 70 Market manipulation occurs when a person engages in activity that is likely to have the effect of creating an artificial price for trading in financial products or on a financial market.
- 71 Market manipulation undermines fair, orderly and transparent markets for registered securities. Market manipulation provisions are directed at ensuring that the market price for registered securities truly reflects the genuine interaction of the forces of supply and demand for those securities on a free market.

### Example 35: Market manipulation

Former GTG chief executive Dr Mervyn Jacobson was sentenced to a total term of two years and eight months imprisonment after being convicted of manipulating the share price of GTG on ASX.

Dr Jacobson will serve 12 months imprisonment before being released on a recognisance release order to be of good behaviour for a period of 20 months.

Dr Jacobson was convicted on all 35 charges relating to his involvement in the manipulation of GTG shares over a six-month period. Two of these charges involved Dr Jacobson conspiring with others to manipulate the GTG share price.

Dr Jacobson's conviction and sentence follows an eight-week jury trial in the Supreme Court (Victoria), where evidence was heard of Dr Jacobson's actions to manipulate the GTG share price on ASX to help him minimise and manage margin calls on loans totalling approximately \$12 million.

All of Dr Jacobson's co-conspirators have previously been convicted and received sentences of imprisonment for their role in the conduct, following our investigations.

### Example 36: Market manipulation

Nigel Derek Heath, a day trader, pleaded guilty to two market manipulation charges. The charges related to his trading in shares and CFDs in four resource companies between 16 February 2012 and 11 October 2013. During this period, Mr Heath traded through nine separate share trading and CFD trading accounts.

We alleged that between 16 February 2012 and 19 August 2013, Mr Heath carried out 138 transactions involving financial products relating to Petsec Energy Limited (PSA). Each of these transactions artificially increased PSA's share price by between 4% and 11.5%, and increased the value of Mr Heath's shareholding in PSA by between \$15,878 and \$46,928.

We also alleged that between 2 July 2012 and 11 October 2013, Mr Heath caused a simultaneous buy and sell in 30 transactions involving financial products relating to PSA, Leyshon Resources Limited, Malagasy Minerals Limited and Orca Energy Ltd. Each of these transactions—commonly referred to as 'matched trades'—artificially increased the price of shares traded on ASX by between 3.1% and 6.9%.

Mr Heath is scheduled to be sentenced this year.

## Insider trading

- 72 Insider trading involves a person, who is in possession of information that is not generally available and that is price sensitive, trading or procuring another person to trade on the basis of that information.
- 73 Insider traders are unfairly exploiting, for their financial benefit, the inherent information asymmetries between well-informed insiders and less well-informed investors, including retail investors. Insider trading destroys trust in market fairness and transparency, and represents a market failure if it is prevalent.

### Example 37: Insider trading and abuse of public office

Lukas James Kamay and Christopher Russell Hill pleaded guilty to offences relating to insider trading, money laundering, corruption and abuse of public office. This followed a joint operation between ASIC and the Australian Federal Police (AFP).

Authorities discovered evidence that Mr Kamay, an employee of NAB, was receiving sensitive information from Mr Hill, an employee of the Australian Bureau of Statistics (ABS).

It was alleged that Mr Kamay was obtaining this market-sensitive information before its official release by the ABS, and then using it to enter into foreign exchange derivative products and personally profit from favourable movements in the prices of those derivatives.

On 6 January 2015 the Supreme Court (Victoria) ordered by consent the forfeiture of property valued in excess of \$7 million. This property had been restrained by the AFP-led Criminal Assets Confiscation Taskforce under Commonwealth proceeds of crime legislation. This amount covered the profits generated by the trading activity.

Mr Kamay was charged and pleaded guilty to a range of offences relating to the use of inside information from the ABS to unlawfully profit through the trading of foreign exchange derivatives and corrupting a public official.

Mr Hill was charged with offences relating to insider trading, receiving a corrupt benefit, release of sensitive information, and abuse of public office.

Both the NAB and the ABS provided their full cooperation and assistance to police throughout the investigation.

Mr Kamay and Mr Hill will be sentenced this year.

#### Example 38: Insider trading

Two men, including a former analyst with ratings agency Moody's Investor Service, pleaded guilty to insider trading that netted a profit of more than \$180,000.

