

# 1 CONSUMERS AND RETAIL INVESTORS

ASIC actively promoted the interests of consumers and retail investors through a broad range of education, policy, enforcement and research initiatives. We supported financial literacy in the community, including schools; monitored advertising; provided investors with tools to vet financial advisers; and took action against illegal investment schemes.

## Taskforce

The Retail Investors Taskforce was formed in November 2007 to identify ways to assist retail investors. Headed by ASIC Deputy Chairman Jeremy Cooper, it has been working to ensure retail investors become better informed and better equipped to manage their investments and protect their wealth. The Taskforce has focused on the quality of advice and information investors receive, better disclosure, advertising and the early detection and elimination of illegal schemes. In April 2008, ASIC released a Roy Morgan research report on the profile of retail investors, their financial literacy and investment decision-making processes. Over 1200 investors were surveyed.

The Taskforce also completed a marketplace review that, together with the Roy Morgan report, will form the blueprint for ASIC's work with consumers and retail investors for the next three to five years. Its work was incorporated into ASIC's Strategic Review.

In addition, Taskforce staff contributed to the Government's Financial Services Working Group, which is looking at a range of important issues, including how to reduce the length of disclosure documents and make them easier to read and understand.

## Unlisted, unrated debentures

It is estimated that unlisted, unrated debentures accounted for approximately \$8 billion of the \$34 billion in debentures held by retail investors and self-managed superannuation funds in mid-2007. Following the collapse of companies

such as Westpoint, Fincorp and ACR, there was considerable concern about unlisted, unrated debentures.

ASIC responded with a three-point plan involving industry profiling, guidance and standard setting. We:

- set new standards for prospectus disclosures of these products, focused on giving investors information they need to understand what they are investing in and the risks involved
- set new standards for advertising of these debentures across all media, to stamp out advertising that misleads investors about what they might be buying, and
- engaged with all issuers of debentures to help them comply with the new standards.

We also commissioned consumer research to help us better understand what attracts investors to these products and be better able to communicate with them about these kinds of investments. Based on this research, we published a new guide for investors to help them make informed decisions.

By March 2008, 100 per cent of the issuers of unlisted, unrated debentures had reported against ASIC's benchmarks and there was a marked improvement in the quality of disclosure to retail investors and their financial advisers. We also commenced or completed specific investigation and enforcement activities relating to Westpoint, Fincorp and ACR (see pages 14–15).

## Financial services

To ensure that consumers using financial products and getting financial advice are treated honestly and fairly, we acted against wrongdoing. We banned 49 individuals or companies from the financial services industry, 12 permanently and 18 for at least 5 years. As a result of ASIC action, 23 individuals were convicted of fraud, theft or misleading conduct in relation to financial services, of whom 14 were jailed for terms of up to 8 years.

## Corporations and insolvency

In consultation with the CDPP, we commenced criminal proceedings against 13 company directors and officers for a range of offences including dishonesty, making false representations, fraud and managing companies while disqualified. We obtained court orders banning 7 directors for periods of 3–16 years, and banned another 7 directors through administrative proceedings.

We also obtained the extradition of four defendants to face charges in relation to their conduct as company directors and officers.

## Illegal fundraising

To improve the early detection of illegal fundraising, we commenced 50 surveillance exercises after receiving public complaints. These surveillances resulted in 13 investigations and 2 schemes being voluntarily shut down.

We obtained interim, injunctive orders relating to over \$5 million of funds invested in illegal investment schemes. We also obtained final orders against 80 schemes or companies, freezing assets and preserving \$50 million for investors in those schemes. These schemes involved around 2000 investors and \$174 million of funds originally invested.

## Misconduct involving superannuation

We actively pursued individuals and corporations in relation to misconduct involving superannuation funds.

- We finalised the recovery of \$10 million under section 50 of the ASIC Act for approximately 26,000 superannuants who lost approximately \$32 million plus interest in the Employees Productivity Award Superannuation (EPAS) Fund.
- We have investigated 9 schemes involving over 800 superannuants and \$28 million in superannuation funds and have taken court action against 6 schemes involving the illegal early release of superannuation funds to stop further breach and restrain money held in bank accounts.

- We obtained court orders winding up two illegal schemes that were promoted to self-managed superannuation funds. More than 350 investors were involved. ASIC secured assets of \$22.2 million for investors from Australia and overseas that will be distributed back to investors through the court-ordered wind-up of the schemes.
- We obtained orders permanently restraining NSW accountant Ian Robert Hodgson from providing financial services. He advised clients to create self-managed superannuation funds to invest approximately \$10.7 million in the illegal property schemes he was operating. The orders facilitate the sale and realisation of these properties and the return of the proceeds of sale to investors.

## Retail banking

**Mortgage fees:** ASIC reviewed home loan entry and exit fees. The review was conducted at the request of the Government and our report was released by the Treasurer, the Hon Wayne Swan MP, on 5 April 2008. The report outlined the levels and nature of the fees.

**Default fees:** While ASIC has no power to prescribe or limit retail banking fees, we used our limited jurisdiction to increase transparency and promote market competition. This, along with action by the consumer sector, has resulted in retail banks launching initiatives to better disclose fees and advise customers how to avoid them. In some cases, it has also led to a reduction in the fees charged.

**Reverse equity products:** ASIC released *All we have is this house*, a report about the experiences of homeowners with reverse mortgages. This found that while borrowers were generally satisfied with these products, there was scope for better investor education. We used these findings to shape our education activities. We also continued to work with the industry throughout the year, promoting best practice in product design and sales. This led to changes in the industry code of practice, improving the protection offered by 'no negative equity' guarantees.

