



ASIC

Australian Securities & Investments Commission

REPORT 433

Overview of licensing and professional registration applications: July to December 2014

May 2015

About this report

This report outlines ASIC's decisions on applications for the period from 1 July 2014 to 31 December 2014 (relevant period) for:

- new Australian financial services (AFS) licences and licence variations;
- new Australian credit licences (credit licences) and licence variations;
- the registration of liquidators, official liquidators, company auditors and approved self-managed superannuation fund (SMSF) auditors; and
- financial markets, clearing and settlement (CS) facilities, and derivative trade repositories (trade repositories).

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.

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.

The statistical information provided in this report is sourced from a range of ASIC's databases and includes both objective data (e.g. date of the decision) and subjective data (e.g. whether an amendment to an authorisation was recorded as an additional condition or a change in an authorisation). Due to the volume of activities included in this report, we have not undertaken individual verification of each statistic included in this report, and note that the statistical information should be regarded as approximate only.

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Overview

ASIC's role

- 1 ASIC is an integrated corporate, markets, financial services and consumer credit regulator. Our regulatory strategic priorities are to promote investor and financial consumer trust and confidence; ensure fair, orderly and transparent markets; and provide efficient and accessible registration. ASIC regulates entities at every point from 'cradle to grave'—from their incorporation through to their winding up.
- 2 The 1997 Financial System Inquiry (Wallis Inquiry) also noted the importance of a licensing regime to ensure market integrity and consumer confidence:

Market integrity and consumer protection are closely linked. They both aim to enhance investor confidence in the operation of financial markets and financial service providers and often using similar tools. For example, licensing of securities dealers aims both to protect consumers from unscrupulous or incompetent operators and to ensure that securities markets operate efficiently.¹
- 3 As the Government indicated when implementing the Corporate Law Economic Reform Program, ASIC was given responsibilities for licensing and professional registration duties under the *Corporations Act 2001* (Corporations Act) because:

[T]he primary objective of regulating intermediaries is to provide protection for retail investors. Adequate licensing thresholds facilitate retail investor confidence that financial intermediaries have appropriate skills, experience and qualifications. Statutory obligations imposed upon intermediaries are designed to limit fraud and provide appropriate accounting for client instructions and funds. A related objective of licensing financial market intermediaries is based on market integrity and prudential grounds. Financial advisers and dealers should have adequate resources to conduct their business and, in some instances, protect against the risk of contagion to other financial participants in the event of default. Key elements of market integrity are reflected in the general requirement for licence holders to act honestly, efficiently and fairly.²
- 4 These principles are also reflected in the *National Consumer Credit Protection Act 2009* (National Credit Act) and the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

¹ Wallis Inquiry, *Financial System Inquiry final report*, report, March 1997, p. 243.

² Treasury, *Implementing CLERP 6*, consultation paper, 3 March 1999, p. 89, <http://archive.treasury.gov.au/contentitem.asp?NavId=013&ContentID=268>.

ASIC's licensing responsibilities

- 5 ASIC's various statutory licensing responsibilities are undertaken within two particular areas of ASIC. Applications for Australian financial services (AFS) licences, Australian credit licences (credit licences) and professional registration are assessed by our Licensing team (part of ASIC's Assessment and Intelligence group), while applications for Australian market licences, clearing and settlement (CS) facility licences and Australian derivative trade repository (ADTR) licences are assessed by our Financial Markets and Infrastructure (FMI) team: see Table 1.

Table 1: Number of AFS and credit licensees, auditors, liquidators, Australian market licensees, CS facility licensees and ADTR licensees (as at 31 December 2014)

Licence and registration type	Number
AFS licensees (includes financial planners, stockbrokers and insurance brokers)	5,150
Credit licensees (includes lenders and mortgage brokers)	5,837
Approved self-managed superannuation fund (SMSF) auditors	6,680
Company auditors	4,659
Registered liquidators and official liquidators	1,307
Australian market licensees*	18
CS facility licensees	7
ADTR licensees	1

*ASIC has also granted exemptions to 24 markets operating in this jurisdiction.

AFS and credit licensing and professional registration

- 6 The Licensing team's role is to assess whether a new applicant can meet certain statutory minimum standards for AFS and credit licensing or professional registration, or whether a current licensee can be licensed or authorised to undertake additional financial or credit services.
- 7 Under the relevant statutory provisions specified, ASIC has the power to:³
- grant licences to providers of financial services under s913B of the Corporations Act;
 - grant licences to providers of credit services under s37 of the National Credit Act;

³ The Licensing team does not assess managed investment scheme registrations; this is dealt with by the Investment Managers and Superannuation team.

- (c) register liquidators under s1282 of the Corporations Act;
- (d) register official liquidators under s1283 of the Corporations Act;
- (e) register company auditors under s1280 of the Corporations Act; and
- (f) register SMSF auditors under s128B of the SIS Act.

8 In the context of AFS licensing, we can refuse to grant a licence (and can suspend or cancel a licence) if the statutory test under s913B(1)(b) of the Corporations Act is not satisfied. Originally, this test was whether we have reason to believe that the applicant or licensee will not comply with their obligations under s912A. In other words, the test required ASIC to establish that the applicant or licensee would certainly fail to comply with their obligations in the future. This was obviously a high threshold for refusing or removing a licence.

9 However, on 1 July 2012 the *Corporations Amendment (Future of Financial Advice) Act 2012* amended the test to whether we have no reason to believe that the applicant or licensee is likely to contravene their obligations. This allows ASIC to more readily take into account past behaviour or other relevant action as a guide to future conduct. As the Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2011 notes:

In the 10 years since the introduction of the Financial Services Reform Act, interpretation of this provision has tended to a view that ASIC is required to believe, as a matter of certainty, that the person will contravene the obligations in future. Such a standard would be so onerous that it could result, in practice, in ASIC never being able to refuse a licence using this part of the test. This new formulation is designed to ensure that ASIC can more appropriately account for the likelihood or probability of a future contravention.

The statutory test is whether the applicant is likely to contravene the obligations under section 912A. ASIC may take into account any information relevant to this question, such as:

- conduct of the applicant that shows deliberation and planning in wilfully disregarding the law;
- the extent of compliance by the applicant with analogous obligations in another regime; or
- any other conduct of the applicant that may lead ASIC to conclude, on reasonable grounds, that the applicant is not likely to comply.

Financial markets, CS facilities and trade repositories

10 The FMI team is responsible for advising the Minister on licensing applications for new financial markets and CS facilities, and is responsible for assessing licence applications for new trade repositories.

11 The Corporations Act sets out the Australian market licensing regime (Pt 7.2) and the CS facility licensing regime (Pt 7.3). Both Pts 7.2 and 7.3

provide for domestic licences and alternative criteria for granting licences to overseas operators. The Corporations Act also empowers the Minister to exempt a financial market or CS facility from the licensing requirements. While the number of these types of applications ASIC receives is significantly less than those we receive in relation to AFS and credit licences, they are typically larger and involve a high degree of complexity in assessment.

- 12 In January 2013, the new Pt 7.5A of the Corporations Act came into effect. This part provides the legislative framework to implement the over-the-counter (OTC) derivative markets reforms to which Australia had committed at the 2009 G20 Pittsburgh Summit. The framework includes mandatory reporting of OTC derivative transactions and a licensing requirement for trade repositories that wish to accept derivative trade data reported under that mandate.

The Financial System Inquiry

- 13 The recent Financial System Inquiry (Murray Inquiry) noted that:
- Government should strengthen the Australian Credit Licence and Australian Financial Services Licence (AFSL) regimes so ASIC can deal more effectively with poor behaviour and misconduct. ASIC should be able to consider all relevant factors in determining whether or not a licence should be granted. ASIC approval should be required for material changes in the ownership or control of a licensee. Finally, ASIC should have more capacity to impose conditions requiring licensees to address concerns about serious or systemic non-compliance with licence obligations (including expert reviews).⁴

Financial Services Reform Act 2001 (FSR Act)

- 14 The FSR Act amended the Corporations Act by introducing the AFS licensing regime.
- 15 As it has been over 12 years since the introduction of the FSR Act, we are continuing to look for ways to improve our licensing assessment methodology and practices. We consider this work important because of a number of significant developments—including advances in technology that have resulted in the development of new and complex financial products, easier access to new markets both here and overseas, and new methods for the distribution and delivery of these financial products and services to retail investors in Australia.
- 16 We have adopted a ‘whole of ASIC’ approach to assessing licensed and professional registered bodies, which involves considering all of the information known to ASIC and any other information collected from the

⁴ Murray Inquiry, *Financial System Inquiry final report*, report, November 2014, p. 250.

public or other regulatory bodies. This approach better ensures that only suitable persons and organisations are licensed or registered.

- 17 In addition, we intend to be more transparent about our AFS and credit licensing and professional registration assessment and decision-making processes and outcomes, and the risks we identify as part of those processes. This report is one element of additional disclosure and transparency.
- 18 We also intend to review our AFS and credit licensing-related regulatory guides to ensure that we are providing adequate guidance on what information and documentation we require when assessing applications. As part of this review, we will also consider whether any of the assumptions or principles we apply to our assessments (e.g. representations about the business activities and authorisations being sought, the need for a key person requirement, the role of a responsible manager, including in relation to competence and capacity, and the adequacy of arrangements regarding outsourced functions) need to be updated or enhanced.

Purpose and scope of this report

- 19 The regulatory outcomes that are discussed in this report relate to:
- (a) *rejection*—applications that are rejected for lodgement because they are manifestly defective and do not meet the minimum standards relating to the information and content included in the application;
 - (b) *withdrawal*—applications that are withdrawn because during our assessment, based on the feedback and requisitions, the applicant considers they would prefer to withdraw than proceed;
 - (c) *modifications*—applications that result in the granting of a licence that is different from that applied for, or that have additional conditions imposed. For example, we might:
 - (i) impose a key person requirement, require a compliance consultant to be appointed, or tailor a special condition to limit the scope of the activity authorised under the licence; or
 - (ii) approve a range of financial services or financial products that the applicant is allowed to offer narrower than that applied for; and
 - (d) *refusals*—applications that are refused because we are not satisfied that the statutory requirements for granting a licence or registration have been met.
- 20 The regulatory outcomes apply equally to applications for a variation to an existing licence. There is a narrower range of regulatory outcomes associated with the registration regime, given the reduced scope for tailoring or imposition of conditions on registrants compared to licensees.

- 21 This report sets out the regulatory outcomes achieved by ASIC—for the period from 1 July 2014 to 31 December 2014 (the relevant period)—in relation to AFS licence applications, credit licence applications, liquidator registration applications, company auditor and approved SMSF auditor registration applications and, in summary form, applications relating to financial markets, CS facilities and ATDRs.⁵
- 22 The purpose of this report is to provide greater transparency and understanding of ASIC’s AFS and credit licensing and professional registration activities. It presents statistics and comments on applications and outcomes for these licensing and registration assessments.
- 23 The information shows that, as a result of our assessment, we may impose additional conditions on and/or make adjustments to the original licence application. In other instances, where we are not satisfied that the applicant is capable of offering the financial or credit services applied for in compliance with the legal obligations, the application may ultimately be refused.
- 24 This report also provides details about how, with the support of other ASIC teams, the Licensing team maintains standards and limits the financial services or products that applicants may seek to offer.
- 25 We intend to issue this report for each half-year period. Given this is the first of these reports, we have gone into detail about the AFS and credit licensing process, but will not repeat this information in subsequent reports.
- 26 We will also use this report to highlight particular issues of focus and areas of potential concern. We will continue this dialogue in our discussions with applicants, their service providers and at public licensing-specific forums that we intend to convene this year.

