

## **INTRODUCTION**

Thank you for the invitation to address you today.

## **THE NEW REGULATORY REGIME**

As you all know the Financial System Inquiry or Wallis Report recommended wide ranging reforms to the Australian Financial System. These reforms are being implemented in a staged manner.

In July last year the Australian Securities Commission became the Australian Securities and Investments Commission and gained broader and new responsibilities for the conduct and disclosure aspects of insurance, superannuation and banking and for consumer protection. Our co-regulator the Australian Prudential Regulatory Authority came into existence.

We are now entering the second stage of the FSI reforms with Building Societies, Credit Unions and Friendly Societies becoming incorporated under the Corporations Law and thereby joining a new regulatory system common to all financial service providers.

The legislation implementing this change, the Financial Sector Reform (Amendments and Transitional Provisions) Bill 1999, is still being considered by Parliament. I understand that it has passed through the House of Representatives and is currently before the Senate Economics Committee for report by 13 May 1999.

I know that this a reform that you largely welcome and have sought for some time.

We also welcome this new role, one financial regulator responsible for registry, corporate governance and consumer protection across the financial sector. However, we are conscious of the challenges such changes mean for all of us - for ASIC as a regulator and for your organisations as they transfer a new regulatory regime.

We are conscious that we must seek to preserve and build on the things within your organisations that are best and that your wish to preserve, but, at the same time, work with you to integrate your institutions into a more complex and challenging environment. I know that you value your core values of saving, self help and co-operation. We seek to ensure a financial market characterised by integrity, honesty, proper disclosure and fairness where consumers can have confidence in making investments and business can operate efficiently and effectively. We share some common objectives.

Today, I will outline briefly this new regulatory environment and try to describe to you ASIC's approach to the transition and to its regulatory role generally. It is fair to say that my words today are only the beginning of a continuing dialogue as we get to appreciate your industry better and you get to understand our regulatory objectives better.

Indeed, one of the key messages I would like to leave you with today is that ASIC is committed to a meaningful dialogue with our stakeholders. Senior ASIC staff have had

the benefit of meetings with members and the executive of your association. The Commission is keen to meet regularly with industry association boards. We see a frank and vigorous dialogue with all our stakeholders as essential to our success.

## **THE NEW REGULATORS ASIC and APRA**

At present, as you know, Building Societies are regulated under the Financial Institutions Scheme and your contact has been with the Australian Financial Institutions Commission (AFIC) and the State Supervisory Authorities (SSA's).

Under the second tranche of the Wallis Inquiry reforms AFIC and the SSA's will cease to be your regulators and ASIC and APRA will assume responsibility.

ASIC and APRA have distinct roles, but with a considerable degree of interaction.

ASIC retains its original jurisdiction as the corporate/market/investor protection regulator, together with all the consumer protection and market integrity aspects of the finance sector, including insurance, superannuation and banking, but excluding credit products.

We are a national body that delivers services throughout Australia, with offices in every capital city. We are conscious that Building Societies are diverse in size and location, products and services and look to be able to service your needs and those of your customers throughout the country.

We see APRA's role as relating to the ability of financial institutions to honour all of their commitments when they fall due. We expect that APRA will focus mostly on the overall viability of institutions. ASIC's role, on the other hand, concerns the relationship between the institutions and individual consumers. ASIC looks after consumers as *individual* customers, ensuring they receive proper disclosure, are dealt with fairly by qualified people, and continue to receive useful information about their investments. APRA looks after the health of the institution so that the community can be confident in its ability to meet its obligations to its customers *collectively*.

Understandably, you want some appreciation of our approaches and attitudes to our new responsibilities.

Our starting point is the objectives given to us by the Commonwealth Parliament: these include to strive to promote:

- the performance of the financial system and the entities in that system in the interests of commercial certainty, reducing business costs, and the efficiency and the development of the economy; and
- the confident and informed participation of investors and consumers in the financial system.

So, how will ASIC approach its new responsibilities? We will seek to:

- devote particular effort to promoting consumer confidence in the financial services sector;
- build an intimate understanding and knowledge of the markets and industries and the needs of the consumers in the sectors we regulates;
- continue and build on our practice of close links to the marketplace;
- continue to work with other regulators and the Government to achieve the optimum balance between flexibility, innovation and to need to provide business with certainty and predictability of regulation; and
- continue to evolve and develop our regulatory approach with a focus on firstly education - making sure that participants are aware of the rules; secondly, compliance strategies and thirdly, effective enforcement.