Daniel Joffe passed on information acquired in the course of his duties as an associate analyst with Moody's to Nathan Stromer, who then bought and sold shares and CFDs in companies that were about to be, or likely to be, subject to takeover bids and price-sensitive announcements.

The trades produced a profit of \$184,408.

The pair faced the Supreme Court (NSW), each pleading guilty to two insider trading charges relating to the conduct that occurred over three months in 2006.

The pair admitted that between 10 November and 14 November 2006 Mr Joffe received inside information relating to a proposed takeover of Alinta Infrastructure Holdings Limited (AIH) by Alinta Limited and passed this information to Mr Stromer who acquired 962,000 CFDs in AIH.

The pair also admitted that between 1 August and 8 August 2006 Mr Joffe became aware of inside information relating to a proposed takeover of Auckland International Airport Limited (AIA) by Babcock & Brown Limited. Mr Joffe communicated this information to Mr Stromer and procured him to acquire 29,580 shares of AIA.

Mr Joffe has also admitted that between 20 September and 27 September 2006 he communicated inside information relating to upcoming price-sensitive announcements contemplated by the Australian Wheat Board Limited (AWB) to Mr Stromer and procured him to short sell 135,000 AWB CFDs.

Mr Joffe and Mr Stromer are scheduled to be sentenced this year.

## Company disclosure obligations

- 74 The integrity and efficiency of our financial markets depends on all investors having access to price-sensitive information about listed entities at the same time. We will act when misconduct occurs following poor handling of confidential information.

### Example 39: Potential breaches of continuous disclosure laws

We accepted an enforceable undertaking from NuSep Holdings Limited (NuSep) following concerns over its corporate governance, including potential breaches of continuous disclosure laws.

Our investigation, which looked at the group's conduct between 2009 and 2012, also led to concerns about NuSep releasing inaccurate information to the market and acquiring shares in itself by issuing and holding shares in a suspense account.

We also had concerns about NuSep's standards of record keeping and the issuing of bonuses to former executives.

NuSep acknowledged our concerns and has been assisting us in our investigation. NuSep has already adopted some new corporate governance practices.

Under the enforceable undertaking, NuSep must appoint an independent expert to review its compliance with continuous disclosure and corporate governance procedures, and develop a plan to rectify any deficiencies identified by the expert. The independent expert will report regularly to ASIC over the next two years on NuSep's implementation of the plan, and we may publish the results of the reports.

NuSep must also adopt and publish an executive remuneration policy consistent with ASX Corporate Governance Principles.

Our investigation is continuing.

## Market misconduct

### Benchmarks

- 75 Banks that participate in benchmark setting processes must ensure their participation in relation to the setting of Australian interest rate benchmarks upholds the integrity and reliability of those benchmarks and is in accordance with their obligations. Where banks have failed to meet their obligations we will take enforcement action.

**Example 40: Potential misconduct**

We accepted an enforceable undertaking from The Royal Bank of Scotland plc and The Royal Bank of Scotland NV (RBS) in relation to potential misconduct involving the BBSW.

RBS has made a voluntary contribution of \$1.6 million to fund independent financial literacy projects in Australia.

This is the third outcome we have achieved as part of our ongoing inquiries in relation to the BBSW submission process. UBS AG and BNP Paribas have each entered into enforceable undertakings and paid a \$1 million voluntary contribution to independent financial literacy projects in Australia.

Following our inquiries, RBS reported to ASIC that it had found evidence of conduct seeking to influence its BBSW submissions, based on how the submissions may benefit RBS's derivatives positions. RBS had withdrawn from the BBSW submissions panel on 30 April 2012.

RBS also reported that it had found limited instances of communications discussing trading of Reference Bank Bills with reference to the setting of BBSW.

As a result of the information provided by RBS and our inquiries, we are concerned that RBS's conduct in relation to the BBSW rate set process may have breached its obligations under the Corporations Act.

The enforceable undertaking requires RBS to ensure its contribution to Australian interest rate benchmark settings is in accordance with its obligations under the United States Commodity Futures Trading Commission (CFTC) Orders. RBS is also required to undertake certain remedial measures regarding its trading in Reference Bank Bills. An independent compliance expert will be required to review and report on RBS's compliance with the enforceable undertaking regarding these remedial measures. We will make the outcome of that review public.