Current areas of focus

Derivatives and foreign exchange contracts

- 27 As outlined in ASIC’s Strategic Outlook,⁶ product distribution and financial market innovation and complexity—which includes financial services relating to foreign exchange and derivatives being marketed to retail clients—are areas of strategic focus for ASIC.

⁵ Enforcement outcomes and relief applications are not covered in this report. For more information on these two areas of activity, see Report 420 *Overview of decisions on relief applications (June to September 2014)* (REP 420) and Report 421 *ASIC enforcement outcomes: July to December 2014* (REP 421).

⁶ ASIC, *ASIC’s Strategic Outlook 2014–15*, October 2014, www.asic.gov.au/about-asic/what-we-do/our-role/asics-strategic-outlook-2014-15/.

- 28 We have recently seen an increase in the number of applicants seeking various authorisations relating to derivatives and foreign exchange contracts, including in the form of over-the-counter contracts for difference.
- 29 We have issued a number of media releases regarding various licensed and unlicensed participants operating in this industry sector. In relation to one case, ASIC Commissioner Cathie Armour has said:
- FX trading is complex and risky, requiring a significant amount of knowledge, research and monitoring. ASIC expects business in this space to have policies, systems and processes in place that protect the interests of their clients.⁷
- 30 As a result of our concerns, in the last few years we have been paying particular attention to proposed new entrants to this market sector. This includes consideration of the applicant's business model, their organisational competence and responsible managers, their contractual and outsourced functions, and their risk management systems and processes. The Licensing team is liaising closely with other ASIC stakeholder teams and other regulatory agencies (both local and overseas) regarding personnel, systems, related parties and associates, as well as operations they may conduct in foreign jurisdictions.
- 31 ASIC's Financial Services Enforcement team has also been active in undertaking a number of investigations concerning foreign exchange participants.⁸ 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. Three examples are discussed below.

Examples of investigations concerning foreign exchange participants

Advanced Markets

Following concerns raised by ASIC, Advanced Markets Pty Ltd (Advanced Markets) made changes to its website to remove statements that implied ASIC regulates all the financial services provided under the AFS licence held by Advanced Markets, including those not carried on in Australia.

The statements published by Advanced Markets on its website raised concerns that such statements may confuse foreign clients to believe that the remit of ASIC's regulation of the financial services business carried on by Advanced Markets under its AFS licence extended to financial services that have no connection to Australia.⁹

⁷ Media Release (14-327MR) *ASIC surveillance prompts FX provider to enhance compliance procedures* (8 December 2014).

⁸ See REP 421, paragraph 52, and *Conquering the new frontier: Regulating for growth in the digital age*, a speech by Greg Medcraft, Chairman, ASIC, The Bloomberg Address Sydney, 26 November 2014.

⁹ Media Release (15-085MR) *FX broker Advanced Markets clarifies its AFS licence* (24 April 2015).

AGM

We suspended the AFS licence held by AGM Markets Pty Ltd (AGM) on the grounds that the company ceased to carry on a financial services business.¹⁰

Grandegoldens

We cautioned Australian investors in the retail foreign exchange industry in relation to Grandegoldens Pty Ltd (Grandegoldens). We are concerned that a website published by Grandegoldens includes information that is misleading in that it may lead investors to believe that Grandegoldens holds an AFS licence.

Grandegoldens does not hold an AFS licence and is not authorised to trade in retail foreign exchange contracts in Australia.¹¹

Peer-to-peer lending

- 32 During the relevant period, we have continued to see a number of entities seeking to enter the peer-to-peer lending market. The peer-to-peer market involves an intermediary facilitating lending by matching borrowers with potential lenders. While we have seen similar investing and lending products before, a key difference is the use of technology or a website-based platform to display a range of loans and investments consumers can acquire. We acknowledge peer-to-peer as a ‘digital disruption’, where technology is driving innovation.
- 33 Our responsibilities involve balancing facilitation of innovation in fundraising and improving the efficiency of the economy, while also promoting the confident and informed participation of investors and consumers in the financial system. As ASIC Chairman, Greg Medcraft said in a recent speech:
- Both regulators and industry must work together to harvest the opportunities, while mitigating the risks. At ASIC, we are keen to facilitate innovation where it does not compromise investor and consumer trust, confidence or stability.¹²
- 34 We do not generally consider there to be significant regulatory barriers for peer-to-peer lending, as shown by the ongoing developments in this sector domestically, including with the licensing of two entrants operating managed investments schemes. However, there are a number of challenges, including:
- (a) whether an applicant’s business model operates in a manner consistent with the regulatory regime of financial services and product authorisations required;¹³

¹⁰ Media Release (15-075MR) *ASIC suspends FX company’s licence* (2 April 2015).

¹¹ Media Release (15-066MR) *ASIC issues warning about Grandegoldens* (27 March 2015).

¹² *Conquering the new frontier: Regulating for growth in the digital age*, a speech by Greg Medcraft, Chairman, ASIC, The Bloomberg Address Sydney, 26 November 2014.

¹³ Murray Inquiry, *Financial System Inquiry final report*, report, November 2014, p. 178.

- (b) how a borrower's creditworthiness is expressed to potential investors; and
- (c) advertising and promotional material that seek to make comparisons with banks and bank-like deposit products.

35 We will continue to work with applicants in these areas to address these challenges as indicated by ASIC's Chairman, Greg Medcraft recently:

ASIC will be launching an innovation hub to help make it quicker and easier for innovative start-ups and fintech businesses to navigate the regulatory system that we administer.¹⁴

Summary of outcomes for the relevant period

Financial markets, CS facilities and trade repositories

36 In total, there are currently 18 market licensees (12 domestic operators and six overseas operators), seven CS facility licensees (five domestic operators and two overseas operators) and one ADTR licensee.¹⁵

37 During the relevant period:

- (a) ASIC granted the first ADTR licence to DTCC Data Repository (Singapore) Pte Ltd, on 15 September 2014; and
- (b) after receiving advice from ASIC, the Minister granted one CS facility licence to Chicago Mercantile Exchange and made changes to the licences of two markets.¹⁶

AFS and credit licensing and professional registration

38 In the relevant period we received 1,105 AFS and credit licensing and professional registration applications across the various application and registration types: 88% of these related to applications for either an AFS licence (i.e. new licences (282) and variations to existing AFS licences (363)) or a credit licence (i.e. new licences (235) and variations to existing credit licences (89)).

39 Table 2 shows the number of applications under consideration (available for assessment) and that were approved during the relevant period. These are broken down by the period in which they were lodged (i.e. both before and during the relevant period).

¹⁴ *Harvesting the opportunities from financial innovation: How can ASIC help you?*, a speech by Greg Medcraft, *Australian Financial Review Banking and Wealth Summit Sydney*, 28 April 2015.

¹⁵ ASIC has also granted exemptions to 24 markets operating in this jurisdiction.

¹⁶ Two professional financial markets were also granted exemptions to operate in Australia subject to conditions.

Table 2: AFS and credit licensing and professional registration applications available for assessment—1 July to 31 December 2014

Type of application	Received before July 2014 and approved July–Dec 2014		Received and approved July–Dec 2014		Not finalised at 31 Dec 2014
	Received	Approved	Received	Approved	
Licensing applications					
New AFS licence	151	87	282	87	144
Variation of AFS licence	188	115	363	157	191
New credit licence	89	55	235	111	82
Variation of credit licence	29	15	89	54	38
Registration applications					
Registration as liquidator	9	6	11	8	6
Registration as official liquidator	6	6	12	10	2
Registration as company auditor	22	21	60	22	36
Registration as approved SMSF auditor	62	25	53	31	67
Total	556	330	1,105	480	566

40 Of the AFS and credit licensing and professional registration applications on hand at the start of the relevant period, the total number of applications assessed during the relevant period was 1,661, of which 810 (49%) were approved. The remaining applications were withdrawn, refused or are still being assessed: see Table 3.

Table 3: Percentage approval of licensing and professional registration applications under consideration—1 July to 31 December 2014

Application type	Under consideration*	Approved
AFS licence (new licence and variations)	984	446 (45%)
Credit licence (new licence and variations)	442	235 (53%)
Registration	235	129 (55%)
Total applications	1,661	810 (49%)

* The total includes all applications under consideration as at 31 December 2014 whether they were received before or during the relevant period.

- 41 To ensure that entities are only licensed if they are able to offer financial or credit services in compliance with their licensing obligations, we may:
- (a) impose additional licence conditions;
 - (b) impose a requirement for additional or alternative responsible managers; and/or
 - (c) modify the standard licence authorisations to limit:
 - (i) the financial products that a licensee may offer; or
 - (ii) the financial services or credit activities that a licensee may undertake.
- 42 Of the 681 AFS and credit licence applications that were approved (including both new licences and licence variations), 499 (73%) were approved in a form different in scope to the licence authorisations sought by the applicant or the standard conditions. For AFS licence applications, approximately 68% were approved with changes to the form of the licence, while for credit licence applications that proportion was approximately 83%.

New AFS licences and licence variations

- 43 There were 984 applications under consideration during the relevant period. Of those, 446 were approved, 91 were rejected for lodgement, 103 were withdrawn, nine were refused and the remaining 335 were undergoing assessment at the end of the relevant period. Of the 446 approved applications, 304 (68%) were approved with alterations to the original application: see Section B for details.

New credit licences and licence variations

- 44 There were 442 applications under consideration during the relevant period. Of those, 235 were approved, 19 were rejected for lodgement, 68 were withdrawn, no applications were refused and the remaining 120 were undergoing assessment at the end of the relevant period. Of the 235 approved applications, 195 (83%) were approved with alterations to the original application: see Section C for details.

Registration of liquidators and auditors

- 45 During the relevant period we registered:
- (a) 14 liquidators;
 - (b) 16 official liquidators;
 - (c) 43 company auditors (with an additional 11 applications for registration withdrawn); and

(d) 56 approved SMSF auditors (with an additional 49 applications withdrawn).

46 For more details, see Section D.

47 We cancelled the registrations of 426 SMSF auditors because they failed to comply with the conditions of their registration, which was to complete the SMSF auditor competency examination by 30 June 2014.

Feedback

48 As this is the first licensing six-monthly report that we have prepared, feedback on its content and/or structure is welcome and can be sent to: licensing.liasion@asic.gov.au.

A Background

Key points

This section sets out a brief overview of the AFS licensing, credit licensing and the registered professional population since inception.

Applications for a new licence, for a licence variation and for a professional registration are thoroughly assessed and the outcome will depend on this assessment. As such, an application can be approved, approved with changes, rejected, withdrawn or refused.

Licensing's regulated population

- 49 We have provided a brief overview of the AFS licensing, credit licensing and the registered professional population since inception. The latest information reflects the work carried out by the Licensing team to date and shows:
- (a) the continuous growth of the AFS licensing population since March 2004;
 - (b) a decrease in the number of credit licensees;
 - (c) a drop in the number of approved SMSF auditors and company auditors; and
 - (d) an increase in the numbers of liquidators overall, predominantly due to an increase in official liquidators.
- 50 The FSR Act amended the Corporations Act by introducing the AFS licensing regime on 11 March 2002, with a transitional period of two years (to 10 March 2004).
- 51 Since then, ASIC's AFS and credit licensing and registration responsibilities have expanded. We have provided key statistics (as at 1 January 2015) on the selected areas shown in Table 4.