With these things in mind I want to emphasise that it is ASIC's objective to make the transition to the Corporations Law regime as smooth as possible for the industry and its customers.

We intend to work closely with our new stakeholders and to actively listen to them. We have already had some excellent dialogue with and assistance from your association and with AFIC and we trust that that will continue until the transition is through. I'll outline some of the assistance we intend to provide to the building society industry after I've described some of the forthcoming changes.

We are also mindful of the complications arising from the shift from a relationship centred around your local State Supervisory Authority to a set of relationships with ASIC, APRA and the ACCC. It remains one of ASIC's objectives to minimise regulatory duplication. To this end we have entered into Memoranda of Understanding and work closely with both APRA and ACCC, including regular meetings of our senior staff.

So, let me talk about the specific changes in some more detail.

## **CHANGES FOR THE BUILDING SOCIETY INDUSTRY**

The changes for building societies can be grouped under two headings:

1. transfer to the Corporations Law; and
2. consumer protection.

I will speak about consumer protection today, even though ASIC assumed that responsibility last year because ASIC has just embarked upon some important initiatives in that area that will be of interest to you.

## **THE CORPORATIONS LAW - REGISTRY AND CORPORATE GOVERNANCE**

The transfer to the Corporations Law is to be effected by the Financial Sector Reform (Amendments and Transitional Provisions) Bill 1999.

The transfer in regimes will involve some important changes for you:

- building societies will become public companies under the Corporations Law;
- you need to amend your constitutions during the 18 month transition period to reflect this;
- the regulation of demutualisations will be focussed around promoting informed decision making by your members, rather than the approval of the terms of the demutualisation by your regulator.

#### *Becoming a Corporations Law company*

The legislation will change the *formal or legal* structure of your organisations, but is largely designed to preserve the *substance* of the relationship between you and your members .

Those societies that have shares on issue on the transfer date will become a public company limited by shares and guarantee.

Those that don't have shares on issue on the transfer date will become a public company limited by guarantee.

This transformation will happen automatically and be the default position if you do not make contrary choices.

You will, however, be able to chose to be:

- a public company limited by shares alone; or
- where you have no shares on issue, a public company limited by shares and guarantee, or a public company limited by shares.

provided that you lodge the prescribed form of election with ASIC no later than 7 days before the transfer date.

ASIC is currently settling the election form and will make it available in draft form to the industry associations shortly. We will formally issue the form after the Commonwealth legislation commences.

Note that a society board of directors must make the election. You will need to plan your board meetings with this in mind.

It is important that societies are aware of this election, although you should note that the die is not permanently cast if you don't make an election. The Corporations Law

provides another mechanism by which a society will be able to change its structure at a later time, although that mechanism is more complicated.

Whether you make an election or not:

- each of your members will automatically become a member of the company;
- each person who is a member of a society other than by holding shares will be automatically issued with a new kind of share called a “membership share” (this share will carry the rights and obligations conferred by the society’s rules and Financial Institutions Code, have no value, not be transferable and only cancellable as set out in the society’s constitution or on the basis that membership could be cancelled prior to the transfer);
- each of your directors and secretaries will automatically become a director or secretary of the company; and
- the society’s rules will automatically become the company’s constitution.

Following your transfer to the Corporations Law there will be a number of other matters for you to address. In particular, you will need to amend your society’s rules, called constitutions under the Corporations Law, to give effect to the changes involved in becoming a corporation (in particular, to set out the rights and obligations attaching to each class of share on issue).

Now we are conscious that those of you who acquire “shareholders” in this way may need some time to adjust to your new structures. We will seek to assist you in understanding some of your new responsibilities.

#### *New Requirements under the Corporations Law*

Your transfer to the Corporations Law will also introduce some new obligations including:

- changes in your financial reporting requirements; and
- obligations to use your Australian Company Numbers in all your public documents and some other documents.