**Market integrity rules**

- 76 Market integrity rules are made by ASIC and apply to market operators and market participants. Market integrity rules are legislative instruments. ASIC requires Ministerial consent before making any rules and any rules are subject to Parliamentary disallowance.
- 77 We refer alleged breaches of the rules to the Markets Disciplinary Panel (MDP), which is an independent peer review body that may issue infringement notices and accept enforceable undertakings.

**Example 41: Breach of market integrity rules**

Merrill Lynch Equities (Australia) Limited (Merrill Lynch) paid a total penalty of \$96,000 to comply with an infringement notice given to it by the MDP. The penalty was for failing to:

- have in place an appropriate automated price filter for automated order processing for one client account, which interfered with the efficiency and integrity of the ASX market; and
- prevent the entry into the ASX trading platform of an erroneous order that resulted in a market for Class A non-voting common stock in News Corporation Inc. not being both fair and orderly.

The MDP had reasonable grounds to believe that Merrill Lynch contravened Rules 5.6.1 and 5.9.1 of the ASIC Market Integrity Rules (ASX Market) 2010. The MDP issued Merrill Lynch with an infringement notice specifying a total penalty of \$96,000, with:

- \$56,000 to be paid for the breach of Rule 5.6.1; and
- \$40,000 to be paid for the breach of Rule 5.9.1.

Merrill Lynch has complied with the infringement notice, such compliance is not an admission of guilt or liability, and Merrill Lynch is not taken to have contravened s798H(1) of the Corporations Act.

## C Providing efficient and accessible registration

### Key points

Registration is one of ASIC's strategic priorities. The companies we register have ongoing responsibilities. Where these responsibilities are not met we will take enforcement action.

### Reporting obligations

- 78 Companies with a legal obligation to lodge financial reports with ASIC need to ensure they do so. Investors and creditors are entitled to know how companies are performing and rely on these reports to make informed decisions.
- 79 We have an ongoing compliance program and will consider taking action where companies are not adhering to their obligations.

#### Example 42: Failure to lodge financial reports

Australian public company Biron Apparel Limited (Biron Apparel) was convicted a second time for failing to lodge financial reports with ASIC and hold annual general meetings.

Biron Apparel was fined \$12,000 after pleading guilty in the Perth Magistrates Court on 10 October 2014 to failing to provide financial reports to members, lodge them with ASIC, and hold annual general meetings for the financial years ending 2010 to 2013. Biron Apparel was convicted in 2010 on similar charges.

The company is currently suspended from trading on ASX.

#### Example 43: Failure to lodge financial reports

Australian public company AAT Corporation Limited was convicted and fined \$27,000 for failing to lodge annual and half-yearly financial reports.

AAT Corporation Limited was charged by ASIC after failing to lodge its annual financial reports for the years ended 30 June 2012 and 30 June 2013 and half-yearly financial reports for the half-years ended 31 December 2010 and 31 December 2012. The company pleaded guilty to the charges.

AAT Corporation Limited was suspended from listing on ASX on 1 March 2010 after failing to lodge its half-yearly report.