Table 4: ASIC's AFS and credit licensing and registration responsibilities

Activity	Date started with ASIC
Auditor and liquidator registration*	<i>Corporations Act 1989</i> —assented on 14 July 1989
AFS licensing	11 March 2002 (end of transition period 10 March 2004)
Credit licensing	1 July 2010
Approved SMSF auditor registration	1 January 2013

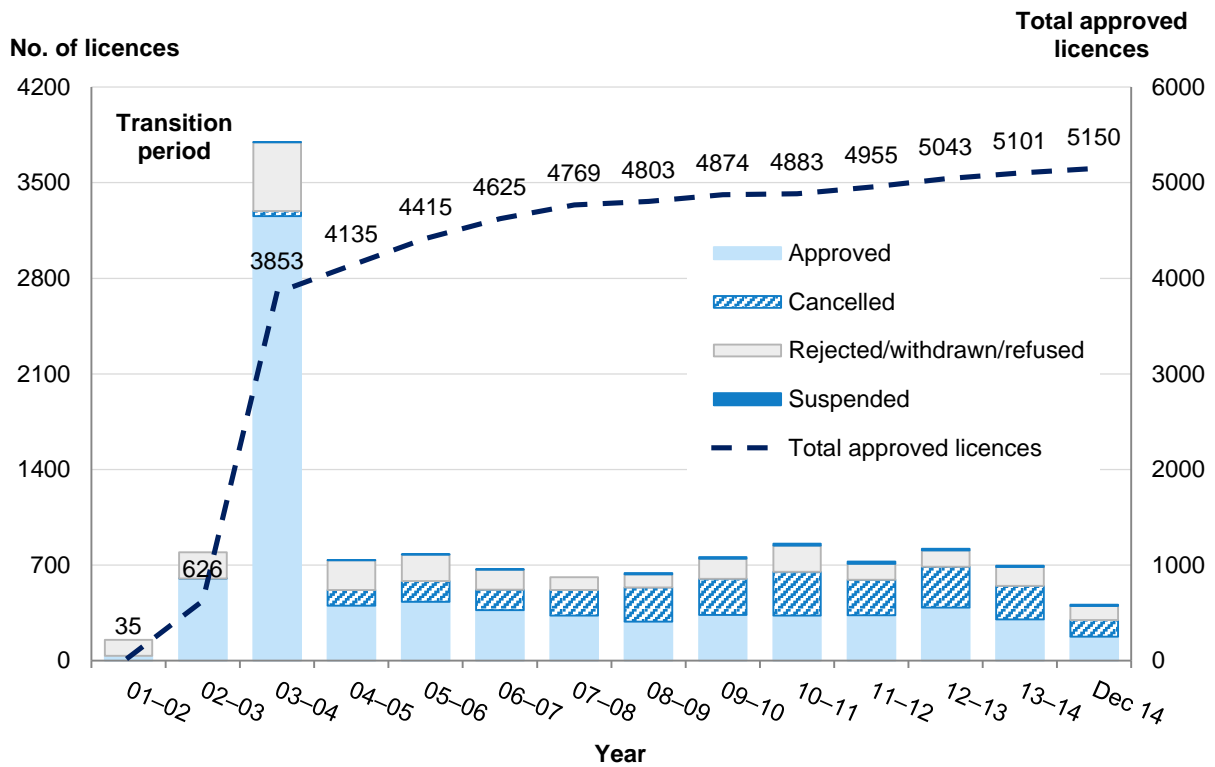
* ASIC's predecessor (the Australian Securities Commission) assumed responsibility for this under the *Corporations Act 1989*.

52

Figure 1, Figure 2, Figure 3 and Figure 4 set out the regulated populations for AFS licensees, credit licensees, liquidators and auditors:

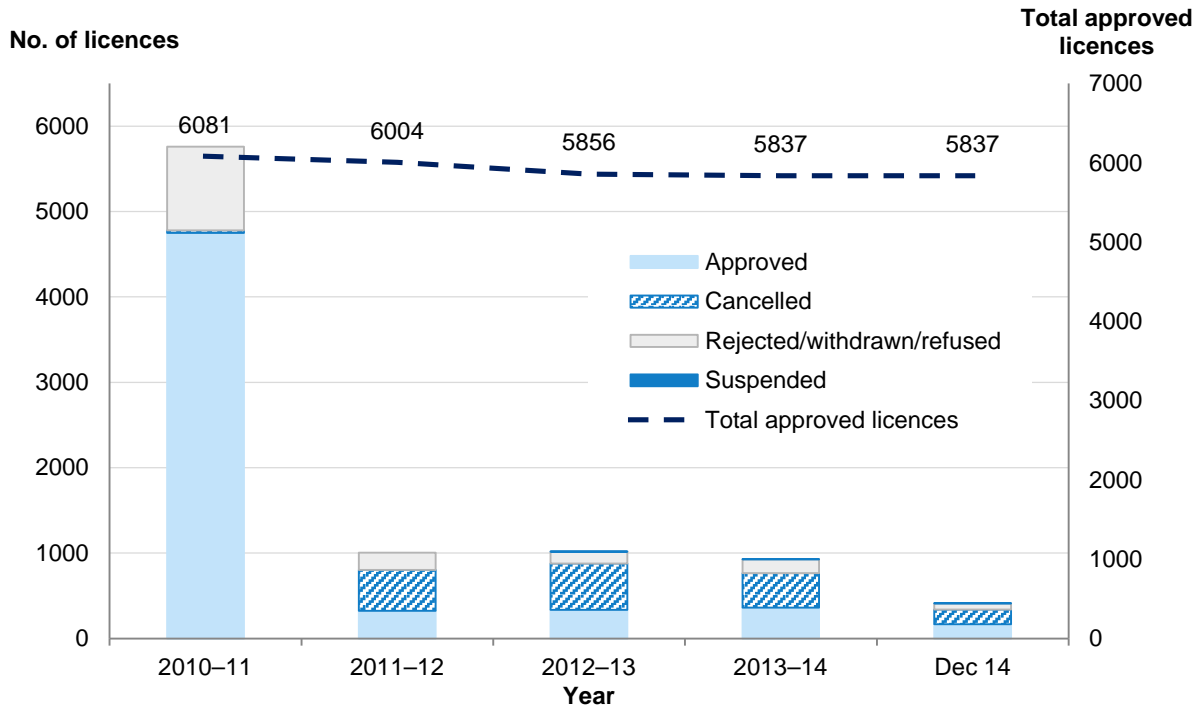
- (a) The number of AFS licensees has grown steadily since the end of the transition period of the current licensing regime, at an average annual rate of approximately 2.8% to 30 June 2014 (full year) (Figure 1).
- (b) The number of credit licensees has dropped slightly after the first year of the regime, suggesting a consolidation in the industry (Figure 2).
- (c) The number of registered liquidators has gone down since 1999. The number of official liquidators, after a period of reasonable stability, started to go up following a change in legislation in 2005 (Figure 3).
- (d) The number of registered company auditors has gone down, reflecting the large number of cancellations at the auditor’s request, among other reasons (Figure 4).
- (e) The number of approved SMSF auditors has gone up since we started registering them in 2013. However, 426 SMSF auditors failed to complete the SMSF auditor competency examination, which was a condition of their registration. The upward trend was reversed in the six months to 31 December 2014, as we cancelled the registrations of those SMSF auditors (Figure 4).

Figure 1: Number of AFS licences by status—year ending 30 June *



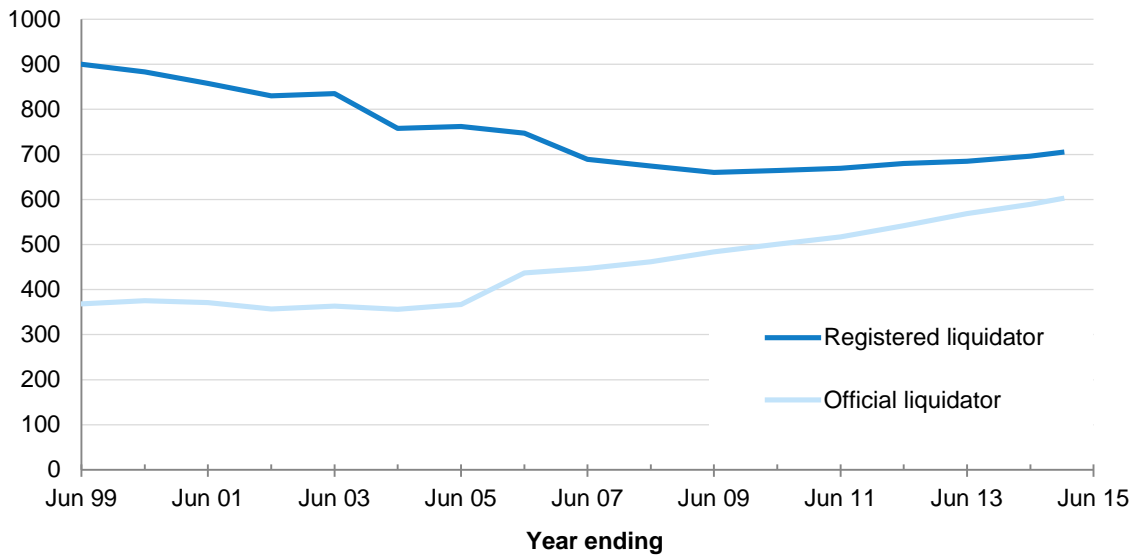
* Except 2014–15 (six months to 31 December 2014).

Figure 2: Number of credit licences by status—year ending 30 June*

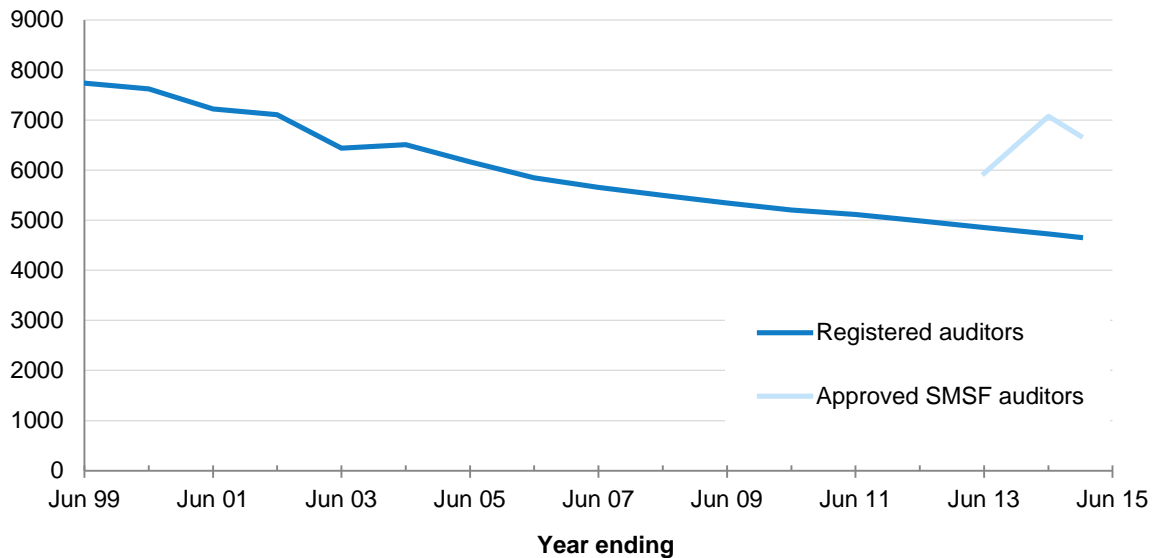


* Except 2014-15 (six months to 31 December 2014).