## Credit and lending practices

To protect consumers and investors and to deter wrongdoing:

- We acted on the insurance sales and debt collection practices of companies in the GE Money Group (see case study below).
- Mortgage brokers Dominic Cincotta and Ronald Wynhoven were convicted of obtaining financial advantages by deception. Mr Cincotta was sentenced to five years jail and Mr Wynhoven was sentenced to three years jail and ordered to pay \$200,000 compensation to victims.
- We obtained compensation orders against mortgage brokers Kelvin Skeers and Tonadale Pty Ltd as a result of unconscionable conduct and misleading and deceptive statements.
- Tunde Doja was sentenced to three years, eight months jail and Tony Zareei was sentenced to community service after being found guilty of fraudulently obtaining a financial advantage for investors by arranging 100 per cent investment loans through a credit provider. The investors were compensated by the credit provider.
- We charged the operators of the Money for Living reverse mortgage scheme with obtaining financial advantage by deception. Gary O'Neill has pleaded guilty and Stephen O'Neill is awaiting trial.

### Refinancing report

Acting on concern about homeowners who might make inappropriate refinancing decisions when trying to relieve mortgage stress, we released the *Protecting wealth in the family home* report. Published in March 2008, it shed light on particularly damaging refinancing strategies being promoted by some brokers and the vulnerability of borrowers under stress to exaggerated claims about solutions. We provided educational material to help consumers protect their interests and took enforcement action against a number of entities involved.

## Assisted with dispute resolution

In May 2008, ASIC approved the new Financial Ombudsman Service as an external dispute resolution scheme for the purposes of the Corporations Act. The new scheme, which will be operational from 1 July 2008, represents the merger of the Financial Industry Complaints Service, the Banking and Financial Services Ombudsman and the Insurance Ombudsman Service. It will deal with 90 per cent of unresolved consumer disputes in the financial services industry. This development will promote better outcomes for retail investors, consumers and industry participants in terms of greater accessibility, consistency and efficiency, and through the potential for economies of scale.

### Case study: ASIC pursues GE Money over poor practices

Poor debt collection practices by its consumer credit business, consumers complaining of harassment, and problems with the advice provided by parts of its insurance advice and sales business led to action against the GE Money group.

ASIC imposed new, more stringent conditions on the financial services licences of two companies in the group, including that they cannot provide personal advice and that all affected customers must be compensated. GE Money has also given a court-enforceable undertaking to implement improvements in its debt collection practices recommended by an independent expert, and to pay compensation to affected customers. ASIC will continue to monitor GE Money closely and will take further action if necessary.

## FIDO

ASIC's dedicated website for consumers and investors, FIDO ([www.fido.gov.au](http://www.fido.gov.au)), continued to be a popular and well regarded source of independent information about finance and investment matters for consumers and investors. The site received almost 1.5 million visits during the year, up from approximately 1 million in 2006–07. New content added this year included information about investing in unlisted, unrated debentures; a checklist for consumers looking to switch home loans; and a dedicated section, including audio segments, for Indigenous consumers. FIDO is continuously promoted via a range of media, editorial and other communication channels.

## Financial literacy

ASIC continued to work on promoting and supporting the inclusion of financial literacy education in schools. Having access to quality, independent resources has been identified as a key need for teachers and students. Working with the Curriculum Corporation, we have developed a set of curriculum-linked financial literacy resources about superannuation and insurance, which will be available on FIDO and other websites regularly used by teachers.

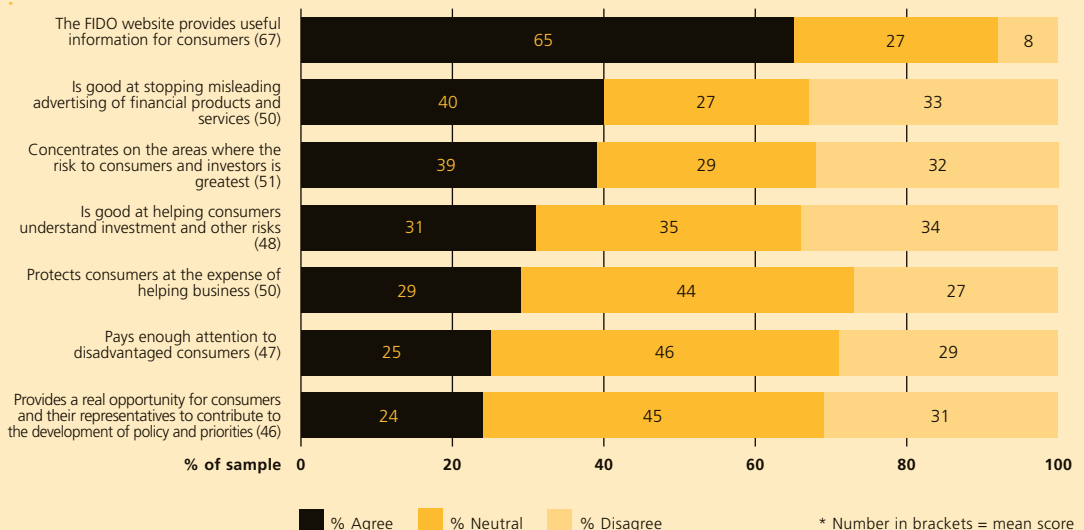
These resources will fill a gap for teachers and will help students make their first decisions in these areas.

From July 2008, we will take over responsibility for the Financial Literacy Foundation and bring together the work of ASIC and the Foundation to embed financial literacy in our school system, promote improved financial literacy and, importantly, financial decision making throughout the Australian population. As in the year under review, we will have a particular focus on the needs of baby boomers and retirees.

**ASIC continued to work on promoting and supporting the inclusion of financial literacy education in schools.**

## ASIC's approach to helping consumers and investors

Source: Allen Consulting Group survey of ASIC stakeholders



# 2 CAPITAL MARKET INTEGRITY

ASIC substantially increased its efforts to identify and systematically pursue problem behaviour to improve confidence in the integrity of the capital markets. This involved detecting and acting against insider trading, market manipulation, failure to provide continuous disclosure and other market abuses.