## Appendix 1: Statistics on enforcement outcomes

- 80 This appendix provides statistics about our enforcement outcomes and an explanation of the methodology for compiling this data: see Table 1 and Table 2. We have also included aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports: see Table 3.
- 81 Table 1 lists enforcement outcomes achieved during the relevant period. In this table ‘enforcement outcome’ refers to any formal action taken to secure compliance, about which we have made a public announcement, and also ‘small business compliance and deterrence’ formal findings, which we do not generally announce. This includes court determinations (criminal and civil), administrative remedies and the acceptance of enforceable undertakings. It also includes outcomes where a defendant has pleaded guilty, or agreed to plead guilty, to the charges against them but has yet to be sentenced. However, it does not include the many less formal processes we undertake to secure compliance with the law once a breach has been identified. For example, it does not include negotiating a change in compliance processes after receiving a breach notification from an AFS licensee: see Table 5.
- 82 ‘Pending matters’ in Table 2 refers to publicly announced enforcement matters that have yet to result in a formal outcome, such as the imposition of an administrative remedy, court ordered penalty or sentence. These include, in the case of criminal matters, matters where charges have been laid but are yet to be heard and, in the case of civil matters, where the filing of an action has been announced but remains undetermined. All of the matters in this table were pending as at 31 December 2014, although they may have been announced or filed before 1 July 2014. Where a matter falls within the ‘small business compliance and deterrence’ area, a public announcement may not have been made about the matter in this table. This table provides a good indication of the number of matters that we are pursuing at any one time.
- 83 Table 4 provides a summary of enforcement outcomes during the relevant period and compares them to the previous six-month period. The table also includes enforcement investigations commenced and completed. In this table ‘enforcement outcome’ refers to any formal action taken to secure compliance or punish wrongdoing.
- 84 Table 5 sets out actions, that are not formal enforcement proceedings, undertaken by ASIC to achieve positive regulatory outcomes.

**Table 1: Enforcement outcomes—1 July 2014 to 31 December 2014\***

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Market integrity</b>	<b>8</b>	–	<b>9</b>	<b>3</b>	–	<b>20</b>
Insider trading	3					3
Market manipulation	2					2
Continuous disclosure			1	1		2
Market integrity rules			8			8
Other market misconduct	3			2		5
<b>Corporate governance</b>	<b>7</b>	<b>5</b>	<b>21</b>	<b>1</b>	–	<b>34</b>
Action against directors	7	4				11
Insolvency						–
Action against liquidators		1	1 <sup>^</sup>			2
Action against auditors			1	1		2
Other corporate governance misconduct			19			19

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Financial services</b>	<b>7</b>	<b>14</b>	<b>50</b>	<b>18</b>	<b>1</b>	<b>90</b>
Unlicensed conduct	1					1
Dishonest conduct, misleading statements, unconscionable conduct	1	8	9	2		20
Misappropriation, theft, fraud	1		2			3
Credit	2	1	12 <sup>#</sup>	7		22
Other financial services misconduct	2	5 <sup>**</sup>	27	9	1	44
<b>Subtotal</b>	<b>22</b>	<b>19</b>	<b>80</b>	<b>22</b>	<b>1</b>	<b>144</b>
<b>Small business compliance and deterrence</b>	<b>182</b>	<b>–</b>	<b>21</b>	<b>–</b>	<b>1</b>	<b>204</b>
Action against directors	172		21		1	194
Efficient registration and licensing	10					10
<b>Total</b>	<b>204</b>	<b>19</b>	<b>101</b>	<b>22</b>	<b>2</b>	<b>348</b>

\* Outcomes are presented per defendant.

^ Outcome currently under appeal.

# One outcome currently under appeal.

\*\* Outcomes currently under appeal.

**Table 2: Pending matters**

Area of enforcement	Criminal	Civil
<b>Market integrity</b>	<b>12</b>	<b>5</b>
Insider trading	6	2
Market manipulation	4	
Continuous disclosure		1
Market integrity rules		
Other market misconduct	2	2
<b>Corporate governance</b>	<b>15</b>	<b>4</b>
Action against directors	14	4
Insolvency	1	
Action against liquidators		
Action against auditors		
Other corporate governance misconduct		
<b>Financial services</b>	<b>15</b>	<b>17</b>
Unlicensed conduct	1	1
Dishonest conduct, misleading statements, unconscionable conduct	7	4
Misappropriation, theft, fraud	5	1
Credit	1	6
Other financial services misconduct	1	5
<b>Small business compliance and deterrence</b>	<b>70</b>	<b>–</b>
Action against directors	70	
Efficient registration and licensing		
<b>Total</b>	<b>112</b>	<b>26</b>

**Table 3: Aggregate enforcement outcomes—1 January 2013 to 31 December 2014**

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Market integrity</b>	<b>28</b>	<b>3</b>	<b>31</b>	<b>6</b>	<b>–</b>	<b>68</b>
Insider trading	20					20
Market manipulation	4		1	1		6
Continuous disclosure		1	6	1		8
Market integrity rules			24			24
Other market misconduct	4	2		4		10
<b>Corporate governance</b>	<b>23</b>	<b>9</b>	<b>30</b>	<b>8</b>	<b>–</b>	<b>70</b>
Action against directors	22	5				27
Insolvency		1	1			2
Action against liquidators		3	8	2		13
Action against auditors			2	6		8
Other corporate governance misconduct	1		19			20