Figure 3: Number of registered and official liquidators—year ending 30 June*



* Except 2014-15 (six months to 31 December 2014).

Figure 4: Number of registered company auditors and approved SMSF auditors—year ending 30 June*

* Except 2014–15 (six months to 31 December 2014).

How AFS and credit licensing and professional registration applications are determined

- 53 The Licensing team fulfils an important gatekeeping role for ASIC. The assessment of applications is not an automatic process; each application is subject to a detailed and rigorous assessment. We aim to keep applicants informed about the progress of their applications during our assessment. We will often consult other ASIC stakeholder and enforcement teams, or we may seek information externally (e.g. from other local or international regulators).
- 54 AFS and credit licensing and professional registration applications are decided on a case-by-case basis. We may not always be required to make a formal determination on an application. Deficient applications may be rejected for lodgement, which means we do not assess the merits of the application until and unless the deficiencies are remedied.
- 55 In addition, if we complete our assessment and advise the applicant that we are not satisfied that the application demonstrates that they are not likely to contravene their licensing or professional registration obligations (referred to as ASIC being ‘minded to recommend refusal’ of the application), the applicant may choose to withdraw the application rather than face a formal refusal. Where an application is withdrawn, a formal determination by an ASIC delegate is not required.
- 56 In addition to applying for new licences, existing licensees may apply to vary their licence to undertake more, or fewer, financial or credit services.

Such variations may be the result of changes in a licensee's business activities or in response to changes in organisational competence. For example, a licensee may wish to expand the scope of its financial services or credit activities or the financial products it deals in or advises on, or the licensee may have lost a 'key person' responsible for a particular licence authorisation and needs to cease offering services in relation to those activities where it is unable to find a suitable replacement key person.

57 The various regulatory outcomes for an AFS or credit licensing or registration application submitted to ASIC are set out in more detail in paragraphs 58–64.

Rejection

58 We may reject an application for lodgement where:

- (a) the applicant fails to promptly provide ASIC with its core proof documents when lodging its application. This is known as 'pre-lodgement rejection'; or
- (b) the application includes all of the relevant core proof documents, but we subsequently identify that the core proof documents contain some substantive deficiency—for example, the core proof documents do not include signed financial statements. This is known as a 'pre-lodgement completeness check rejection'.

Approval

59 An application may be approved where:

- (a) the Licensing team, or an ASIC delegate, is of the view that the applicant meets the legislative requirements (e.g. s913B of the Corporations Act for AFS licence applications or s37 of the National Credit Act for credit licence applications); or
- (b) for licence applications—the Licensing team, or an ASIC delegate, agrees to approve the application:
 - (i) with adjustments (e.g. enhanced conditions, and/or an additional or replacement responsible manager); or
 - (ii) with amended authorisations (i.e. authorisations applied for are removed or an authorisation is tailored).

Withdrawal

60 An application may be voluntarily withdrawn by the applicant—for example, because:

- (a) the applicant no longer wishes to pursue the relevant financial or credit services; or

- (b) the applicant has been advised that the Licensing team is minded to recommend refusal of the application to an ASIC delegate.

Refusal

- 61 If we are minded to recommend refusal of an application and the applicant does not wish to withdraw their application, we will refer the decision to an ASIC delegate who will subsequently decide whether the application should be refused. The applicant has the right to make submissions and to be heard at a hearing before the ASIC delegate.
- 62 A refusal may follow a hearing, or be accepted by the applicant after considering the ASIC delegate's written concerns.
- 63 If the application relates to a variation of an existing licence, the Licensing team may make a determination on the application without having to refer the matter to an ASIC delegate.
- 64 An applicant is entitled to seek a review of ASIC's decisions by making an application to the Administrative Appeals Tribunal.

B AFS licences

Key points

During the relevant period, we considered 984 AFS licence applications (comprising 645 received during the relevant period and 339 received before the relevant period), and we finalised 67% (649) of these during the relevant period.

Of the 649 AFS licence applications finalised, we granted 174 new AFS licences and 272 AFS licence variations, and we refused nine applications.

Of the 446 AFS licence applications (including variations) that we approved during the relevant period, we imposed:

- a key person condition on 253 AFS licence applications;
- an additional responsible manager requirement on 22 AFS licence applications (four new applications and 18 variation applications); and
- modified licence authorisations on 110 AFS licence applications.

We declined to accept five responsible managers nominated by the licensee (four new licence applications and one variation application) because we were concerned they did not have the knowledge and skills to meet the organisational competence obligations.

One hundred and three AFS licence applications were withdrawn before we were required to make a formal determination.

We refused nine AFS licence applications. We are of the view that the number of AFS licence applications that we would have refused would have been much higher if applicants had not withdrawn their applications in response to our feedback rather than proceeding to a formal determination.

Eight AFS licences were suspended and 120 AFS licences were cancelled.

Applications and regulatory outcomes

- 65 An application for an AFS licence may be:
- (a) rejected for lodgement;
 - (b) approved (with or without changes to the authorisations and conditions);
 - (c) withdrawn; or
 - (d) refused.
- 66 An application that is approved may also have additional regulatory outcomes—for example:
- (a) a requested authorisation may be modified, tailored or refused;

- (b) a responsible manager condition may be imposed or the applicant's nominated responsible manager may not be accepted because of concerns they will not meet the organisational competence requirement;
- (c) a key person condition may be imposed or the applicant's nominated key person refused; or
- (d) additional conditions, or other non-standard conditions, may be imposed.

67 We note that, in addition to the regulatory outcomes associated with refusals or withdrawals, for every application that is approved there may be a combination of regulatory outcomes. This means that the number of regulatory outcomes for approved licences may be larger than the number of applications approved. For example, we may impose a key person condition, require the appointment of an additional responsible manager, and refuse one of the authorisations sought. In this case, while there is a single approved licence application, we consider that we have achieved three beneficial regulatory outcomes.

68 We may also suspend or cancel an AFS licence. This may occur after a licensee has ceased operating a financial services business, or as a result of ASIC taking action against the licensee.

Applications finalised

69 Table 5 summarises the number of AFS licence and AFS licence variation applications we finalised during the relevant period, broken down by how the application was decided.

Table 5: Finalised AFS licence applications—1 July to 31 December 2014

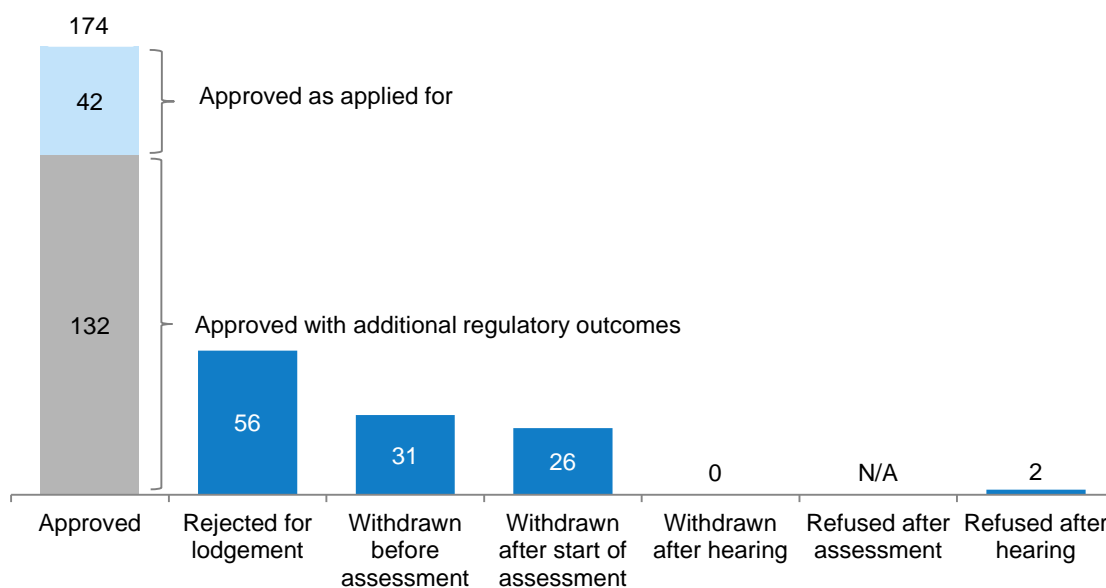
Status of applications	New AFS licence applications		AFS licence variation applications	
	Received before July 2014	Received July–Dec 2014	Received before July 2014	Received July–Dec 2014
Applications lodged	151	282	188	363
Applications finalised	121	168	141	219
Approved (with and without additional regulatory outcomes)	87	87	115	157
Rejected for lodgement (pre-lodgement)	4	52	5	30
Withdrawn before start of assessment (pre-lodgement)	7	24	3	15

Status of applications	New AFS licence applications		AFS licence variation applications	
	Received before July 2014	Received July–Dec 2014	Received before July 2014	Received July–Dec 2014
Withdrawn after start of assessment (post-lodgement)	21	5	15	13
Withdrawn after hearing	0	0	0	0
Refused after assessment	0	0	3	4
Refused after hearing	2	0	0*	0*

* Only variation applications which are partially refused have recourse to a hearing by an ASIC delegate.

- 70 During the relevant period, we approved 142 (32%) of the 446 AFS licence applications as applied for by the applicant (i.e. without requiring any additional regulatory outcomes).
- 71 Figure 5 shows the status of new AFS licence applications we finalised in the relevant period. The graph highlights how we dealt with applications expeditiously—that is, by rejecting them for lodgement because the applications omitted material content, or as a result of the applicant withdrawing its application before we had to make a formal determination because we clearly communicated, and the applicant understood, that it was unlikely that the application would be approved.

Figure 5: Number of finalised new AFS licence applications by status—1 July to 31 December 2014

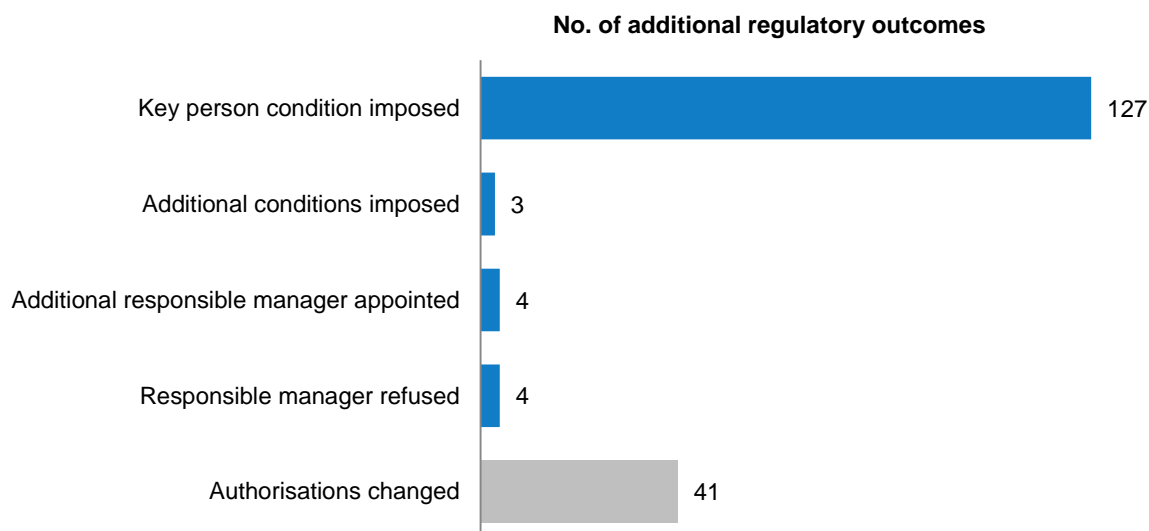


72 Figure 6 shows the new AFS licence applications we approved with additional regulatory outcomes during the relevant period, broken down by the type of regulatory outcome achieved. This reflects how we have influenced the terms of the AFS licences approved over the relevant period.