## Capital Markets Taskforce

The Capital Markets Taskforce, led by Commissioner Belinda Gibson, was established during the year to oversee current ASIC work on insider trading and continuous disclosure, and to look more broadly at future developments in capital markets and how ASIC can contribute to market integrity.

We increased resources to improve detection and action against market abuse, we streamlined internal processes, and we incorporated the Taskforce's review of ASIC's role in the capital markets into ASIC's Strategic Review, see page 30.

## Market integrity

We provided timely guidance on maintaining market integrity to listed entities, stock lenders, market participants and investors affected by the market turbulence. This included publishing, in conjunction with the ASX, a reminder of directors' obligations to disclose market-sensitive information about their margin loans and financing arrangements. Our guidance reinforced ASIC's commitment to enforcing market laws.

## Market surveillance

We undertook 225 market surveillance exercises following direct complaints to ASIC from shareholders, market participants, company directors and the general public. Direct complaints about market misconduct increased by over 33 per cent; the majority related to continuous disclosure (40 per cent) and insider trading (21 per cent). We completed 80 surveillance exercises and our inquiries into 145 matters are continuing. As part of this

exercise, we issued 81 'please explain' letters or notices to ASX-listed companies and individuals, querying levels of market disclosure or seeking further information in relation to alleged contraventions. These surveillances led to seven investigations, and information was forwarded to international market regulators in another two cases.

We acted on 88 suspicious transactions and possible contraventions that the ASX referred to us. At year's end, we were assessing 16 matters; investigating 30 matters for possible civil, criminal or administrative action; considering 20 matters for other remedial action (such as licensing action); and had closed 22 matters that did not warrant further inquiry.

In addition, we referred seven insider trading matters and two market manipulation matters to the CDPP, and there were three false and misleading statement matters and two continuous disclosure matters before the courts.

During the year, our enforcement action resulted in one conviction for insider trading, two convictions and one banning for market manipulation, the payment of four infringement notices for alleged contravention of the continuous disclosure provisions, and three convictions for making false and misleading statements.

## Competition for market services

We provided advice to the Minister on competition for trading in ASX-listed securities. Our consultation process and procuring of independent expert advice ensured that a broad range of interests and points of view were taken into account in our advice to the Minister.

## Financial reporting

We reviewed the accounts of 325 entities, including 28 companies listed on the ASX 200, and found that, overall, the level of compliance with accounting standards was positive. In 15 cases, we agreed with the entity that they would improve reporting in future accounts, and

# Manage

we are continuing to work on 10 matters. Common areas for improvement were business combinations, impairment and intangible assets.

## Auditors

Our focus on the performance of auditors included inspecting 13 audit firms. Following each inspection, we reported to the firm involved, and all firms have committed in writing to consider and act on the matters brought to their attention to further build audit quality and independence. We also reviewed the conduct of 24 individual auditors.

We completed our first four joint inspections of audit firms with the US Public Company Accounting Oversight Board (PCAOB). We entered into an arrangement with the PCAOB in July 2007 to assist it to ascertain compliance by Australian auditors with the US *Sarbanes Oxley Act 2002*, thereby reducing regulatory duplication for the audit profession.

## IFIAR

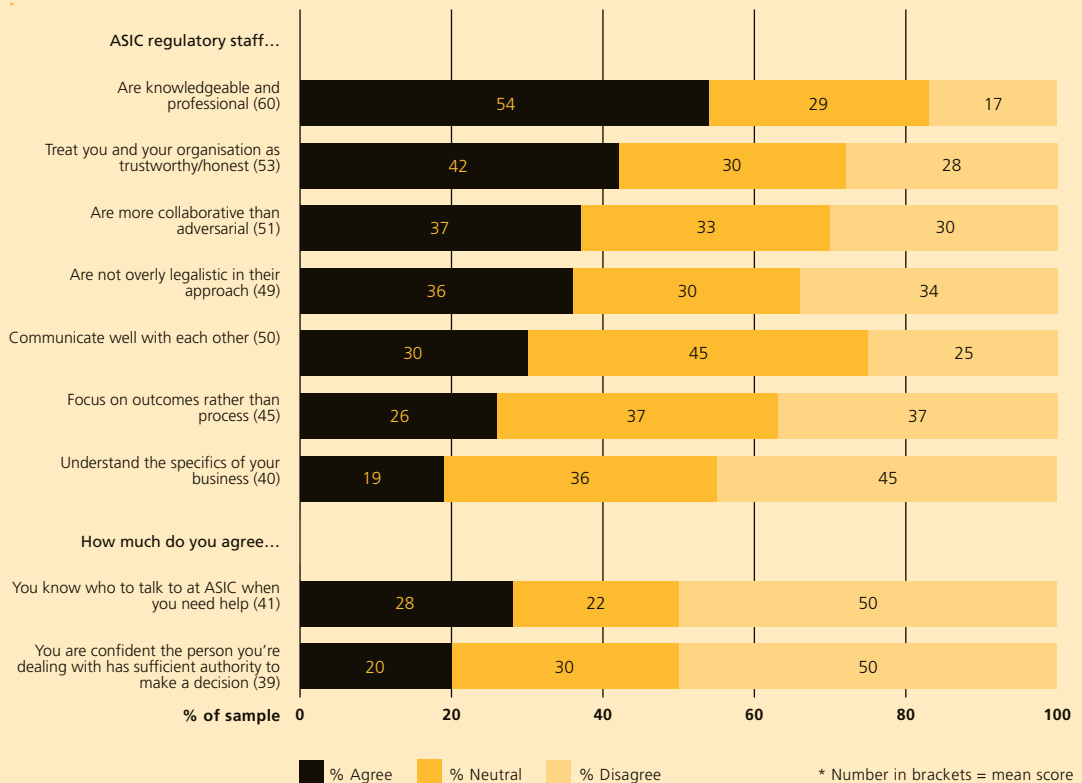
ASIC is a founding member of the International Forum of Independent Audit Regulators (IFIAR), a group of 24 audit regulators from economies generating over 70 per cent of the world's GDP. Jeffrey Lucy, ASIC's former Chairman, completed his term as inaugural Chairman of IFIAR in September 2007. Currently, ASIC is involved with IFIAR in a number of focus areas, including analysing the drivers of audit quality.