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Financial services</b>	<b>33</b>	<b>34</b>	<b>144</b>	<b>69</b>	<b>5</b>	<b>285</b>
Unlicensed conduct	2	1				3
Dishonest conduct, misleading statements, unconscionable conduct	12	20	27	14	1	74
Misappropriation, theft, fraud	8		14			22
Credit	8	2	57	24	3	94
Other financial services misconduct	3	11	46	31	1	92
<b>Subtotal</b>	<b>84</b>	<b>46</b>	<b>205</b>	<b>83</b>	<b>5</b>	<b>423</b>
<b>Small business compliance and deterrence</b>	<b>774</b>	<b>2</b>	<b>115</b>	<b>–</b>	<b>1</b>	<b>892</b>
Action against directors	749		115			865
Efficient registration and licensing	25	2			1	27
<b>Total</b>	<b>858</b>	<b>48</b>	<b>320</b>	<b>83</b>	<b>6</b>	<b>1315</b>

Note: Some of the data in this table was corrected on 5 August 2015.

**Table 4: Other enforcement statistics—1 July 2014 to 31 December 2014**

Investigations commenced	94
Investigations completed	94
Persons charged in criminal proceedings	14
Criminal charges laid	173
Infringement notices issued	25
Infringement notices paid	\$710,300
Compensation/remediation	\$24,964,275
Civil penalties imposed	\$3,010,000

**Table 5: Alternative regulatory outcomes—1 July 2014 to 31 December 2014**

Area of enforcement	Outcomes
<b>Market integrity</b>	<b>4</b>
Change to entity's procedures	1
Changes to compliance procedures	1
Corrective disclosure	2
<b>Corporate governance</b>	<b>135</b>
Liquidator—Improved disclosure	4
Liquidator—Peer review	3
Liquidator—Registration cancelled	1
Repayment of remuneration or change in behaviour	2
Amendment to transaction terms	14
Amended disclosure made	100
Stop order issued	7
Transaction abandoned	3
Improved internal controls	1

Area of enforcement	Outcomes
<b>Financial services</b>	<b>34</b>
Change to entity's procedures	16
Changes to compliance procedures	7
Corrective disclosure	3
Warning letter issued	2
Breach rectified	4
Breach rectified/customers reimbursed	2
<b>Total</b>	<b>173</b>

## Appendix 2: Schedule of media releases

Media release (by area of enforcement)	Date	Link
<b>Market integrity</b>		
Former portfolio manager sentenced to jail	4/07/2014	<a href="#">14-156MR</a>
ASIC accepts enforceable undertaking from The Royal Bank of Scotland	21/07/2014	<a href="#">14-169MR</a>
Jonathan Moylan convicted	25/07/2014	<a href="#">14-179MR</a>
Former director of Northern Star Resources Limited charged with insider trading	1/08/2014	<a href="#">14-186MR</a>
Credit Suisse AG pays \$88,400 infringement notice penalty	4/08/2014	<a href="#">14-188MR</a>
ASIC update on ongoing investigation into Padbury Mining	15/08/2014	<a href="#">14-203MR</a>
Goldman Sachs Australia Pty Ltd pays \$35,000 infringement notice penalty	1/09/2014	<a href="#">14-216MR</a>
Taylor Collison Limited pays \$30,000 infringement notice penalty	1/09/2014	<a href="#">14-217MR</a>
Merrill Lynch Equities (Australia) Limited pays \$96,000 infringement notice penalty	11/09/2014	<a href="#">14-228MR</a>
BBY Limited pays \$90,000 infringement notice penalty	11/09/2014	<a href="#">14-229MR</a>
Etrade Australia Securities Limited pays \$55,000 infringement notice penalty	23/09/2014	<a href="#">14-246MR</a>
New South Wales man pleads guilty to market manipulation	14/10/2014	<a href="#">14-270MR</a>
Commonwealth Securities Limited pays \$15,000 infringement notice penalty	27/10/2014	<a href="#">14-280MR</a>
ABN AMRO Clearing Sydney Pty Ltd pays \$40,000 infringement notice penalty	27/10/2014	<a href="#">14-281MR</a>
Former Genetic Technologies CEO jailed for market manipulation	28/11/2014	<a href="#">14-320MR</a>
Two Sydney men plead guilty to insider trading	5/12/2014	<a href="#">14-326MR</a>
Avestra Asset Management fined for breaching takeover laws	17/12/2014	<a href="#">14-339MR</a>
ASIC investigation prompts NuSep into enforceable undertaking	19/12/2014	<a href="#">14-341MR</a>
ASIC accepts variations to enforceable undertaking with Commonwealth Securities Ltd and Australian Investment Exchange Ltd	19/12/2014	<a href="#">14-344MR</a>
<b>Corporate governance</b>		
ASIC removes liquidator from industry	8/07/2014	<a href="#">14-160MR</a>
ASIC's appeal upheld in Walton liquidators' independence case	18/07/2014	<a href="#">14-167MR</a>
ASIC obtains bankruptcy orders against former officers of CTC Resources NL	12/08/2014	<a href="#">14-194MR</a>
ASIC investigation leads to five years in jail for former director	20/08/2014	<a href="#">14-206MR</a>