73 Figure 6 also shows the changes we made to licence authorisations on 41 occasions by modifying, tailoring or refusing the authorisations sought. For example, we have changed authorisations to only relate to:

- (a) wholesale advice or dealing, or only applying to named managed investment schemes rather than the broader authorisation of ‘kinds of schemes’; and
- (b) electricity derivatives rather than derivatives generally.

Figure 6: Number and type of additional regulatory outcomes in approved new AFS licence applications—1 July to 31 December 2014

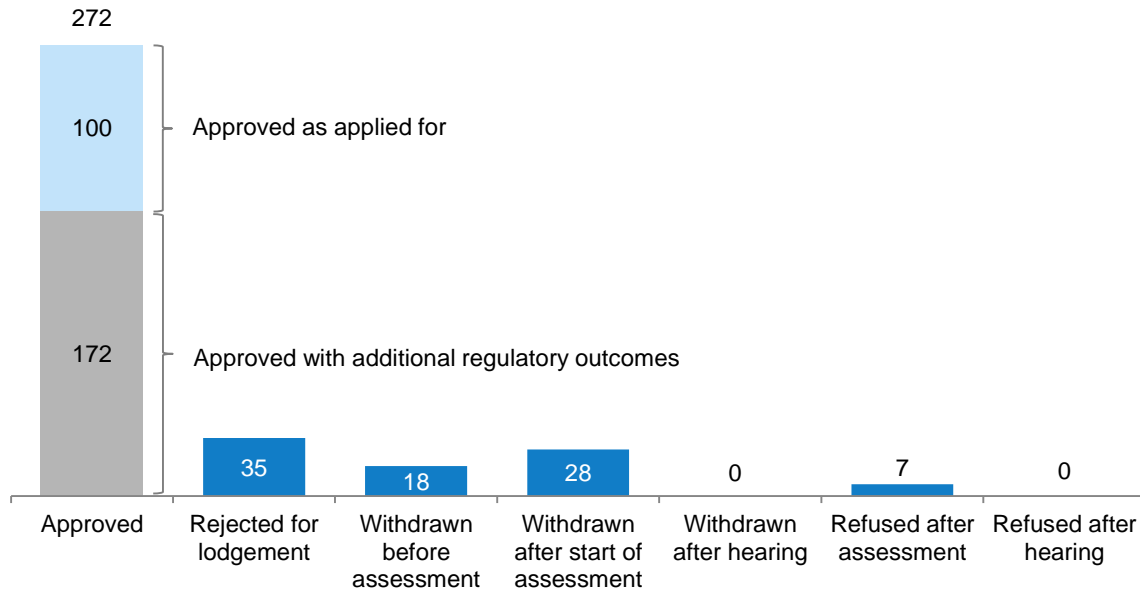


Note 1: There may be more than one additional regulatory outcome for each approved licence application. For example, we could impose a key person condition after requiring an additional responsible manager to be appointed.

Note 2: ‘Responsible manager refused’ indicates ASIC’s decision to not accept the nominated responsible manager as having the necessary knowledge and/or skills to satisfy us that the applicant meets the necessary organisational competence as set out in Regulatory Guide 105 *Licensing: Organisational competence* (RG 105).

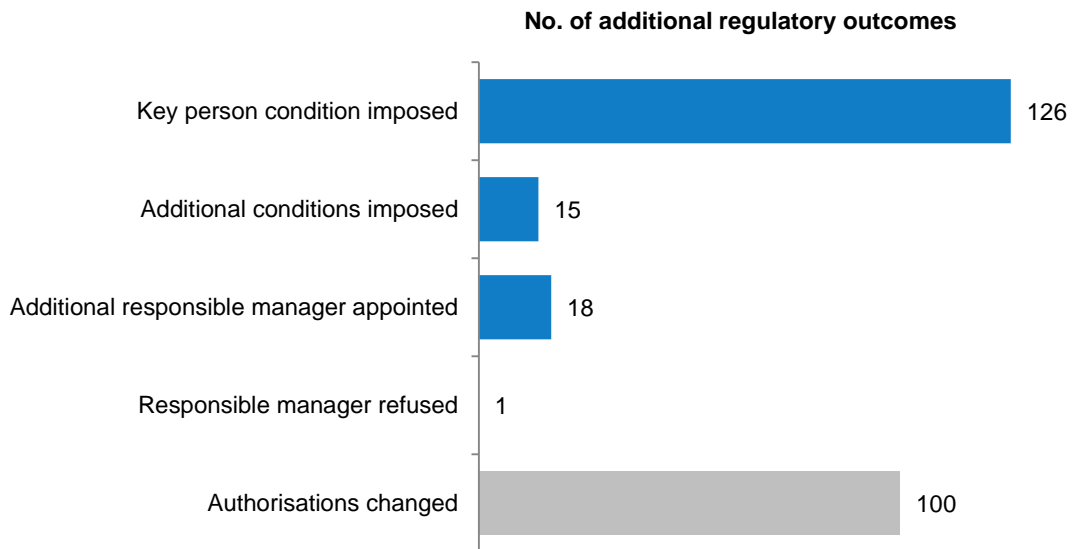
74 Figure 7 shows AFS licence variation applications we finalised in the relevant period. This figure also shows the number of approved AFS licence variation applications where we approved the variation the applicant applied for in their initial application without imposing additional regulatory outcomes.

Figure 7: Number of finalised AFS licence variation applications by status—1 July to 31 December 2014



75 Figure 8 shows the AFS licence variation applications we approved with additional regulatory outcomes, broken down by type of regulatory outcome achieved.

Figure 8: Number and type of additional regulatory outcomes in approved AFS licence variation applications—1 July to 31 December 2014



Note 1: There may be more than one additional regulatory outcome for each approved licence variation application. For example, we may reject a responsible manager and impose additional conditions.

Note 2: 'Responsible manager refused' indicates ASIC's decision to not accept the nominated responsible manager as having the necessary knowledge and/or skills to satisfy us that the applicant meets the necessary organisational competence as set out in Regulatory Guide 105 *Licensing: Organisational competence* (RG 105).

Applications approved with additional regulatory outcomes

- 76 An application for a new AFS licence or variation of an AFS licence may have more than one regulatory outcome (e.g. authorisations, key person conditions and responsible managers), as discussed in paragraph 67. The application is reported as approved even if only some aspects are approved.

Additional conditions imposed on AFS licences

- 77 Under s914A of the Corporations Act, we may impose conditions on an AFS licence and add, vary or revoke the conditions already imposed.

Key person condition

- 78 The most common AFS licence condition we impose is a key person condition. If an AFS licensee is heavily dependent on the competence of one or more responsible managers, we will require that they be named on the licence as a key person condition. An example is where a licensee has a sole responsible manager. If that named person leaves, the licensee must apply for a variation, as they will no longer be able to comply with that condition of the licence: see Regulatory Guide 105 *Licensing: Organisational competence* (RG 105) at RG 105.83–RG 105.86.
- 79 During the relevant period, we imposed a key person condition on:
- (a) 127 of the approved new AFS licences (73% of approved applications); and
 - (b) 126 of the approved AFS licence variations (46% of approved applications).

Other conditions

- 80 We may impose other conditions on an AFS licence where we are of the view that an applicant may need further monitoring, or should be specifically required to undertake some additional process. These conditions are in addition to those that may be imposed by other requirements (e.g. ASIC class orders).
- 81 During the relevant period, we imposed an additional condition on:
- (a) three of the approved new AFS licences; and
 - (b) 15 of the approved AFS licence variations.
- 82 We imposed additional conditions on nine AFS licensees as a result of surveillance activities undertaken by one or more ASIC stakeholder teams (e.g. the Financial Advisers, Investment Managers and Superannuation, Deposit Takers, Credit and Insurers, and Financial Services Enforcement teams). For example, we required a licensee to:
- (a) appoint a compliance expert to comprehensively review the licensee's compliance measures; and

- (b) commission the expert to provide, by a specified date, a report to the licensee and ASIC setting out:
 - (i) an assessment of whether the compliance measures ensure that the licensee complies with Australian financial services laws;
 - (ii) any specific or general recommendation on the steps to be taken by the licensee to ensure that appropriate compliance measures are in place; and
- (c) commission the expert to provide to the licensee and ASIC a second report detailing whether the recommendations set out in the first report have been complied with.

Responsible managers

- 83 An applicant must demonstrate competence regarding each financial product they have sought. Where competence has only been shown regarding some financial products, we may offer a licence that contains fewer financial product authorisations than was sought.
- 84 Ordinarily, the descriptions of financial products are consistent across AFS licences. However, in some cases we may tailor a licence authorisation to more accurately reflect the specific type of financial product authorisation that is being requested, or for which the applicant has competence. For example, a licence may restrict the licensee to dealing with financial products that are listed on specified exchanges or operating schemes that only hold interests in unsecured debt.
- 85 We will require the appointment of an additional responsible manager when our assessment of an application concludes that the nominated responsible managers are not able to demonstrate to our satisfaction that they have sufficient competence or capacity, given their other roles and engagements, for the authorisation(s) sought.
- 86 During the relevant period, we requested the appointment of an additional responsible manager for:
 - (a) four approved new AFS licences; and
 - (b) 18 approved AFS licence variations.
- 87 We have also not accepted responsible managers nominated by applicants for the purposes of satisfying us about the applicant's organisational competence in:
 - (a) four applications for a new AFS licence; and
 - (b) one application to vary an existing AFS licence.

Authorisations not granted in the manner requested

- 88 During the relevant period, we modified the authorisations sought in 141 cases (with 41 of these relating to new AFS licences and 100 of these relating to AFS licence variations). Of these:
- (a) in 96 cases, we approved licences with standard authorisations that were different from those sought by the applicant or refused to grant the authorisation sought; and
 - (b) in 45 cases, we approved a non-standard authorisation—that is, an authorisation that was specific to that applicant (we refer to this as a ‘tailored’ authorisation).
- 89 We also imposed special conditions on nine licensees (two of which had two special conditions imposed).
- 90 We modified the authorisations on two licences to refuse the authorisation to provide advice and deal on behalf of another person in relation to:
- (a) a managed discretionary account; and
 - (b) foreign exchange contracts and derivatives.
- 91 We may tailor an authorisation. For example, the authorisation for ‘dealing’ in a financial product that is a derivative may be tailored to derivatives that are traded on a licensed financial market or exchange.

Applications rejected or withdrawn

- 92 We may reject for lodgement an application if, for example, it does not include a core proof document. An applicant may also withdraw their application before or after our assessment. Both withdrawals or rejections before acceptance of lodgement occur where the applicant does not include the required core proof documents or the core proof documents are manifestly defective. If the applicant chooses to not withdraw the deficient application, we will reject it. If a withdrawal or rejection occurs at this stage, the application fee will be refunded or credited towards a future application.
- 93 Withdrawal after assessment usually occurs when an applicant decides that they would prefer to withdraw their application (either before or after a hearing) rather than risk having the application refused. There is no refund of the licence application fee after our assessment has commenced.
- 94 In most cases an applicant withdraws their application during the assessment when they are unable to demonstrate that a nominated responsible manager has the required competence regarding an authorisation being sought, without which the proposed financial services business cannot operate. For example, an applicant receiving a general advice authorisation, but not an

authorisation to ‘operate a scheme’, would be of limited use if the applicant’s proposed business model involved offering units in a scheme in relation to operating a funds management business.