## Liquidators

On 1 January 2008, major insolvency reforms came into effect. We have worked closely with the profession to provide clear guidance on the changes. The amendments strengthen ASIC's powers to monitor liquidators and help improve the outcomes for creditors.

### Dealing with ASIC regulatory staff

Source: Allen Consulting Group survey of ASIC stakeholders



We inspected 6 insolvency firms and contacted 18 others about conduct issues, resulting in improved procedures and conduct. The registration of one liquidator, Richard Albarran, was suspended and we obtained a contempt order against him. He was fined \$20,000 and ordered to pay ASIC's and the CALDB's costs on an indemnity basis. Following a successful court application, Stuart Ariff was removed, by consent, as a liquidator of two companies.

We visited approximately 250 companies identified as being at financial risk to improve awareness by company directors of their duties and obligations to prevent insolvent trading. Many of these companies subsequently sought professional advice to help them avoid insolvency and insolvent trading.

## Statutory reports

Receivers, managing controllers, administrators and liquidators (external administrators) are required to report to ASIC if it appears to them that a relevant person may have engaged in misconduct or, in the case of liquidators, if the return to unsecured creditors may be less than 50 cents in the dollar. We have changed our reporting approach to provide more detailed information about the types of statutory reports we receive and the action we take on them. To aid comparison, we have provided a three-year analysis in Table 2.

**Table 2: Statutory reports received from external administrators**

	07-08	06-07	05-06
<b>Total reports received</b>	<b>8,579*</b>	8,335*	7,292*
Reports assessed alleging misconduct or suspicious activity	6,886	6,862	5,796
<b>Initial reports<sup>†</sup></b>			
Reports assessed alleging suspicious activity	5,835	5,717	4,763
Supplementary report requested	17%	17%	17%
Analysed, assessed and recorded	83%	83%	83%
<b>Supplementary reports<sup>‡</sup></b>			
<b>Supplementary reports assessed alleging misconduct</b>	<b>1,051</b>	1,145	1,033
Referred for compliance, investigation or surveillance**	10%	16%	6%
Referred to assist existing investigation or surveillance	7% <sup>#</sup>	Not captured	Not captured
Analysed, assessed and recorded	79%	81%	92%
Identified no offences	4%	3%	2%

\* More than one report may be lodged about a single company or entity

† Initial reports are electronic tick-a-box reports lodged under Schedule B of RG16, which provide ASIC with key statistical particulars about the corporate insolvency, and indicate whether, on early investigation and inquiry, misconduct is apparent and whether the external administrator recommends further investigation. Initial reports are required to be lodged by external administrators as soon as practicable, within two to six months of the date of appointment, depending on the nature of the appointment. Generally, ASIC will determine whether to request a supplementary report on the basis of an initial report.

‡ Supplementary reports are typically detailed free-format reports, which detail the results of the external administrator's inquiries and the evidence to support the alleged offences. Generally, ASIC can determine whether to commence a formal investigation on the basis of a supplementary report.

\*\* In previous Annual Reports, this figure was calculated by reference to total reports received. This figure is now calculated by reference to total supplementary reports.

# In previous Annual Reports, these matters were included in 'analysed, assessed and recorded'.

# Manage

The main issues raised in supplementary reports were suspected fraud or negligence by company officers (33 per cent), suspected insolvent trading (30 per cent) and failure to lodge documents or reports (13 per cent). Supplementary reports prepared by liquidators also assist ASIC to identify and ban company directors involved in two or more failed companies and to take action against phoenix operators.

## Assetless Administration Fund

ASIC sought to increase participation in the Assetless Administration Fund. We revised the Fund's guidelines, visited more than 100 insolvency firms and conducted training nationally to over 420 liquidators and their staff to explain our requirements. The Fund was established by the Government and is administered by ASIC to finance preliminary investigations and reports by liquidators into the failure of companies with few or no assets.

During the year, we approved discretionary grants for preliminary investigations and reports into 126 companies, paid over \$1.4 million to liquidators for reports received, and committed \$0.8 million for reports to be received in 2008–09. Some 36 of the 66 directors who

**We revised the Fund's guidelines, visited more than 100 insolvency firms and conducted training nationally to over 420 liquidators and their staff.**

