



ASIC

Australian Securities & Investments Commission

Hear from the regulators: What you need to know

*A speech by Greg Medcraft, Chairman
Australian Securities and Investments Commission*

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CHECK AGAINST DELIVERY

Introduction

Thank you, Toby, and thank you to the Governance Institute for having me here today.

It's a pleasure to be addressing so many governance professionals and to be on a panel with:

- Ian Laughlin (Deputy Chairman, APRA)
- Susan Pascoe (Commissioner, Australian Charities and Not-for-profits Commission), and
- Kevin Lewis (Chief Compliance Officer, Australian Securities Exchange).

Today, I'd like to speak about maintaining trust and confidence in our markets.

In particular, I'd like to talk about:

- ASIC's role
- challenges to markets and financial services
- how we respond, and
- areas of focus for ASIC's Corporations team, including:
 - the handling of confidential information
 - promotional materials for hybrid securities, and
 - rights issues with control implications.

ASIC's role

ASIC's fundamental objective is to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth. This contributes to improved standards of living for all Australians.

In order for markets to do their job, investors need to have trust and confidence in them. Without it, you don't have a market.

Making sure Australians have trust and confidence in our markets is at the heart of everything we do. It is what drives the excellent men and women who work at ASIC and do so for good reason.

The markets we oversee are based on three pillars:

- investor freedom of choice and responsibility
- gatekeepers – such as directors, advisers, auditors, product manufacturers and stock exchanges – who have responsibilities under the law, and
- the law itself, which sets out the rights and responsibilities of those in the markets ASIC oversees.

Challenges to our markets and financial services

So what are the challenges to ensuring investors and issuers have trust and confidence in our markets?

We are living in a time of rapid innovation and change, as always, and this is only likely to increase.

Change brings opportunity, but also risk to investor trust and confidence.

In this age of innovation, the five key external challenges I see for ASIC – as Australia's integrated financial services and markets regulator – are:

- getting the right balance between a free market-based system and investor trust and confidence, with a particular focus on:
 - deregulation – making it easier and less costly for markets to do their job, and
 - ensuring that the gatekeepers we regulate have a culture and systems that emphasise the best interests of those they have responsibilities to
- digital disruption to existing business models and channels, which I will talk about later
- structural change in our financial system through:
 - the growth of market-based financing, which is largely driven by superannuation, and
 - the movement of savings from the banking sector to the superannuation sector
- financial innovation-driven complexity in products, markets and technology. Much of this is driven by the digitisation of our economy, and
- globalisation, which affects:
 - technology
 - markets, and
 - products.

These were identified in our Strategic Outlook, which we released in October. While these things are all challenges, they also present opportunities to fund economic growth by often providing greater:

- access
- competition, and
- efficiency.

Industry and regulators need to continue working together to harvest the opportunities while mitigating the risks to investor trust and confidence.

Responding to our challenges

So how does ASIC respond to these challenges and ensure that investors have trust and confidence in our markets? We do this through our strategic priorities of:

- promoting investor and financial consumer trust and confidence;
- ensuring fair, orderly and transparent markets; and
- providing efficient and accessible registration for participants in the financial system.

In achieving our strategic objectives, a key aspect of what we do is identifying and dealing with those who break the law.

ASIC is a law enforcement agency – 70% of our regulatory resources are devoted to surveillance and enforcement.

We hold gatekeepers to account to the best of our ability through our **detect, understand and respond** approach. Let me unpack each of these.

We **detect** misconduct and the risk of misconduct by gathering intelligence through:

- surveillance – both proactive and reactive
- breach reporting
- reports from whistleblowers and the public, and
- data gathering and matching (e.g. our Market Analysis Intelligence (MAI) surveillance system).

We **understand** by analysing the intelligence we receive.

And, depending on our resources and powers, we **respond** with the right nudge to the three pillars of investors, gatekeepers and the law.

- For investors, we do this by educating them. This is through ASIC's award-winning financial literacy work, largely conducted under our

MoneySmart brand. (Last financial year the MoneySmart website attracted nearly 5 million unique visits.)