The detail of your obligations during the transition period will be determined by regulations that are being prepared by the Treasury. However, I understand that the Treasury are well aware that the industry will need time to make the transition to complying with these new obligations.

#### *Demutualisation*

Another important change will be the manner in which demutualisations will be supervised - if and when they occur. For those building societies that retain a mutual structure, they will be obliged to provide various documents to ASIC and members with the notice of the meeting to approve the demutualisation.

The required documents will be:

- a complying disclosure statement that has been registered with ASIC;
- an estimate of the financial benefits (if any) members will be offered if the constitution is altered; and
- a report by an independent expert that states whether, in the expert's opinion, the proposed modification or share issue is in the best interests of the members as a whole.

The disclosure statement must give all the information that members would reasonably require and expect to be given to make an informed decision. It must be first registered with ASIC. The legislation provides that we must register a disclosure statement if we are satisfied that it adequately sets out or explains a variety of matters, including information about:

- the changes in members' rights;
- financial benefits offered to members (including any preferential allocations);
- any benefits officers of the company may receive; and
- the procedures by which the changes are to take place.

Additional protection will be provided by new provisions prohibiting a person from engaging in unconscionable or misleading conduct in relation to a demutualisation.

### *Smoothing the Transfer*

A number of other activities will occur to smooth the transfer.

ASIC will have a "roadshow" visiting most capital cities in advance of the transfer date. We will cover a number of issues, including:

- an introduction to ASIC, its role and powers and its senior management;
- an explanation of the new regulatory framework;
- an outline of the key changes and the things that the industry will need to do to effect those changes; and
- an explanation of our role as a consumer protection regulator and some of the key issues affecting building societies, credit unions and friendly societies.

There will be an opportunity for questions and discussion. Your key national and regional contacts will be at these roadshows so that you can meet those with whom you'll be dealing in the future.

At the same time we are intending to publish a booklet that will generally explain what's new and what you have to do. It will cover the topics I've mentioned above in greater detail but will also include useful information such as who to contact within ASIC for help.

Those people include our Infoline and Business Centre staff. Our Infoline staff already answer most of the inquiries made of ASIC. Our Business Centres are located in all capital cities, with additional offices in Geelong, Newcastle, Gold Coast and Townsville, and help you with registry searches and will lodging forms. They will be ready to deal with most of your questions about the transfer and will arrange for the right technical staff to help you when they can't.

In addition, of course, we are conscious of the need to recruit people with an understanding of your industry and we expect to be able to attract a number of people from your current regulators as well as the industry itself.

## **CONSUMER PROTECTION**

As I've mentioned, ASIC is now the consumer protection regulator for the finance sector, with the exception of credit products.

We all know of the key trends driving retail consumers to participate in the financial services marketplace. Government policies, demographic trends, changing working patterns and new technologies are both encouraging and forcing consumers to deal with a wider range of financial services on a more regular basis. In many cases consumers are having to take on greater financial risks, such in the retirement income arena. We are also witnessing an increasing 'convergence' of different parts of the finance sector, and consumers can increasingly 'one stop shop' if they wish.

In this changing environment it is essential that consumers have confidence in the financial market place.

How is ASIC seeking to achieve this objective? What are our new powers and what activities are we undertaking in the consumer protection area?

### *Consumer protection laws*

The first point I'd like to make is that while ASIC has new responsibilities. The laws that financial institutions must comply with remain substantially unchanged.

Let me expand on this point. In the past it was necessary to comply with the consumer protection provisions of the *Trade Practices Act 1974*. Those consumer protection provisions have now been replicated in the *Australian Securities and Investments Commission Act 1989*. Section 52 has become Section 12DA of the ASIC Act. The Australian Competition and Consumer Commission, which administers the Trade Practices Act, no longer deals with consumer protection in the financial sector except in respect of credit. The golden tenet of consumer protection law, that you must not

engage in conduct that is misleading or deceptive or is likely to mislead or deceive, remains unchanged.

We are working very closely with the ACCC to ensure that we provide a seamless and consistent approach to consumer protection generally and in particular, to activities which combine financial and non-financial products.

### *ASIC's approach to consumer protection regulation*

So how does ASIC consider the consumer's perspective?