- 95 We rejected for lodgement 91 applications during the relevant period (56 in relation to new applications and 35 variation applications).
- 96 During the relevant period, 103 AFS licence applications were withdrawn, comprising:
- (a) 57 new AFS licence applications (31 related to those accepted for lodgement but withdrawn before assessment and 26 were withdrawn after assessment); and
 - (b) 46 AFS licence variation applications (18 related to those accepted for lodgement but withdrawn before assessment and 28 were withdrawn after assessment).

Applications refused

- 97 The Licensing team’s objective is to ensure that investors and consumers can reasonably expect that persons licensed and registered by ASIC have adequately demonstrated that they meet, and will continue to meet, the appropriate minimum statutory requirements in the provision of their financial services and financial products. This has to be balanced against the objective of enhancing market efficiency by facilitating competition and reducing unnecessary regulatory red tape for businesses. We need to ensure that inappropriate applicants are not licensed, given they have the potential to inflict significant financial and personal detriment on investors and consumers.
- 98 Under s913B(1)(b) of the Corporations Act, we must refuse an AFS licence application if we have reason to believe that the applicant will be likely to contravene the obligations that will apply under s912A of the Corporations Act, and/or if we have no reason to believe that the applicant’s responsible officers are not of good fame or character. As discussed at paragraph 9, the threshold for ASIC’s statutory obligation to grant and refuse an AFS licence under s913B of the Corporations Act was clarified in the *Corporations Amendment (Future of Financial Advice) Act 2012*, with the effect that we are now more appropriately able to take account of the likelihood or probability of a future contravention.
- 99 While the decision in *One RE v ASIC 2012 AATA 294* was made in relation to s913B of the Corporations Act before the 2012 amendment, we consider it continues to provide helpful guidance on the test in s913B, given the concept of ‘reason to believe’ was not amended. In that case, the Senior Member indicated at [90] that:

... it is relevant to consider the language of the relevant legislative provision. Under s 913B(1) it is not necessary for me to form a view about whether One RE will or will not comply with the obligations under s 912A of the Act but rather whether there is no reason to believe it will not comply. While the expression reason to believe poses a relatively low threshold, the requirement that there be no reason to believe sets a benchmark that has the practical effect of shifting the onus to an applicant for an AFSL to establish, to the reasonable satisfaction of the decision-maker, that it will comply with the obligations under s 912A. If there is any doubt based on the objective facts, the decision-maker will not be able to form such a view.

- 100 We refused nine AFS licence applications (two related to a new AFS licence and the other seven related to variations) during the relevant period.
- 101 We are of the view that the number of AFS licence application refused would be much higher if applicants did not decide to withdraw their applications before the need for a formal determination by an ASIC delegate.
- 102 We refused applications for a range of reasons, including because:
- (a) the applicant provided false and misleading information to ASIC on a number of occasions during assessment of the application;
 - (b) we were not satisfied that the applicant's risk management systems were adequate; and
 - (c) we were not satisfied that the applicant's organisational competence (as set out in RG 105) was adequate.

Licences suspended and cancelled

- 103 We can suspend or cancel an AFS licence for a number of reasons, including where the licensee:
- (a) enters into external administration;
 - (b) becomes deregistered;
 - (c) has not complied with the conditions on its licence;
 - (d) ceases to carry on a financial services business; or
 - (e) applies to ASIC for a suspension or cancellation.
- 104 During the relevant period, we suspended eight AFS licences—two AFS licensees requested we suspend their licence, and six AFS licences were suspended due to the licensee's circumstances (e.g. entering external administration) or as initiated by ASIC. Such suspensions may originate from complaints from the public or from surveillance activities initiated by ASIC or other persons (e.g. a breach notification provided by the auditor).

- 105 Where a cancellation or suspension occurs, we may still specify that statutory obligations remain in place. Such obligations may include the continuation of professional indemnity insurance, continuation of membership with an external dispute resolution scheme and continuation of the obligation to lodge accounts.
- 106 During the relevant period, we cancelled 120 AFS licences. Of these:
- (a) 104 were cancelled at the request of the licensee. The main reason licensees gave for requesting a cancellation is that they had ceased to conduct a financial services business as a result of retirement or the sale of their client list/business; and
 - (b) 16 were cancelled following action initiated by ASIC. The main reason that we cancel AFS licences is because the licensee has entered into external administration or has been deregistered by ASIC.

C Credit licences

Key points

During the relevant period, we considered 442 credit licence applications (comprising 324 received during the relevant period and 118 received before the relevant period), and we finalised 73% (322) of these during the relevant period.

Of the 322 credit licence applications finalised, we granted 166 new credit licences and 69 credit licence variations. We did not refuse any applications.

Of the 235 credit licence applications (including variations) that we approved during the relevant period, we imposed:

- a key person condition on 188; and
- an additional responsible manager requirement on five.

We rejected for lodgement 19 credit licence applications.

Sixty-eight credit licence applications were withdrawn before we made a formal determination.

We cancelled 172 credit licences.

Applications and regulatory outcomes

- 107 An application for a credit licence may be:
- (a) rejected for lodgement;
 - (b) approved (with or without changes to the authorisations and conditions);
 - (c) withdrawn; or
 - (d) refused.
- 108 An application that is approved may also have additional regulatory outcomes—for example:
- (a) a requested authorisation may be modified, tailored or refused;
 - (b) a responsible manager condition may be imposed or the applicant's nominated responsible manager may be refused;
 - (c) a key person condition may be imposed or the applicant's nominated key person refused; or
 - (d) additional conditions, or other non-standard conditions, may be imposed.

- 109 We note that, for every application that is approved, there may be a number of regulatory outcomes. This means that the number of outcomes for approved licences may be larger than the number of applications approved. For example, we may impose a key person condition, require the appointment of an additional responsible manager, and refuse one of the authorisations sought. In this case, while there is a single approved licence application, we consider that we have achieved three separate regulatory outcomes.
- 110 We may also suspend or cancel a credit licence. This may occur after a licensee has ceased operating a credit business, or as a result of ASIC taking action against the licensee.

Applications finalised

- 111 Table 6 provides details of the number of credit licence applications and credit licence variations we finalised during the relevant period, broken down by how the application was decided. A total of 87 applications were either rejected for lodgement or withdrawn by the applicant during the relevant period.

Table 6: Finalised credit licence applications—1 July to 31 December 2014

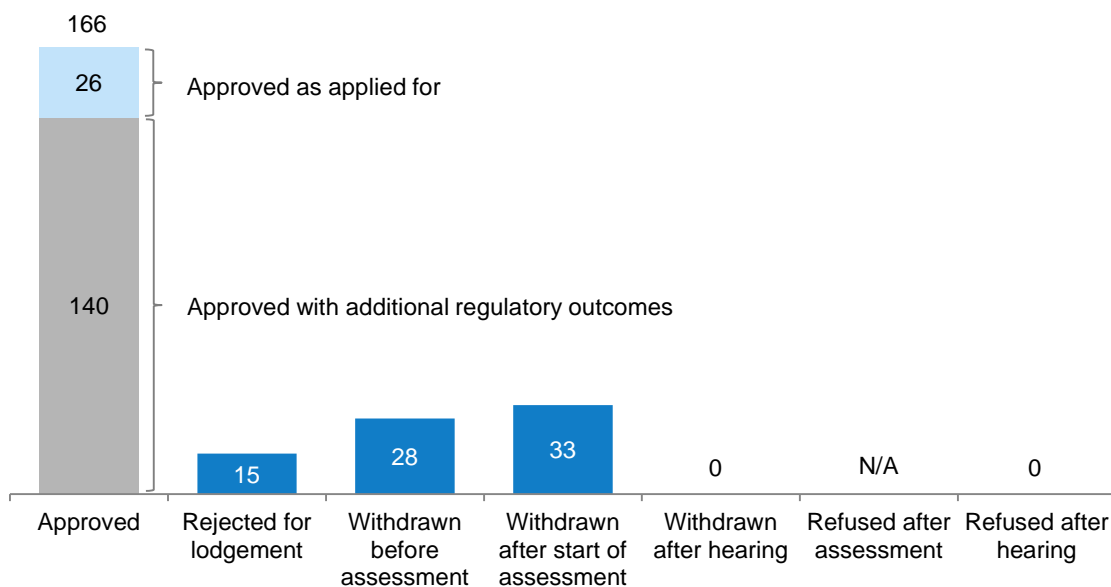
Status of applications	New credit licence applications		Credit licence variation applications	
	Received before July 2014	Received July–Dec 2014	Received before July 2014	Received July–Dec 2014
Applications lodged	89	235	29	89
Applications finalised	75	167	20	60
Approved (with and without additional regulatory outcomes)	55	111	15	54
Rejected for lodgement (pre-lodgement)	1	14	0	4
Withdrawn before assessment	2	26	1	1
Withdrawn after start of assessment (post-lodgement)	17	16	4	1
Withdrawn after hearing	0	0	0	0

Status of applications	New credit licence applications		Credit licence variation applications	
	Received before July 2014	Received July–Dec 2014	Received before July 2014	Received July–Dec 2014
Refused after assessment	0	0	0	0
Refused after hearing	0	0	0*	0*

* Only variation applications which are partially refused have recourse to a hearing by an ASIC delegate.

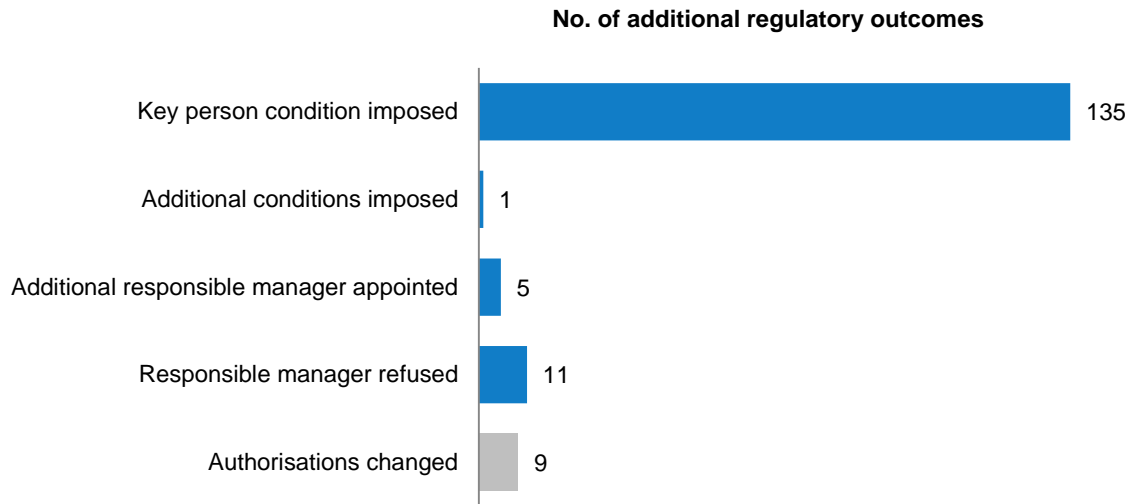
112 Figure 9 shows the status of new credit licence applications we finalised in the relevant period. This figure also shows the number of applications we approved in the form requested by the applicant.

