



**ASIC**

Australian Securities & Investments Commission

## REPORT 448

# Overview of licensing and professional registration applications: January to June 2015

September 2015

### About this report

This report outlines ASIC's decisions on applications for the period from 1 January to 30 June 2015 (relevant period) relating to:

- 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
- Australian 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.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

### Previous reports on ASIC licensing and professional registration applications

Report number	Report date
REP 433	May 2015

# Contents

<b>Overview</b> .....	<b>4</b>
ASIC's role.....	4
Purpose and scope of this report.....	4
Current areas of focus: Industry issues.....	6
Current areas of focus: ASIC policy and procedures.....	13
Summary of outcomes for the relevant period.....	14
<b>A Background</b> .....	<b>18</b>
Regulated population: Licensing and registration.....	18
How AFS and credit licensing and professional registration applications are determined.....	21
<b>B AFS licences</b> .....	<b>22</b>
Applications and regulatory outcomes.....	22
Applications finalised.....	22
Applications approved with additional regulatory outcomes.....	26
Applications rejected or withdrawn.....	28
Applications refused.....	29
AFS licences suspended or cancelled.....	30
<b>C Credit licences</b> .....	<b>32</b>
Applications and regulatory outcomes.....	32
Applications finalised.....	32
Applications approved with additional regulatory outcomes.....	36
Applications rejected or withdrawn.....	37
Applications refused.....	38
Credit licences suspended or cancelled.....	38
<b>D Liquidator, company auditor and approved SMSF auditor registrations</b> .....	<b>39</b>
Outcomes of registration applications.....	39
Liquidators.....	39
Company auditors.....	41
Approved SMSF auditors.....	41
<b>Key terms</b> .....	<b>43</b>
<b>Related information</b> .....	<b>46</b>

## 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. We regulate entities at every point from 'cradle to grave'—from their incorporation through to their winding up.
- 2 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 team.
- 3 For further background on ASIC's licensing and professional registration responsibilities, please refer to Report 433 *Overview of licensing and professional registration applications: July to December 2014* (REP 433), issued May 2015, paragraphs 1–18.

### Purpose and scope of this report

- 4 This is the second six-monthly report published by ASIC providing an overview of licensing and professional registration applications.
- 5 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 has additional conditions imposed on it. 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 that is 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.

- 6 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.
- 7 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.
- 8 This report sets out the regulatory outcomes achieved by ASIC—for the period from 1 January to 30 June 2015 (relevant period)—in relation to:
- (a) AFS licence applications;
  - (b) credit licence applications;
  - (c) liquidator registration applications;
  - (d) company auditor and approved self-managed superannuation fund (SMSF) auditor registration applications; and
  - (e) in summary form, applications relating to financial markets, CS facilities, the Companies Auditors and Liquidators Disciplinary Board (CALDB) and ADTR licences.<sup>1</sup>
- 9 The purpose of this report is to provide greater transparency and understanding of ASIC's licensing and professional registration activities. It presents statistics and comments on applications and outcomes for these licensing and registration assessments—notably, when outcomes are different to those applied for.
- 10 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

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<sup>1</sup> 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).

capable of offering the financial or credit services applied for in compliance with the legal obligations, the application may ultimately be refused.

- 11 This report also provides details about how, with the support of other ASIC teams, the Licensing team maintains standards and limits the financial services and products, or credit, that applicants may seek to provide.
- 12 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 on a periodic basis.

## Current areas of focus: Industry issues

### Retail OTC derivatives

- 13 We continue to see a number of applicants seeking various authorisations relating to over-the-counter (OTC) retail derivatives including margin foreign exchange (FX).
- 14 As mentioned at paragraphs 27–31 of REP 433, we continue to pay 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 continues to liaise 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.
- 15 The Licensing team dealt with three applications during the relevant period relating to ‘deal issue’ and/or make a market in OTC derivatives involving margin FX.
- 16 Of these applications:
- (a) one was voluntarily withdrawn after being advised that we were minded to recommend refusal of the application;
  - (b) the other two were both refused by an ASIC Hearing Delegate following a hearing; and
  - (c) one of the applications referred to in paragraph 16(b) was appealed to the Administrative Appeals Tribunal (AAT) but the appeal was subsequently withdrawn by the applicant and dismissed by the AAT.

## Examples of regulatory outcomes concerning retail OTC derivative participants

### Rainbow Legend Group

Following an investigation, ASIC has cancelled the AFS licence of FX provider Rainbow Legend Group Pty Ltd (Rainbow Legend) for failing to comply with its obligations, including making false and misleading statements.

ASIC's investigation found the company falsely promoted on a number of websites an insurance compensation scheme for clients of up to \$2.5 million.

The use of ASIC's logo on the websites could have led clients to wrongly believe the company was in some way endorsed or approved by ASIC. The company had also not complied with a number of its reporting obligations, including failing to lodge financial statements for the years ended 30 June 2013 and 30 June 2014, and an auditor's report for two financial years.

ASIC Commissioner Greg Tanzer said, 'In a global market it is necessary to recognise that an AFS licence only covers financial services offered in Australia'.<sup>2</sup>

### FX Primus group of companies

Following concerns raised by ASIC, FX Primus, which provides margin FX and contracts for difference (CFD) trading, has agreed to make changes to its websites and to notify its Australian clients that it is not licensed to provide them with financial services.

ASIC Commissioner Cathie Armour said, 'Financial service providers must ensure that they are properly licensed or authorised in Australia before they promote financial services to Australian investors. ASIC will not hesitate to take action where we have concerns Australian investors are being targeted by unlicensed or unauthorised operators.'<sup>3</sup>

### Australian Capital Markets Advisory Services

ASIC suspended the AFS licence of retail OTC derivative provider Australian Capital Markets Advisory Services Pty Ltd (ACMAS).

