



ASIC

Australian Securities & Investments Commission

ASIC's risk outlook for 2015

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CHECK AGAINST DELIVERY

Introduction

Good morning everyone. It's a pleasure to be here at Macquarie University's Financial Risk Day for 2015.

The key themes for today's conference – risk culture, governance and financial literacy – are fitting, as they are themes that will play a key role in our financial system in 2015 and in years to come.

Risk culture, governance and financial literacy are also elements in maintaining *trust and confidence* in our financial system, and this is important because our financial system is built on trust and confidence. Trust and confidence are at the heart of ASIC's role as Australia's financial services and markets regulator.

Our fundamental objective is to allow markets to allocate capital efficiently to fund the real economy and, in turn, economic growth. In order for markets to do their job, investors need to have trust and confidence in our markets. Without it, markets won't work the way they are supposed to.

Markets, of course, don't operate in a vacuum. In particular, investors need to have confidence and trust in the people who act as intermediaries or gatekeepers in the market. That is, investors need to trust our financial institutions, advisers, brokers, auditors and liquidators in order to have trust and confidence in the markets.

The importance of trust and confidence is also reflected in our regulatory strategic priorities of:

- investor and consumer trust and confidence; and
- fair, orderly and transparent markets.

Today, I'd like to talk about the risks ASIC sees for trust and confidence in our financial system. These are set out in our Strategic Outlook, which we released last October.

I'll talk about:

- our challenges;
- our strategic risks:
 - how we identify them;
 - what they are; and
 - how they shape what we do; and
- our enforcement work, in particular how it supports risk and compliance professionals.

Our challenges

At ASIC, our focus is on being proactive and forward looking so we are well positioned to manage the challenges to trust and confidence in our financial system.

These challenges are:

- *getting the right balance between a free market-based system and investor protection*, with a particular focus on:
 - facilitating business and deregulation; 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;
- *structural change* in our financial system through the:
 - growth of capital markets; and
 - the movement of savings from the banking sector to the super sector;
- *financial innovation-driven complexity* in products, markets and technology. Much of this is driven by the digitisation of our economy; and
- *globalisation*.

The strategic risks we've identified have arisen from these challenges.

Our strategic risks

How we identify them

We have also used our intelligence gathering function to help identify our strategic risks. Gathering intelligence forms part of our 'detect, understand and respond' approach.

Let me go into more detail on this:

- 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* by:
 - educating investors;
 - providing guidance to gatekeepers;
 - communicating the actions we take;
 - disrupting harmful behaviour;
 - providing policy advice to Government; and
 - lastly, taking enforcement action – such as sending criminals to jail, removing bad apples from the industry and securing compensation for investors. I will talk more about our enforcement work a bit later.

What they are

So what are ASIC's strategic risks?

They are highlighted on the slide and are:

- *Conduct related:*
 - Poor gatekeeper conduct in our markets by companies, principals and intermediaries.
 - Poor gatekeeper conduct in the financial services sector. In particular, weak compliance systems, poor cultures, unsustainable business models and conflicted distribution may result in poor advice, mis-selling and investor loss.
- *Innovation-driven complexity:*
 - Poor retail product design and disclosure and misleading marketing may disadvantage consumers, particularly at retirement.
 - Innovation and complexity in product distribution and financial markets through new technology may deliver mixed outcomes for consumers and issuers. The recent Murray Inquiry report provides a very good analysis of complexity and the need for policy responses to it.
- *Globalisation:* Encouraging cross-border activity and integration of international markets can deliver significant economic benefits to Australia. However, we must also ensure that cross-border transactions do not lead to compromised market outcomes locally.

- *Expectations gap*: This arises from the mis-match between the expectations that people have about what ASIC is able to achieve with our resources and powers, and what we actually can achieve. For example, ASIC is not resourced to take action in relation to every instance of misconduct that is brought to our attention. We prioritise matters for investigation based on the extent of harm or loss, the benefits of pursuing misconduct, and the available evidence. Or, to put it a little crudely, we want to make sure Australians get the biggest bang for their buck.

How they shape what we do

Now that I've outlined how we identify our strategic risks and what these risks are, the next question is, 'How do our strategic risks shape what we do?'