Media release (by area of enforcement)	Date	Link
ASIC winds up 10 abandoned companies owing more than \$350,000 in employee entitlements	25/08/2014	<a href="#">14-210MR</a>
Perth director sentenced on fraud charge	2/10/2014	<a href="#">14-260MR</a>
NSW man jailed following \$260,000 fraud	31/10/2014	<a href="#">14-288MR</a>
Former CEO and two Melbourne men jailed following theft of millions from Phosphagenics Limited	7/11/2014	<a href="#">14-296MR</a>
Director of ERB International Pty Limited pleads guilty to ASIC criminal charges	25/11/2014	<a href="#">14-315MR</a>
ASIC winds up nine abandoned companies that owed more than \$310,000 in employee entitlements	12/12/2014	<a href="#">14-333MR</a>
ASIC cancels registrations of SMSF auditors	15/12/2014	<a href="#">14-335MR</a>
Gippsland Secured Investments auditor deregistered	18/12/2014	<a href="#">14-340MR</a>
<b>Financial services</b>		
Former WealthSure financial adviser jailed for \$500,000 fraud	1/07/2014	<a href="#">14-145MR</a>
ASIC permanently bans Victorian insurance broker	2/07/2014	<a href="#">14-147MR</a>
ASIC permanently bans former South Australian financial adviser	3/07/2014	<a href="#">14-151MR</a>
ASIC suspends AFS licence of Financial Technology Securities Pty Ltd	4/07/2014	<a href="#">14-154MR</a>
Sydney woman pleads guilty to \$3.6 million home loan fraud	9/07/2014	<a href="#">14-161MR</a>
ASIC permanently bans Victorian finance broker	10/07/2014	<a href="#">14-163MR</a>
ASIC suspends AFS licence of Custom Wealth Solutions Dealer Services	21/07/2014	<a href="#">14-168MR</a>
ASIC accepts enforceable undertaking from The Royal Bank of Scotland	21/07/2014	<a href="#">14-169MR</a>
ASIC permanently bans Queensland financial adviser	22/07/2014	<a href="#">14-171MR</a>
ASIC acts on licensees failing to lodge annual statements	22/07/2014	<a href="#">14-172MR</a>
ASIC bans Melbourne mortgage broker for submitting false documents	23/07/2014	<a href="#">14-173MR</a>
ASIC obtains court orders against former WA financial adviser	23/07/2014	<a href="#">14-175MR</a>
ASIC permanently bans former Sydney financial adviser	23/07/2014	<a href="#">14-176MR</a>
ASIC accepts enforceable undertaking from Adelaide-based AFS licensee	30/07/2014	<a href="#">14-183MR</a>
ASIC surveillance results in cancellation of seven AFS licences	4/08/2014	<a href="#">14-187MR</a>
ASIC imposes new AFS licence conditions on two Commonwealth Bank financial planning businesses	8/08/2014	<a href="#">14-192MR</a>