- For gatekeepers, we:
 - provide guidance
 - communicate actions we take
 - disrupt harmful behaviour (e.g. our work in stopping misleading advertising), and
 - take enforcement action, such as sending criminals to jail, removing bad apples from the industry and securing compensation for investors.
- Lastly, for the law, we respond by providing policy advice to Government.

We do the best we can with our resources and powers to catch those who break the law. For those who intentionally break it, we will do all that we can to ensure the ramifications are severe.

Of course, the vast majority of people comply with the law and have nothing to worry about.

Areas of focus for ASIC's Corporations team

Today, I'd also like to talk about some areas of focus for ASIC's corporations team to help ensure investors have trust and confidence in our markets. These areas are:

- handling of confidential information
- promotional materials on hybrids, and
- rights issues with control implications.

Handling of confidential information

Trust and confidence in financial markets, which is at the heart of our strategic objective of ensuring fair, orderly and transparent markets, depends on all investors having access to market-sensitive information about listed entities at the same time.

Leakage of information before market announcements creates opportunities for insider trading, market manipulation and undermines investor trust and confidence.

In May, ASIC released its report on the handling of confidential information.¹ The report outlines the findings of our review of practices employed to handle and protect confidential, market-sensitive information.

We found that listed entities need to be proactive about the proper handling and dissemination of market-sensitive information.

Poor practices can lead to regulatory action for a breach of the Corporations Act. They can also create negative perceptions of the entity within the investment community and harm the success of a transaction.

Our commitment to enforcing the law in this area was reflected in our successful prosecution of Newcrest Mining for briefing analysts about market-sensitive information. Newcrest was required to pay a penalty of \$1.2 million for breaching their continuous disclosure obligations.

We continue to undertake surveillance in this area. For example, our cross-market, real-time market surveillance system – MAI – gives us the ability to aggressively interrogate trades before announcements by:

- data matching in real time
- pattern matching algorithms, and
- post-real-time data mining.

Promotional materials for hybrids

The next area of focus I wanted to talk about is promotional materials for hybrids.

Promotional materials that are balanced and not misleading are key ingredients for investor trust and confidence in our markets. This is particularly important for complex financial products like hybrids where insights from behavioural economics suggest consumers are more likely to focus on the summary information in promotional material rather than more detailed information in a prospectus.

This is why ASIC is reviewing the promotional material issued by market participants for hybrids. Disappointingly, we have found a small number of cases where promotional material did not have a balanced disclosure of features and risks. In particular, issues we identified include:

- inadequate disclosure of risk
- disclaimers that were not sufficiently prominent
- hybrids being referred to as stocks or shares, and

¹ Report 393 *Handling of confidential information: Briefings and unannounced corporate transactions* (REP 393).

- hybrids being classified as fixed income in a way that may be misleading.

The entities we have engaged with about their promotional material have been receptive to our recommendations. Where issues were identified, they have implemented changes. Doing so has avoided the need for ASIC to take enforcement action.

Rights issues with control implications

The third and final area of focus I wanted to outline was rights issues with control implications.

Recently, we have observed an increase in the use of exceptions to the takeover rules in a way that is technically possible but does not comply with the spirit of the law.

These practices also raise some concerns about:

- the fair, orderly and transparent operation of our markets, and
- trust and confidence in our financial system.

The most common exceptions we see being relied on that are causing concern for ASIC are:

- the rights issue exception, and
- the underwriter exception.

ASIC is monitoring these transactions carefully for compliance with takeovers law.

If we are concerned with the structure of a transaction, we are engaging with issuers to make structural changes. If we think it is warranted, we are prepared to refer matters to the Takeovers Panel or use our other powers to secure a change.

Conclusion

I'd like to conclude by reiterating ASIC's fundamental objective – we exist to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth.

A key part of this is ensuring resilient, fair, orderly and transparent markets underpinned by investor and issuer trust and confidence.

Thank you.