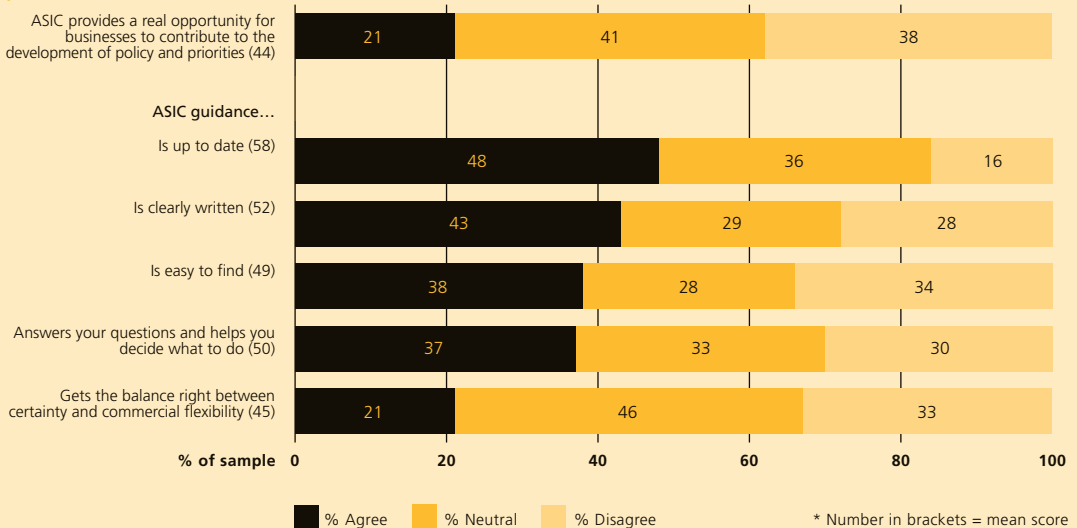
were disqualified or banned from managing companies were the subjects of reports funded by the Assetless Administration Fund.

## Expert reports

In October 2007, ASIC issued two updated regulatory guides on expert reports. Expert reports are an important part of the information provided to investors during transactions such as takeovers and schemes of arrangement. The guides discuss the independence of experts and the content of expert reports, with the aim of improving their quality, succinctness and integrity.

## Helping business understand what the rules are (policy and guidance)

Source: Allen Consulting Group survey of ASIC stakeholders





# Year 01

## 3 FACILITATING CAPITAL FLOWS

An important priority for ASIC is to reduce impediments to capital flows into and out of Australia (while protecting Australian investors). The goal is to increase access by Australians to international capital and international investment opportunities, thereby boosting liquidity in Australian markets and generating more competition, diversification and better overall returns for Australian investors. In this area, we worked closely with Treasury and the Government.

### Research

ASIC completed economic, technical and survey reports to better understand the factors that facilitate and impede capital flows into and out of Australia. Australians, both individually and through their fund managers, are investing more overseas. Valued at more than \$1 trillion, Australia's funds management sector is the world's fourth largest and a significant part of global markets. However, Australia is a substantial net capital importer and draws extensively on foreign savings to fund economic growth.

Impediments to flows of capital into and out of Australia raise the cost of capital to Australian businesses and reduce the return on investment to Australian savers. To the extent that barriers to capital flows limit the growth and vibrancy of the pool of capital seeking a home, liquidity in financial markets is reduced and the potential benefits of increased international integration are lost. We have been working to reduce these barriers.

### Mutual recognition arrangements

With Treasury, we made significant progress towards mutual recognition of regulatory systems over the last 12 months, with a number of initiatives reaching fruition and others nearing the final stages of negotiation.

ASIC and the US Securities and Exchange Commission (SEC) are working towards an agreement that will allow mutual recognition

of brokers and dealers across the Australian and US securities markets, and recognition of each jurisdiction's regulation of markets. This will be the first step in increasing investment flows and business opportunities between Australian and US securities markets.

The New Zealand Securities Commission, the New Zealand Companies Office and ASIC have also worked together to implement a number of trans-Tasman initiatives. These include the trans-Tasman MRSO regime, which will allow a single disclosure document (either a New Zealand prospectus or an Australian prospectus or product disclosure statement) to be used in both Australia and New Zealand.

In June, letters were exchanged between ASIC and the China Banking Regulatory Commission (CBRC) to recognise Australia as an approved destination under the Chinese Qualified Domestic Institutional Investor (QDII) Scheme administered by the CBRC. This agreement will lead to Australia being a more attractive destination for China's capital investment, having the potential to improve liquidity in ASX markets. It also provides benefits to Australia's funds management industry as qualified Chinese commercial banks will now be able to engage the services of Australian investment managers to assist with QDII investments.

In addition, ASIC's current Memorandum of Understanding with the China Securities Regulatory Commission (CSRC) has been acknowledged as sufficient for the purpose of Australia being recognised by the CSRC as an approved destination for investments administered by the CSRC.

Our negotiations with the Hong Kong Securities and Futures Commission culminated in ASIC being the first foreign securities commission to receive a level of mutual recognition that facilitates the sale of retail funds to investors in each other's markets. This agreement, entered into on 7 July 2008, gives more choices to the Australian and Hong Kong retail public and opportunities for the Australian and Hong Kong funds management industry.

We have also been discussing possible reciprocal arrangements with the Monetary Authority of Singapore (MAS). In November 2007, we provided certain relief to allow Singaporean managed investment schemes, authorised by the MAS, to enter the Australian market. This broadened the range of investments available to Australian investors.

## Review of recognition arrangements

ASIC and Treasury have issued a joint consultation paper, *Cross-border recognition: Facilitating access to overseas markets and financial services*, to investigate what more can be done to facilitate cross-border capital flows for the benefit of Australian investors while maintaining effective cross-border regulatory arrangements to protect investors. The consultation paper contains proposals to refine ASIC's current framework of unilateral recognition while developing a mutual recognition framework for application in agreements between Australia and overseas jurisdictions.

## Future work programs and priorities

This year, our work to support the development of international global financial markets and services will concentrate on maximising cross-border recognition opportunities and modernising regulatory cooperation arrangements.

## Further cooperation

ASIC continued to work with the Indonesian capital markets supervisory agency, Bapepam-LK, to strengthen the supervision of fund managers in that country. A senior ASIC staff member has been deployed to Jakarta for up to two years to work directly with the Indonesian regulator.

ASIC remains committed to the International Organization of Securities Commissions (IOSCO), through its work on the Executive and Technical Committees in addition to the Asia Pacific Regional Committee. ASIC was re-elected this year to the IOSCO Executive Committee together with countries such as

China, Germany, Japan, the United Kingdom and the US. We also seconded a staff member to the European Commission.