Figure 9: Number of finalised new credit licence applications by status—1 July to 31 December 2014



113 Figure 10 shows the new credit licence applications we approved with additional regulatory outcomes during the relevant period, broken down by the type of regulatory outcome achieved.

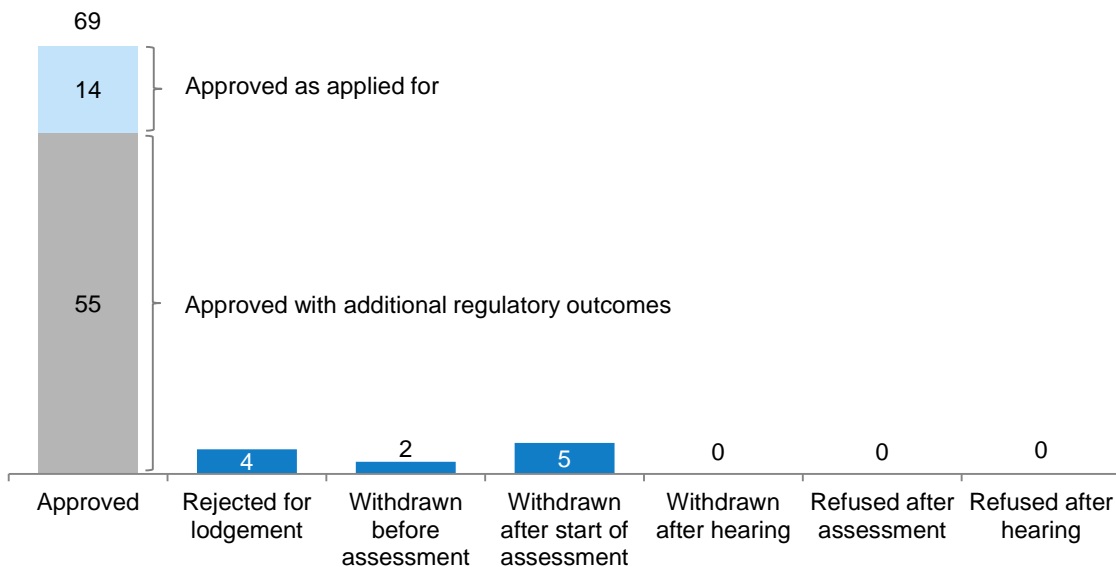
Figure 10: Number and type of additional regulatory outcomes in approved new credit licence applications—1 July to 31 December 2014



Note: There may be more than one additional regulatory outcome for each approved licence application. For example, we may change the authorisation(s) and require an additional responsible manager to be appointed.

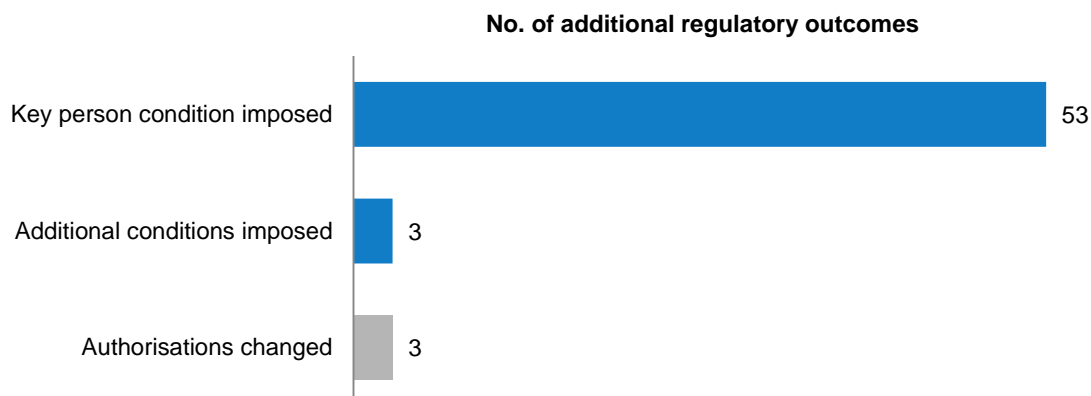
114 Figure 11 shows the status of credit licence variation applications we finalised in the relevant period with a breakdown of those we approved with a regulatory outcome and those we approved in the form requested by the applicant.

Figure 11: Number of finalised credit licence variation applications by status—1 July to 31 December 2014



115 Figure 12 shows the credit licence variation applications we approved with additional regulatory outcomes, broken down by the type of regulatory outcome achieved.

Figure 12: Number and type of additional regulatory outcomes in approved credit licence variation applications—1 July to 31 December 2014



Note: There may be more than one additional regulatory outcome for each approved licence variation application. For example, we may refuse a key person change and impose additional conditions.

Applications approved with additional regulatory outcomes

Additional conditions imposed on credit licences

- 116 Under s45 of the National Credit Act, we may impose conditions, or additional conditions, on a credit licence and may vary or revoke existing conditions. In 17% of credit licence applications, we granted the licence or variation in the form applied for by the applicant.

Key person condition

- 117 Similarly to AFS licence applications, the most common condition we impose is a key person condition. If a credit licensee is heavily dependent on the competence of one or more responsible managers, we will require that they be named on the credit licence as a key person condition. An example is where a licensee has a sole responsible manager.

- 118 During the relevant period, we imposed a key person condition on:
- (a) 135 of the applications for new credit licences (81% of approved applications); and
 - (b) 53 of the applications for credit licence variations (77% of approved applications).

Other conditions

- 119 We may impose other conditions on a credit licence where we are of the view that an applicant may need further monitoring or should be specifically required to undertake some additional process.

120 During the relevant period, we imposed additional conditions on one application for a new credit licence. The additional condition included a compliance expert requirement, requiring extensive periodic compliance reviews to be conducted for two years after issue of the new licence.

121 We initiated a variation to three credit licences to add a compliance expert condition, due to the outcome of a surveillance by ASIC's Deposit Takers, Credit and Insurers team. These conditions require a compliance expert to undertake a review of the licensee's, and its representatives', compliance with credit legislation and the conditions on the licence. The reviews are documented in written reports and are provided to the licensee and ASIC.

Responsible managers

122 We will require the appointment of an additional responsible manager when our assessment of the application concludes that the nominated responsible managers do not demonstrate sufficient competence for the authorisations sought.

123 During the relevant period, we requested the appointment of an additional responsible manager from five applicants for a new credit licence.

Authorisations not granted in the manner requested

124 We approved nine applications for a new credit licence and three for a credit licence variation with changes to the authorisation sought. In one instance we limited the authorisation to permit the applicant to be the assignee of a debt in particular circumstances.

Applications rejected or withdrawn

125 Applicants may withdraw their licence applications. The most common reason for withdrawals is, as a result of our explanation, the applicant understands why their application will not meet the statutory requirements for a licence.

126 The application might lack relevant information or might be linked to individuals who do not meet the competence requirements to perform their duties. Ultimately, it is the applicant's decision whether to proceed with their application or not.

127 Reasons for credit licence withdrawals are similar to those for an AFS licence, with withdrawals occurring before and after lodgement.

128 During the relevant period, we rejected for lodgement 15 new credit licence applications, 28 new credit licence applications were withdrawn before assessment and 33 were withdrawn after our assessment.

- 129 In addition, we rejected for lodgement four applications to vary an existing credit licence, two applications were withdrawn before assessment and another five were withdrawn after our assessment.

Applications refused

- 130 Under s37 of the National Credit Act, we must refuse a licence application if we have reason to believe that the applicant will be likely to contravene the obligations that will apply under s47 of the Act if the licence is granted. This statutory requirement is the same as that discussed in relation to applications for AFS licences: see paragraph 97. Further, we may also refuse a licence application if we have reason to believe that a person who is a director, secretary or senior manager of the applicant is not a fit and proper person to engage in credit activities.
- 131 During the relevant period, we did not refuse any applications either for a new credit licence or to vary an existing credit licence. We are of the view that there would have been a number of credit licence applications refused if applicants did not voluntarily withdraw their applications before the need for a formal determination by an ASIC delegate.

Licences suspended and cancelled

- 132 As with AFS licences, we can suspend or cancel a credit licence for a number of reasons, including where the licensee:
- (a) enters into external administration;
 - (b) becomes deregistered;
 - (c) has not complied with the conditions on its licence;
 - (d) does not engage, or ceases to engage, in credit activities; or
 - (e) applies to ASIC for a suspension or cancellation.
- 133 Where a cancellation or suspension occurs we may still specify that statutory obligations remain in place. Such obligations may include the continuation of professional indemnity insurance, continuation of membership with an external dispute resolution scheme and continuation of the obligation to lodge accounts.
- 134 During the relevant period, there were 24 ASIC-initiated cancellations (non-enforcement) and 148 cancellations initiated by the credit licensee. No suspensions occurred during the relevant period.

D Liquidator, company auditor and approved SMSF auditor registrations

Key points

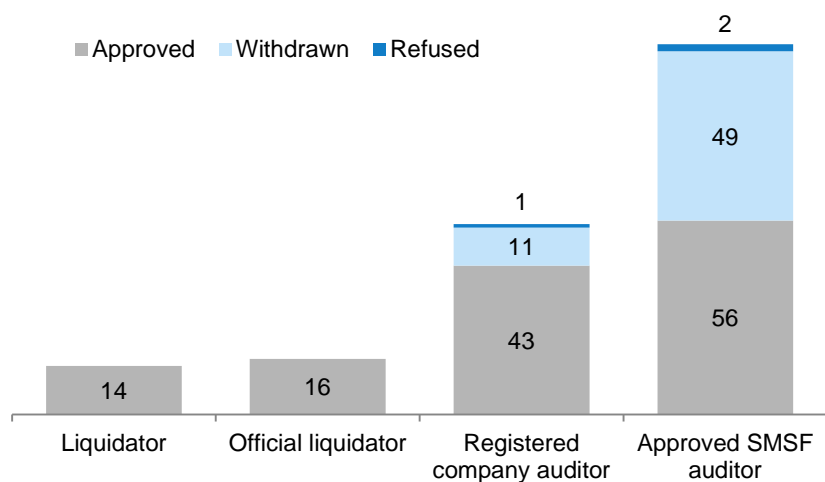
In the relevant period, we:

- approved 14 applications for registration as a liquidator;
- approved 16 applications for registration as an official liquidator;
- registered 43 company auditors, received withdrawal requests from 11 applicants and refused one;
- registered 56 approved SMSF auditors, received 49 withdrawal requests and refused two; and
- cancelled the registration of 426 SMSF auditors who failed to complete their SMSF auditor competency examination by 30 June 2014.

Outcomes of registration applications

135 Figure 13 summarises the outcomes of applications for registration as liquidators, official liquidators, registered company auditors and approved SMSF auditors.

Figure 13: Liquidator, official liquidator, company auditor and approved SMSF auditor registration applications by status—1 July to 31 December 2014



Liquidators

Registration

- 136 Under s1282(2) of the Corporations Act, we must grant an application for registration as a liquidator if:
- (a) the applicant:
 - (i) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has, in the course of obtaining that degree, diploma or certificate, passed examinations in subjects certified by the appropriate authority of the university or other institution as representing a course of study in accountancy of not less than three years duration and in commercial law (including company law) of not less than two years duration; or
 - (ii) has other qualifications and experience that, in the opinion of ASIC, are equivalent to the qualifications mentioned in paragraph 136(a)(i);
 - (b) we are satisfied that the applicant has sufficient experience with externally administered bodies corporate; and
 - (c) we are satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator.
- 137 We must refuse the application if:
- (a) any of the requirements in paragraph 136 are not satisfied; or
 - (b) the applicant is a person who is disqualified from managing corporations under Pt 2D.6 of the Corporations Act.
- 138 Where an application for registration as a liquidator of a specified body corporate is made under s1279, we must grant the application and register the applicant as a liquidator of that body if we are satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the body, given the nature of the property or business of the body and the interests of its creditors and contributories. If we are not satisfied, we must refuse the application.
- 139 We may refuse to register a person as a liquidator or as a liquidator of a specified body corporate who is not resident in Australia.
- 140 The applicant has the right to a hearing.
- 141 We have discretion to register an applicant as an official liquidator and will generally do so where the requirements set out in Regulatory Guide 186 *External administration: Liquidator registration* (RG 186) are met.