ASIC is a law enforcement agency; 70% of our regulatory resources are devoted to surveillance and enforcement. We hold gatekeepers to account so that Australians have trust and confidence in our financial services and markets. We do this in a number of ways, which I mentioned earlier.

We disrupt harmful behaviour. For example, last financial year ASIC action resulted in 127 instances of potentially misleading promotional material being withdrawn or amended.

We communicate the actions we take, in particular through our media releases. This is important in maximising the deterrent effect of our actions. As we state in our Information Sheet 151 on ASIC's approach to enforcement – 'We will always assert the right to make an enforcement outcome public, unless the law requires otherwise. We will not agree to keep enforcement outcomes secret. This is important for regulatory transparency and effective deterrence.'

Most importantly, we take enforcement action so that there are meaningful consequences – whether they are criminal, civil or administrative – for those who break the law.

ASIC's enforcement work

Over and over, cases show that some people will break the law if they think no one is looking. For example, Melinda Scott, a former financial adviser, was found to have defrauded more than 150 clients of over \$5.9 million over a period of 20 years. However, her actions caught up with her – last month she was jailed for over six years.

At ASIC, we look at how we can leverage our enforcement tools to achieve the greatest impact and address the largest areas of risk.

We have a number of tools in our arsenal. What tool we use will depend on the type of enforcement outcome we are looking for and the seriousness of the misconduct. This is shown on the slide.

We may:

- take *punitive* action, such as sending someone to jail;
- take *protective* action, such as disqualification from managing a corporation;
- take *preservative* action, such as going to court to seek orders to protect assets;
- take *compensatory* action, to recover damages or property for consumers that have suffered loss;
- take *corrective* action, such as a court order to make corrective disclosure;
- issue an *infringement notice* – so-called ‘speeding tickets’, which result in fast outcomes for minor breaches; or
- enter into a *negotiated outcome*, such as an enforceable undertaking. The advantage of enforceable undertakings is that they can result in more timely outcomes and can have a reach beyond criminal, civil or administrative sanctions. For example, an enforceable undertaking can be used to effect change across the whole organisation.

An underlying consideration for any enforcement outcome we seek is the deterrent impact of our actions.

Our enforcement results

I also want to make the point that, when it comes to enforcement, ASIC gets results.

Last financial year ASIC action resulted in:

- 30 criminals being convicted and 14 jailed;
- over \$174 million in compensation for investors;
- nearly \$6 million in fines from enforcement matters;
- 62 people removed from directing companies;
- 23 Australian financial services licences cancelled; and
- 57 people banned from providing financial services.

The people who work at ASIC are serious and passionate about enforcing the law. We do all that we can to hold gatekeepers to account so that trust and confidence in our financial services and markets is strong.

Supporting risk and compliance professionals

At ASIC, we also recognise that our enforcement work helps support the risk management and compliance functions of the firms we regulate.

For risk management and compliance professionals to be taken seriously, their work needs to be backed up by robust enforcement. We want boards and management to appreciate that there are profound consequences for breaking the law. Not only for the companies they act, but for them personally.

For example, in the Prime Trust matter last December, the Federal Court delivered a penalty judgment against five former directors of Australian Property Custodian Holdings who breached directors' duties by making an illegal \$30 million related party payment. The judgment involved fines and/or disqualifications from managing a company for all five directors. In particular, Mr William Lewski was banned from managing a corporation for 15 years and received a penalty of \$230,000.

The ongoing Hanlong matter demonstrates that we are also prepared to pursue wrongdoers across borders. In October last year, former Hanlong Mining managing director Steven Xiao appeared in court charged with 104 counts of insider trading. This followed a long-running ASIC investigation, which resulted in Mr Xiao being extradited to Australia from Hong Kong.

Conclusion

I'd like to conclude by reiterating the importance of ASIC's enforcement work in maintaining trust and confidence in our financial services and markets. It is a fundamental part of giving Australians assurance that our financial system works the way it is supposed to.

Our enforcement work is also an important tool in managing our strategic risks. As I mentioned earlier, these risks fall into the areas of:

- conduct;
- innovation-driven complexity;
- globalisation; and
- the expectations gap.

Thank you.