## Business education

To make it easier for overseas investors and traders to participate in Australian equity markets, ASIC is preparing a range of educational and guidance material for companies and financial service providers. We are also developing consultation papers on cross-border capital flows and the recognition of foreign offer documents.

### Case study: Cold calling

We detected and stopped a commodity options trading scam, known as Capital Marketing Services, that was targeting Australian consumers through the internet. The perpetrators of the scam, who were not based in Australia, used fictitious trade exchanges, stockbroking firms and clearing houses to deceive over 900 Australians into investing in excess of \$24 million over an 18-month period.

It is a challenge for ASIC to protect investors where the perpetrators are based overseas but, since the detection of this scam in 2006, ASIC has collaborated with and provided key information to regulators and police agencies in the US, Hong Kong, Singapore and Malaysia. Regulatory action has resulted in a number of overseas arrests and proceedings in those countries and action to freeze foreign bank accounts holding in excess of \$800,000. ASIC has initiated its own actions to restrain a further \$4 million in Australia. Recently, one of the perpetrators was sentenced to a term of imprisonment of two years in Hong Kong, and the outcomes of criminal and civil actions in Malaysia and Singapore are awaited. In the US, restitution totalling \$13 million was ordered against a number of companies related to the scam.

# 4 HELPING SMALL AND MEDIUM BUSINESS

ASIC plays a central role in the Australian economy as the registrar for companies and through its management of information lodgment and access services, collection of fees and answering of public inquiries. We are using technology and improving our systems to reduce red tape and increase efficiency for Australia's 1.6 million companies.

## Improved service delivery

On 2 July 2007, we introduced an electronic registration and payment service for the approximately 130,000 company charge documents (Form 309) and 70,000 related documents that ASIC receives and processes each year. In the coming year, we will be increasing the number of online services provided.

We set and met a higher standard of service delivery in our Client Contact Centre. We extended our toll-free 1300 300 630 contact number to all callers. We now answer 80 per cent of calls within 60 seconds and more than 95 per cent of all inquiries are answered on the spot. We also answered 90 per cent of emails within two business days, up from 80 per cent the previous year, and businesses can now pay their annual review fee by credit card.

In addition, we have a dedicated team participating in the whole-of-government Standard Business Reporting (SBR) project. This project is working to reduce the costs of business reporting to government by harmonising procedures and reporting requirements across Commonwealth and state agencies.

## Streamlining and reducing duplication

Following ASIC submissions, law reform occurred that streamlined public companies' reporting obligations to reduce effort, cost and duplication. The obligation for listed companies to notify top-20 shareholders in their annual review process was removed, and the need for a company to notify ASIC that a person had

ceased to act as an officeholder where the individual had already done so was abolished.

In addition, the Working Group formed by ASIC and APRA continued to review areas of regulatory overlap or duplication between the two agencies and how these might be resolved.

In March 2008, APRA and ASIC released a new online breach reporting system for dual-regulated institutions. The online system simplifies the process through which regulated institutions report breaches to ASIC and APRA.

ASIC also released a licensing guide clarifying how it will recognise standards set by APRA in assessing whether a person has appropriate knowledge for their role in a financial services business.

**We now answer 80 per cent of calls within 60 seconds and more than 95 per cent of all inquiries are answered on the spot.**

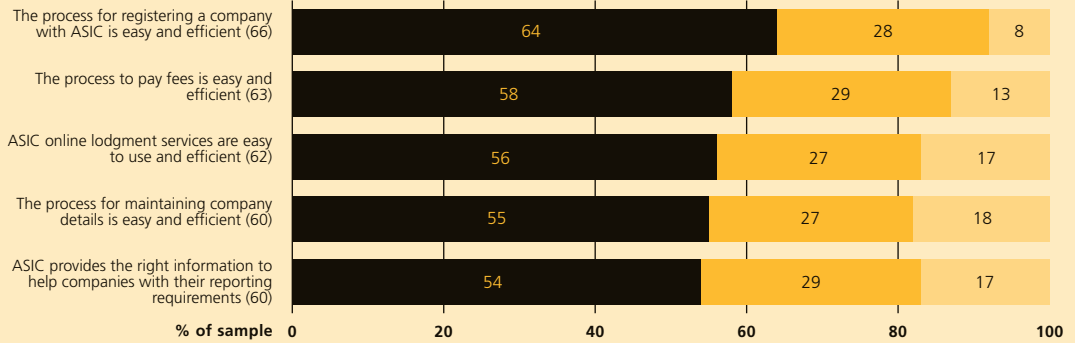
## Phoenix trading

Phoenix trading occurs when the assets of a company are moved to another company, usually with a similar name and the same directors, without appropriate consideration or payment for the transfer as a way of avoiding debts or other liabilities.

In May 2008, ASIC commenced civil proceedings against solicitor Timothy Donald Somerville and eight company directors over their alleged involvement in phoenix-style transactions. We also take banning action against people who have been directors of two or more failed companies, see page 61.