Media release (by area of enforcement)	Date	Link
Your Super Accountant pays infringement notice in relation to 'FREE' SMSF set up claims	12/08/2014	<a href="#">14-195MR</a>
Esuperfund Pty Ltd pays \$30,600 penalty for misleading advertising	12/08/2014	<a href="#">14-196MR</a>
Make it Mine Finance Pty Ltd pays \$20,400 penalty for misleading advertising	14/08/2014	<a href="#">14-198MR</a>
South Yarra accountant jailed for operating illegal investment schemes	14/08/2014	<a href="#">14-200MR</a>
ASIC acts to ensure better disclosure by ALDI of credit card and contactless payment surcharges	18/08/2014	<a href="#">14-204MR</a>
Payday lender engages in unconscionable conduct and breaches consumer credit laws	2/09/2014	<a href="#">14-220MR</a>
ASIC bans former mortgage broker for nine years	3/09/2014	<a href="#">14-221MR</a>
Car dealer issued with \$42,500 infringement notice and agrees to refund consumers a further \$36,250	5/09/2014	<a href="#">14-224MR</a>
ASIC cancels margin forex company's AFS licence	9/09/2014	<a href="#">14-226MR</a>
Sydney woman convicted for fraud	16/09/2014	<a href="#">14-234MR</a>
NAB pays \$40,800 penalty for misleading UBank advertisements	17/09/2014	<a href="#">14-235MR</a>
Westpac pays \$20,400 penalty for misleading statements	17/09/2014	<a href="#">14-236MR</a>
Invast Financial Services pays \$20,400 penalty for making misleading representations	18/09/2014	<a href="#">14-241MR</a>
ASIC bans former Queensland-based adviser	22/09/2014	<a href="#">14-243MR</a>
ASIC and Bank of Queensland reach Storm Financial settlement	22/09/2014	<a href="#">14-244MR</a>
ASIC permanently bans Sydney man from providing financial services	24/09/2014	<a href="#">14-248MR</a>
ASIC imposes additional AFS licence conditions on mortgage scheme operator	25/09/2014	<a href="#">14-251MR</a>
ASIC cancels credit licence of Victorian credit provider	26/09/2014	<a href="#">14-253MR</a>
ASIC permanently bans former NSW insurance broker	30/09/2014	<a href="#">14-255MR</a>
ASIC suspends Protect Ensure's AFS licence	30/09/2014	<a href="#">14-256MR</a>
NAB pays \$10,200 penalty for misleading statements in PDS	1/10/2014	<a href="#">14-257MR</a>
AFS licensee addresses ASIC concerns on SMSF advice	1/10/2014	<a href="#">14-258MR</a>
ASIC concerns see CBA release \$2.2 million for 45,000 travel card customers	8/10/2014	<a href="#">14-262MR</a>
ASIC welcomes Westpac's payments to CGIC investors	10/10/2014	<a href="#">14-264MR</a>