142 During the relevant period, we approved 14 applications for registration as a liquidator and 16 applications for registration as an official liquidator.

Withdrawals

143 No applications for registration as a liquidator and for registration as an official liquidator were withdrawn during the relevant period.

Refusals

144 We did not refuse any applications for registration as a liquidator or for registration as an official liquidator during the relevant period.

Suspensions and cancellations

145 ASIC does not have the power to suspend a liquidator. ASIC may apply to the Companies Auditors and Liquidators Disciplinary Board (CALDB) to suspend a liquidator's registration: s1292(2) of the Corporations Act.

146 ASIC only has the power to cancel the registration of a liquidator where the liquidator:

- (a) becomes insolvent;
- (b) is subject to a prohibition under Pt 2D.6 of the Corporations Act;
- (c) fails to maintain adequate professional indemnity insurance;
- (d) requests that we cancel the registration of the liquidator; or
- (e) is deceased.

147 Cancellations for any other reasons are dealt with by the CALDB.

148 During the relevant period, seven registered liquidators and five official liquidators ceased to be registered.¹⁷ Of those:

- (a) five registered liquidators, three of which were also official liquidators, voluntarily cancelled their registration;
- (b) we cancelled the registration of one liquidator who was also an official liquidator for failing in the performance of their duties;¹⁸ and
- (c) the death of an official liquidator meant that their registration as a registered liquidator was also cancelled.

¹⁷ An official liquidator must also be a registered liquidator. It is possible that an individual ceases to be an official liquidator and continues as a registered liquidator. However, one cannot cease as a registered liquidator and continue to operate as an official liquidator. In the case of the five ceased official liquidators, they were also among the seven registered liquidators who ceased to be registered.

¹⁸ Media Release (14-160MR) *ASIC removes liquidator from industry* (8 July 2014).

149 For more detailed information, see our report specifically covering the regulation of registered liquidators.¹⁹

Company auditors

Registration

- 150 Under s1280 of the Corporations Act, we must grant an applicant registration as a company auditor if:
- (a) the applicant:
 - (i) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has:
 - (A) in the course of obtaining that degree, diploma or certificate, passed examinations in subjects certified by the appropriate authority of the university or other institution as representing a course of study in accountancy (including auditing) of not less than three years duration and in commercial law (including company law) of not less than two years duration; and
 - (B) satisfactorily completed a course in auditing prescribed by the Corporations Regulations 2001; or
 - (ii) holds other qualifications and experience that, in ASIC's opinion, are equivalent to those mentioned in paragraph 150(a)(i);
 - (b) we are satisfied that the applicant either meets all the components of an auditing competency standard approved by ASIC under s1280A of the Corporations Act or has such practical experience in auditing as is prescribed; and
 - (c) we are satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor.
- 151 We must refuse the application for registration as a company auditor if:
- (a) any of the requirements in paragraph 150 are not satisfied; or
 - (b) the applicant is a person who is disqualified from managing corporations under Pt 2D.6 of the Corporations Act.
- 152 The applicant has a right to a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter where a refusal has been proposed.
- 153 During the relevant period, we registered 43 company auditors.

¹⁹ Report 430 *ASIC regulation of registered liquidators: January to December 2014* (REP 430).

Withdrawals

- 154 Eleven applications for registration were withdrawn during the relevant period.

Refusals

- 155 We refused one application to register as a company auditor.

Suspensions and cancellations

- 156 ASIC does not have the power to unilaterally cancel or suspend the registration of a company auditor. We may cancel a company auditor's registration at the request of the auditor: see s1290 of the Corporations Act. We may also apply to the CALDB, requesting that the CALDB cancel or suspend the registration of a registered company auditor: s1292 of the Corporations Act.
- 157 There were 62 company auditors and three authorised audit companies that ceased to be registered during the relevant period. A common reason for this is due to the retirement or death of the registered individual.
- 158 For more detailed information, see ASIC's report specifically covering ASIC's regulation of company auditors.²⁰

Approved SMSF auditors

Registrations

- 159 Under s128B of the SIS Act, we must grant an application for registration as an approved SMSF auditor if the applicant (who must be an Australian resident) meets the qualifications and practical experience required by the regulations and has passed the competency examination required in the SIS Act.
- 160 Additionally, we must be satisfied that the applicant is capable of performing the duties of an approved SMSF auditor, is unlikely to contravene the obligations of an approved SMSF auditor under Subdiv B and is otherwise a fit and proper person to be an approved SMSF auditor.
- 161 We have discretion to approve an application for registration if the applicant has not met one or more of the requirements set out in paragraph 159 but has met the requirements of paragraph 160.

²⁰ The 2013–14 report on company auditors, covering an 18-month period, will be published in the fourth quarter of 2015. For our earlier report see Report 397 *Audit inspection program report for 2012–13* (REP 397).

- 162 We must refuse the application if:
- (a) the requirements of paragraph 160 are not met; or
 - (b) the applicant is a person who is disqualified or suspended for the purposes of the SIS Act.
- 163 During the relevant period, we registered 56 applicants as approved SMSF auditors.

Withdrawals

- 164 There were 49 applications for registration as an approved SMSF auditor withdrawn during the relevant period.
- 165 Withdrawals predominantly occurred where we indicated that we were going to refuse the application.

Refusals

- 166 We may refuse an application for registration as an approved SMSF auditor. Refusals are generally related to the applicant:
- (a) failing to complete the SMSF auditor competency examination;
 - (b) having insufficient audit experience; or
 - (c) having a history of involvement with insolvent companies.
- 167 Unlike an ASIC refusal relating to a company auditor, the refusal for registration as an approved SMSF auditor does not require a hearing. An applicant is then entitled to seek an internal review of the decision under the SIS Act. This review does not require a hearing but allows for the applicant to make written submissions.
- 168 Two applications were refused by an ASIC delegate. As at the date of this report, we have three matters before the Administrative Appeals Tribunal, none of which have yet been heard.

Suspensions and cancellations

- 169 We may suspend or cancel the registration of an approved SMSF auditor for various reasons, including because the auditor has:
- (a) not complied with the conditions on their registration;
 - (b) not conducted an audit for five years;
 - (c) applied to ASIC for a suspension or cancellation; or
 - (d) ceased to be an Australian resident.

- 170 During the transitional period that commenced on 1 January 2013, SMSF auditors were able to become registered on the condition that they complete the SMSF auditor competency examination by 30 June 2014. SMSF auditors who were subject to this condition and had not successfully completed the examination by that date were in breach of their registration conditions.
- 171 Since 1 July 2014, we have cancelled the registrations of 426 approved SMSF auditors for not completing their SMSF auditor competency examination by 30 June 2014.
- 172 In addition, we cancelled 54 registrations at the request of the SMSF auditor. The main reasons were because the auditor:
- (a) was no longer willing to be an approved SMSF auditor;
 - (b) was winding up their business; or
 - (c) had died.
- 173 An SMSF auditor can seek an internal review of ASIC's decision to cancel their SMSF auditor registration by an ASIC delegate.
- 174 No approved SMSF auditors were suspended during the relevant period.

Key terms

Term	Meaning in this document
ADTR licence	Australian derivative trade repository licence
ADTR licensee	Holder of an ADTR licence
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 Australian financial services licence under s913B of the Corporations Act Note: This is a definition contained in s761A.
approved SMSF auditor	Has the meaning given in s10(1) of the SIS Act after 31 January 2013
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	An Australian derivative trade repository licence under s905C of the Corporations Act that authorises a person to operate a trade repository
CALDB	Companies Auditors and Liquidators Disciplinary Board
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit activity	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
CS facility	A clearing and settlement facility as defined by s768A of the Corporations Act
CS facility licence	An Australian CS facility licence under s824B of the Corporations Act that authorises a person to operate a CS facility in Australia
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
FMI team	Financial Markets and Infrastructure team
FSR Act	<i>Financial Services Reform Act 2001</i>
liquidator	A person registered by ASIC under s1282 of the Corporations Act

Term	Meaning in this document
Murray Inquiry	2014 Financial System Inquiry
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
official liquidator	A person registered by ASIC under s1283 of the Corporations Act
OTC	Over the counter
relevant period	1 July 2014 to 31 December 2014
REP 421 (for example)	An ASIC report (in this example numbered 421)
RG 105 (for example)	An ASIC regulatory guide (in this example numbered 105)
trade repository	A derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	Self-managed superannuation fund

Related information

Headnotes

ADTR licence, ADTR licensee, AFS licence, AFS licensee, application, approved SMSF auditor, authorisation, cancellation, clearing and settlement, company auditor, credit licence, credit licensee, CS facility, CS facility licence, derivative trade repository, financial market, licence variation, liquidator, official liquidator, refusal, registration, rejected for lodgement, responsible manager, suspension, withdrawal

Regulatory guides

RG 1 AFS Licensing Kit: Part 1—Applying for and varying an AFS licence

RG 2 AFS Licensing Kit: Part 2—Preparing your AFS licence application

RG 3 AFS Licensing Kit: Part 3—Preparing your additional proofs

RG 8 Hearings practice manual

RG 78 Breach reporting by AFS licensees

RG 98 Licensing: Administrative action against financial services providers

RG 104 Licensing: Meeting the general obligations

RG 105 Licensing: Organisational competence

RG 172 Australian market licences: Australian operators

RG 177 Australian market licences: Overseas operators

RG 180 Auditor registration

RG 186 External administration: Liquidator registration

RG 204 Applying for and varying a credit licence

RG 205 Credit licensing: General conduct obligations

RG 206 Credit licensing: Competence and training

RG 243 Registration of self-managed superannuation fund auditors

RG 249 Derivative trade repositories

Legislation

Corporations Act, Pts 2D.6, 7.2, 7.3 and 7.5A; s912A, 913B, 914A, 1279, 1280, 1280A, 1282, 1283, 1290 and 1292

Corporations Amendment (Future of Financial Advice) Act 2012

Corporations Regulations 2001

Explanatory Memorandum to the Corporations Amendment (Future of Financial Advice) Bill 2011

FSR Act

National Credit Act, s37, 45 and 47

SIS Act, s128B

Reports

REP 397 *Audit inspection program report for 2012–13*

REP 420 *Overview of decisions on relief applications (June to September 2014)*

REP 421 *ASIC enforcement outcomes: July to December 2014*

REP 430 *ASIC regulation of registered liquidators: January to December 2014*

Media releases

14-160MR *ASIC removes liquidator from industry (8 July 2014)*

14-327MR *ASIC surveillance prompts FX provider to enhance compliance procedures (8 December 2014)*

15-066MR *ASIC issues warning about Grandegoldens (27 March 2015)*

15-075MR *ASIC suspends FX company's licence (2 April 2015)*

15-085MR *FX broker Advanced Markets clarifies its AFS licence (24 April 2015)*