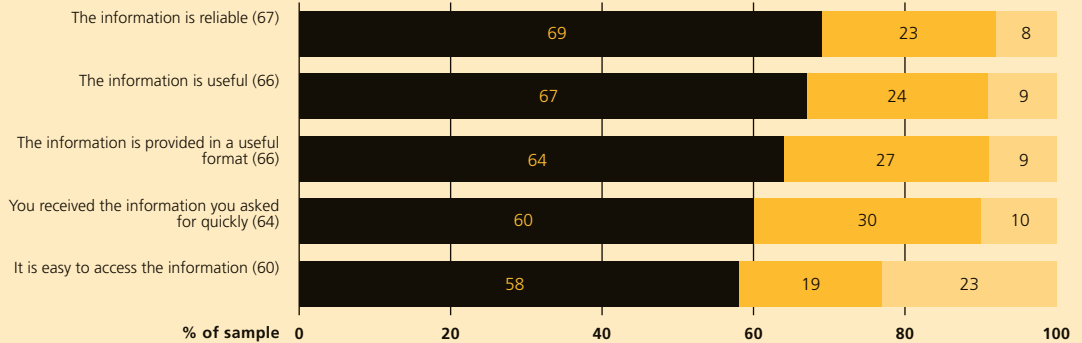
## Lodging company documents with ASIC

Source: Allen Consulting Group survey of ASIC stakeholders



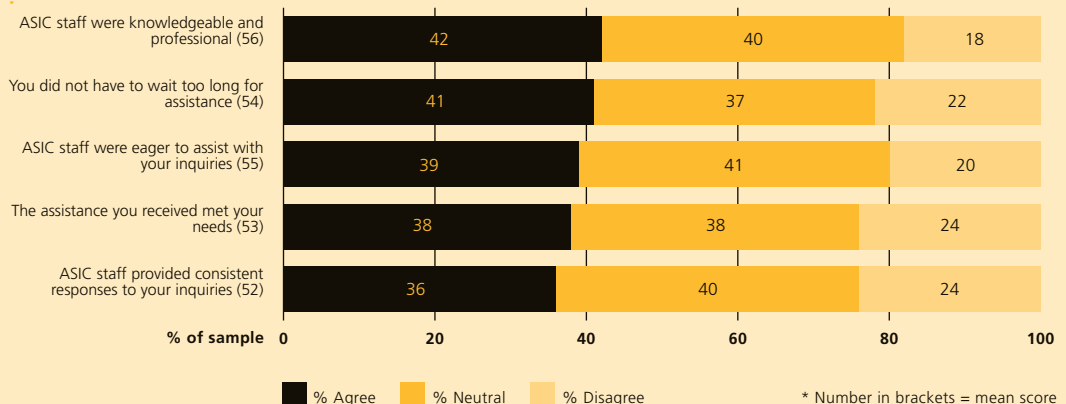
## Searching information in ASIC's databases

Source: Allen Consulting Group survey of ASIC stakeholders



## Calling the ASIC Client Contact Centre (including the ASIC Infoline)

Source: Allen Consulting Group survey of ASIC stakeholders



# 5 LIFTING OPERATIONAL EFFECTIVENESS

ASIC is focused on ensuring the efficient and cost-effective administration of the regulatory framework for which we are responsible. This includes improving our internal operations, delivering the benefits of regulation for business and other stakeholders with minimum cost, and meeting the Government's best-practice requirements.

## Better Regulation program

ASIC's Better Regulation program was launched in 2006 and is aimed at making ASIC more transparent and accessible while reducing duplication and paperwork for the benefit of business, consumers and others. We have also completed research to better understand the impact of regulatory decisions and to develop responses to the rising cost of regulation.

With the support of the Finance Industry Council of Australia (FICA), ASIC commissioned Chant Link & Associates to conduct a survey of 64 financial-sector organisations on the cost impact of the regulatory framework that ASIC administers. The report was released on 26 March 2008, with key findings including:

- Respondents saw the benefits of regulatory oversight, both to their own organisation and to the market in general.
- The main concerns were poor implementation of some legislation, some regulation seen as unnecessary, and the volume of regulatory requirements seen as being difficult to manage.
- Compliance costs were generally accepted as inevitable and integral to maintaining consumer confidence.
- Most believed their compliance costs would be reduced overall if the quality of the regulatory process were to be improved.

ASIC will use the findings of the study to engage in further dialogue with industry on the impact of its regulation on business.

## Simpler documents

On 5 July 2007, the number of types of ASIC regulatory documents produced to assist our stakeholders was reduced from 27 to 4: consultation papers, regulatory guides, reports and information sheets. We also launched a roadmap on our website to help users find these documents.

## Best-practice compliance

The Office of Best Practice Regulation (OBPR) was set up by the Government in 2006 to help departments and agencies achieve best practice in preparing regulation and guidance. It assesses compliance with the Government's regulatory impact analysis requirements. During the year, ASIC was assessed by the OBPR as fully complying with its requirements.

## Stakeholder consultation

ASIC has well established and extensive liaison arrangements at Commission, executive and operational levels to ensure open consultation and sound working relationships with industry and consumers. These involve regular liaison with key industry associations and senior business leaders, as well as periodic consultation with industry sectors.

Our Financial Services Consultative Committee is a key platform for ASIC liaison with that industry at an operational level, and our Business Advisory Committees provide strategic advice and feedback on the operations of our Public Information Program. Our Consumer Advisory Panel recommends research and alerts ASIC to emerging consumer issues, and our two Business Consultative Panels provide input to help us identify emerging risks and trends in the market. We will enhance this engagement with industry through the appointment of an External Advisory Panel (see page 30), which was an outcome of our Strategic Review.

**ASIC's Better Regulation program was launched in 2006 and is aimed at making ASIC more transparent and accessible while reducing duplication and paperwork.**

### Direct liaison

We are proactively increasing our direct liaison with the various industry sectors we regulate, through face-to-face meetings aimed at sharing information and expectations with industry participants. For example, we visited 224 financial services institutions and 300 small financial services licensees to better understand emerging trends, issues and risks relevant to them and encourage compliance. Within two months of the visits, we received 13 notifications of significant breaches, 41 applications for licence variations and 23 requests for advice or assistance from the 300 licensees visited.

### Information technology upgrade – our STAR Program

In the 2007–08 Budget, the Government announced additional funding of \$116.7 million over the next four years for the upgrading of our information technology infrastructure. This upgrade will deliver improved access to ASIC's public information and better support to our people through flexible systems that meet legislative and business requirements. We will introduce an easily searched integrated data warehouse in which information is consistently classified, consolidated and stored, and thus more easily mined. The introduction of enhanced technology foundations will also deliver better information protection, systems availability and reliability, and enable a timely disaster recovery capability.