Media release (by area of enforcement)	Date	Link
ASIC acts to restrain forex company	13/10/2014	<a href="#">14-266MR</a>
ASIC concerns see Pepperstone exit the Japanese market	13/10/2014	<a href="#">14-267MR</a>
Former director of insurance company pleads guilty to multiple counts of dishonest conduct	13/10/2014	<a href="#">14-268MR</a>
ASIC permanently bans former South Australian finance broker	14/10/2014	<a href="#">14-271MR</a>
ASIC action leads to \$1.128 million refund to consumers	15/10/2014	<a href="#">14-272MR</a>
ASIC continues crackdown on payday lending avoidance models	22/10/2014	<a href="#">14-278MR</a>
ASIC concerns prompt NAB to correct misleading home loan claims	27/10/2014	<a href="#">14-282MR</a>
Trident Investment Management Pty Ltd pays \$10,200 penalty for misleading statements	6/11/2014	<a href="#">14-292MR</a>
Wellington Capital's High Court appeal dismissed	6/11/2014	<a href="#">14-293MR</a>
ASIC review prompts Equanimity into enforceable undertaking	11/11/2014	<a href="#">14-297MR</a>
ASIC bans Victorian adviser from providing financial services	17/11/2014	<a href="#">14-304MR</a>
ASIC issues warning about unlicensed FX dealer YoutradeFX	18/11/2014	<a href="#">14-306MR</a>
ASIC shuts down unlicensed FX business and removes its director from the industry	20/11/2014	<a href="#">14-309MR</a>
Former financial adviser jailed for two years	21/11/2014	<a href="#">14-310MR</a>
ASIC cancels credit licence and bans director for 10 years	25/11/2014	<a href="#">14-312MR</a>
Payday lender penalised for breaching new responsible lending laws	25/11/2014	<a href="#">14-313MR</a>
ASIC moves to protect public from unlicensed conduct	28/11/2014	<a href="#">14-318MR</a>
Former financial adviser faces charges over \$9 million fraud	28/11/2014	<a href="#">14-319MR</a>
Prime Trust directors disqualified and fined	2/12/2014	<a href="#">14-323MR</a>
ASIC surveillance prompts FX provider to enhance compliance procedures	8/12/2014	<a href="#">14-327MR</a>
ASIC crackdown stops another payday lender from overcharging consumers	9/12/2014	<a href="#">14-328MR</a>
ASIC accepts enforceable undertaking from Victorian financial adviser	11/12/2014	<a href="#">14-331MR</a>
ASIC investigation leads to Interactive Brokers refunding \$1.5 million to Australian customers	16/12/2014	<a href="#">14-336MR</a>
ASIC cancels Protect Ensure's AFS licence	17/12/2014	<a href="#">14-338MR</a>

Media release (by area of enforcement)	Date	Link
ASIC action restrains FX business and sole director from carrying on a financial services business	19/12/2014	<a href="#">14-342MR</a>
ASIC accepts enforceable undertaking from First Prudential Markets on compliance processes	19/12/2014	<a href="#">14-345MR</a>

## Key terms

Term	Meaning in this document
14-137MR (for example)	An ASIC media release (in this example numbered 14-137)
AFMA	Australian Financial Markets Association
AFP	Australian Federal Police
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	ASX Limited or the exchange market operated by ASX Limited
Australian auditing standards	Standards issued by the Auditing and Assurance Board under s336 of the Corporations Act
BBSW	Australian bank bill swap rate
CBA	Commonwealth Bank of Australia
CFD	Contracts for difference
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act
EFT	Electronic funds transfer
EFTPOS	Electronic funds transfer at point of sale
enforcement outcome	Any formal action to secure compliance, about which ASIC has made a public announcement

Term	Meaning in this document
Federal Court	The Federal Court of Australia
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
FOS	Financial Ombudsman Service Ltd
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
MDP	Markets Disciplinary Panel
NAB	National Australia Bank
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
POS exemption	Point-of-sale exemption
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act  Note: See s761A for the exact definition.
relevant period	1 July 2014 to 31 December 2014
REP 387 (for example)	An ASIC report (in this example numbered 387)
s606 (for example)	A section of the Corporations Act (in this example numbered 606), unless otherwise specified
SMSF	Self-managed superannuation fund
Wellington	Wellington Capital Limited

## Related information

### Headnotes

ASIC's strategic priorities, banning, credit activity, enforceable undertaking, enforcement outcome, financial service, gatekeepers, infringement notice, misleading or deceptive conduct

### Legislation

ASIC Act

Corporations Act, s606 and 671B

National Credit Act

### Cases

*Australian Securities and Investments Commission v Newcrest Mining Limited* [2014] FCA 698

### Reports

Financial System Inquiry, *Financial System Inquiry final report*

REP 281 *ASIC enforcement outcomes: July to December 2011*

REP 299 *ASIC enforcement outcomes: January to June 2012*

REP 336 *ASIC enforcement outcomes: July to December 2012*

REP 360 *ASIC enforcement outcomes: January to June 2013*

REP 383 *ASIC enforcement outcomes: July to December 2013*

REP 387 *Penalties for corporate wrongdoing*

REP 402 *ASIC enforcement outcomes: January to June 2014*

REP 415 *Review of the sale of home insurance*

REP 416 *Insuring your home: Consumers' experiences buying home insurance*

### Market integrity rules

ASIC Market Integrity Rules (ASX Market) 2010, Rules 5.6.1 and 5.9.1