In February of this year, ASIC established the Office of Consumer Protection (OCP) to provide advice to the Commission on consumer protection issues and ASIC's consumer protection work.

ASIC also reviewed its consumer liaison arrangements and established the Consumer Advisory Panel, which reflects the wider range of consumer issues that ASIC now must deal with. This Panel was established to promote an information exchange between representatives of different consumer organisations and interests and ASIC. CAP is undertaking a number of projects itself including one on availability of information/education to consumers regarding financial products.

### *Consumer protection and industry codes*

ASIC has also assumed the consumer protection responsibilities of the Australian Payments Systems Council. In particular we've inherited responsibility for the oversight of industry codes of conduct, including the Banking Code, the Credit Union Code of Practice, the Building Society Code of Practice and the Electronic Funds Transfer Code of Conduct. ASIC believes that codes can play an important part in improving and maintaining industry-consumer relationships.

Many of you will already have heard from ASIC on this topic as the monitoring of these codes is now under way. You may therefore be aware that ASIC's approach to this task is that we are following previous practice for this *current* round of industry reporting on adherence to code requirements. So we've written to each of you asking for your compliance results for the year ending 31 March 1999.

More importantly for the longer term, we have also asked you for your views on the monitoring process. I would strongly encourage you to respond to this question, as we are intending to review the approach to the monitoring of these codes. In due course we will be seeking views on whether the monitoring process can be improved and whether fine-tuning or more substantial changes might be required.

While we are discussing codes, I would note that this is one area where there is a new provision in the law. Section 12FA(1) of the ASIC Act provides that the Commission has:

“the function of promoting the adoption of, and approving and monitoring compliance with, industry standards and codes of practice”.

ASIC is keen to assist financial service providers with the development and review of codes designed to boost consumer protection. Already, we have been approached to comment on the Friendly Societies proposed code and disputes resolution procedures. ASIC is also talking with CUSCAL about the review of the Credit Union Code. We would look forward to commencing a dialogue with the Building Societies.

### *E-commerce and EFT Code Expansion*

The EFT Code is also an important part of this picture. We are currently chairing a working party charged with examining the possible extension of the EFT Code of Conduct to cover those forms of electronic banking not presently covered by the Code. Credit Union and Building Society representatives are of course part of this working party, which met recently for the first time.

ASIC believes a very important part of its regulatory role is to facilitate the use of new technologies by financial service providers *and* consumers. The work on the EFT Code is being conducted with this aim in mind. We believe that consumers' confidence in new technologies will be enhanced if there is consistent protection regardless of the technology they use to do their banking transactions. ASIC is aware that the EFT Code has been working well, so we're hoping to see a similarly positive approach in the new areas such as 'phone and Internet banking.

More broadly on e-commerce issues, we've have just established a new Electronic Enforcement Unit. ASIC is seeking to ensure that industry and consumer confidence in electronic markets is improved through timely and effective enforcement.

### *ASIC and alternative dispute resolution*

To complete my discussion of consumer protection issues, I'll now turn to the subject of dispute resolution.

I'd first note that ASIC is very supportive of the external, finance sector alternative dispute resolution schemes, or ADR schemes. We see them as being an important part of the spectrum of consumer protection available in the finance sector. We recognise the efforts that various industry sectors have put into developing these schemes.

Recent industry reforms now mean that financial advisers and single responsible entities in the managed investment industry must join an ADR scheme that has been approved by ASIC, as a condition of holding a licence. So ASIC is currently developing a policy statement that will form the basis for its approval of complaints resolution schemes. Currently, credit unions, building societies and friendly societies are not required by legislation to be a member of an approved alternative dispute resolution scheme. ASIC will, however, be encouraging each of you to join such a scheme consistent with developing best practice.

We look forward to further dialogue with the industry on the best way forward.

## **CONCLUSION**

Last year we started a journey to the national regulation of building societies. ASIC became your consumer protection regulator, taking over the general consumer protection powers of the ACCC and the industry codes of practice in relation to deposit taking and electronic funds transfers. This year, if and when the legislation is passed, we complete that journey with building societies transferring to the Corporations Law.

We look forward to working with you to ensure a smooth transition and to promote an efficient competitive financial system in which consumers with significant choices of financial products and vehicles can and do confidently participate.