As well as mapping what we need to do, this year we selected and customised an enterprise content management (ECM) system, began implementing a new disaster recovery capability for our document imaging facilities and upgraded our security systems. Next year,

we will roll out the ECM system, deliver portal technology so that our information is easier to access for our people and the community, and deliver a new data warehouse framework.

### Public complaints

We encourage people to report suspected misconduct. During the year, ASIC dealt with 11,436 complaints, an increase of 7 per cent. We also seek to finalise people's complaints in a timely manner. This year, 78 per cent of complaints were finalised in 28 days, which surpassed our target of 70 per cent.

	2007–08
<b>Complaints finalised</b>	<b>11,436</b>
Referred for compliance, investigation or surveillance	22%
Resolved, mainly through getting information people needed or by getting companies or company officers to comply	34%
<b>Identified no offences or lacked jurisdiction to act</b>	<b>17%</b>
Analysed, assessed and recorded for intelligence purposes	27%

In direct response to complaints, we sent 1135 warning letters to company directors seeking their compliance with their legal obligations. We also prosecuted 752 company officers for 1455 contraventions, obtaining good behaviour bonds, jail sentences, suspended sentences and fines and costs of \$1.07 million. These jail and suspended sentences are reported with other enforcement activity, see page 61. Overall, we achieved a compliance rate of 55 per cent.

### Service Charter

The ASIC Service Charter sets out the most common interactions we have with stakeholders and how quickly stakeholders can expect us to respond to phone calls, complaints, requests or applications. Our performance for 2007–08 improved or remained steady in 15 of the 21 areas measured. See page 50 for full results.

# 6 STRATEGIC REVIEW

The outcomes of the Strategic Review will take ASIC closer to the market and consumers, make the organisation more accessible and flexible, and enable us to take emerging trends into account more quickly.

On 8 May 2008, ASIC announced the results of the Strategic Review of its operations that began shortly after the appointment of Mr Tony D'Aloisio as Chairman a year earlier. The results of the Review will be implemented by 1 September 2008. While ASIC will continue at approximately its current size – in terms of budget and people – it will be substantially reorganised.

## Rationale for change

A key input to the Strategic Review was a comprehensive survey of stakeholders' current and future expectations and attitudes towards ASIC. This was conducted on ASIC's behalf in January and February 2008 by the Allen Consulting Group, which surveyed business and consumer stakeholders. ASIC staff completed the same survey for comparison purposes.

The survey found that business, in particular, wanted to see improvements in how ASIC administers the law and the way it deals with people and entities that breach the law. While positive about many of ASIC's administrative systems and information services, business said ASIC should prioritise the prosecution of market abuses, focus on cutting red tape and become more accessible. The survey 'boiled down' to a mark for ASIC of only 5.5 out of 10.

The firm of McKinsey & Co was engaged to assist with the Strategic Review process. They worked closely with ASIC's Strategic Review team to assess ASIC's external environment and internal capabilities; benchmark ASIC against peer organisations; develop propositions about strategy, capability building, leadership and structure; and design a strategic plan and an implementation plan.

## New structure

ASIC is moving to a flatter, more flexible and more outwardly focused structure that embraces its responsibilities in both the real economy and the financial economy.

The changes are designed to ensure ASIC has a clear, forward-looking, market-based agenda and can appoint the leaders and build the internal capabilities it needs to ensure its agenda is realised.

The restructured ASIC will:

- better understand the markets it regulates
- be more forward-looking in examining issues and assessing systemic risks
- better articulate why it has chosen to intervene and the behavioural changes it wants the market to make
- have a clearer set of priorities, and
- have stronger leadership skills, and better skilled and credentialled staff.

## Key changes

The changes ASIC is making in order to deliver these benefits are:

- additional investment in market research and analysis
- the appointment of an experienced External Advisory Panel, drawn from a variety of sectors of the economy, to advise ASIC's Commission on market developments and potential systemic issues
- abolition of the 4 current 'silos' directorates of ASIC and their replacement with 20 outwardly focused stakeholder and deterrence teams covering the financial economy
- additional resources directed to the supervision of brokers and intermediaries, to providers of exchange-traded products and to surveillance of exchange-traded markets, and
- a better balance between national and regional initiatives, including greater resources in the burgeoning Western Australian market.

# Manage

While there will be a consolidation of senior roles, our total staff numbers will not decrease from 1669 full-time equivalent positions. ASIC will also increase its investment in training and development to build the credentials of existing staff and leaders. This includes the establishment of an ASIC Academy and the recruitment of senior people from industry.

ASIC will maintain its strong approach to enforcement. From September 2008, we will have eight enforcement or deterrence teams (instead of one large directorate). Each team will be given specific responsibilities, such as insider trading, major fraud or significant misconduct.

Regional Commissioners, who report directly to the Commission, will have new, additional responsibilities for managing support services and building teams. In particular, they will work with the Commission to ensure that ASIC maintains a proper balance between local and national initiatives.

## Our priorities

ASIC's priorities, referred to above, were considered during the Strategic Review and found to remain relevant and consistent with its future direction. ASIC will continue to focus on:

- promoting the interests of consumers and retail investors
- building confidence in and the integrity of Australia's capital markets
- facilitating capital flows
- helping small and medium business, and
- lifting operational effectiveness.

These priorities will be enhanced by an additional focus on:

- international enforcement and internet fraud, as part of our facilitating capital flows priority, and
- managing the domestic and international implications of global financial turbulence.

### What business would like ASIC to focus on – high-priority factors

Source: Allen Consulting Group survey of ASIC stakeholders