ACMAS ceased providing financial services after a change of all directors and shareholdings in the company in June 2015 when the entity became a wholly owned subsidiary of Formax International Market Limited. The new management of the company was unable to demonstrate it was fully compliant with many of the AFS licensing requirements.

ASIC Commissioner Cathie Armour said, 'More generally we would have concerns if new entrants to this market were trying to inappropriately bypass ASIC's stringent AFS licence application processes. Regulatory obligations on AFS licensees continue to apply after the change of control. Any entity that is unable to comply with Australian licensing obligations risks having its licence suspended or cancelled.'<sup>4</sup>

<sup>2</sup> Media Release (15-108MR) *ASIC cancels FX company's licence* (12 May 2015).

<sup>3</sup> Media Release (15-120MR) *ASIC requires FX Primus to cease targeting Australian investors* (21 May 2015).

<sup>4</sup> Media Release (15-217MR) *ASIC suspends retail OTC derivative licence after change of control* (11 August 2015).

### **FIBO Group and Trading Point of Financial Instruments**

Following ASIC concerns, British Virgin Island company FIBO Group Limited (FIBO) and Cyprus company Trading Point of Financial Instruments Limited (Trading Point)—also known by the trading name XM.com—have each agreed to cease providing unlicensed financial services to Australians.

Both entities have Australian clients but neither entity is appropriately licensed to provide financial services in Australia. The entities were advertising their services on their respective group websites which contained information about an Australian group entity with a similar name that had an AFS licence.

ASIC Commissioner Cathie Armour said, ‘ASIC has received a number of complaints from investors who have mistakenly believed they are being provided services by an Australian financial services licensee when in reality the agreements are with a different company ... Investors need to be diligent when entering into any contracts that relate to the provision of financial services. They need to make sure they know who they are dealing with and be aware of the country or regulatory regime in which the entity operates.’

AFS licensees advertising and offering their services on websites before they are able to commence providing those services could be found to have engaged in misleading and deceptive conduct. ASIC warns potential licensees against the use of such references before they are licensed as this constitutes an offence under s911C of the *Corporations Act 2001* (Corporations Act).<sup>5</sup>

### **ASIC’s Innovation Hub<sup>6</sup>**

- 17 New technology is creating new opportunities, and new risks, in financial services and markets.
- 18 ASIC has developed an Innovation Hub with tailored content on our website for financial technology (fintech) businesses that are developing innovative financial products or services.
- 19 We are committed to encouraging innovation that has the potential to benefit consumers. We are equally committed to ensuring that the regulation of new products and services is appropriate, effective and promotes investor and consumer trust and confidence.
- 20 The Innovation Hub will provide innovative start-ups with informal assistance throughout the early stages of their development, including:
- (a) guidance and assistance during the pre-licence application phase (e.g. meeting with senior staff to discuss the licence application process and any regulatory issues that the business has identified); and

<sup>5</sup> Media Release (15-233MR) *Two overseas entities agree to stop providing unlicensed FX services* (27 August 2015).

<sup>6</sup> [www.asic.gov.au/for-business/your-business/innovation-hub/](http://www.asic.gov.au/for-business/your-business/innovation-hub/)

- (b) guidance and assistance, if required, during the business's first year of being licensed (e.g. if an application for a licence variation is being considered).

21 Since its commencement in April 2015 to early August, the Innovation Hub has had 32 external meetings with new fintech businesses and industry organisations. We have started work in relation to 22 businesses, involving applications for licences and requests for guidance, and we have set up a senior internal Innovation Hub taskforce to coordinate our work on new business models: see also discussion below on marketplace lending and our digital advice taskforce.<sup>7</sup>

### Marketplace lending

22 The interest in peer-to-peer lending, which we consider is more appropriately referred to as 'marketplace lending', continues to grow. We reported previously (see paragraphs 32–35 of REP 433) on our desire to work with applicants to address the risks and challenges that this 'digital disruption' has the potential to create.

23 ASIC has established an internal working group for marketplace lending, comprising staff from the Licensing team and various relevant stakeholder teams. An industry roundtable discussion was convened in August 2015. The purpose of this discussion was to seek industry views on an information sheet that ASIC is preparing to provide guidance to operators of marketplace lending platforms on:

- (a) the legal obligations for marketplace lenders under the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act);
- (b) assisting consumers to understand the product and ensuring that they are not misled—in particular, by the use of certain industry terminology (e.g. when comparing the product to banking products); and
- (c) the advertising requirements to ensure that advertising is clear and not misleading or deceptive.

24 The discussion also considered what some good practices may look like in operating the platform and providing disclosure, and examined ASIC's plan to periodically survey platform operators about their business to better understand developments and any changes in risk profile of the business.

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<sup>7</sup> Media Release (15-211MR) *Innovation Hub: ASIC update* (5 August 2015).

### Investor directed portfolio services

- 25 We have considered a number of applications from marketplace lending businesses seeking to obtain an AFS licence authorisation to operate an investor directed portfolio service (IDPS) or IDPS-like scheme. We have noted that, while marketplace lending platforms share similarities with IDPS and IDPS-like schemes, they also exhibit the characteristics of typical managed investment schemes. In our view, the applications we have received to date required a managed investment scheme authorisation.
- 26 Depending on how the business model is proposed, this does not mean that a marketplace lending product is precluded from:
- (a) being operated as an IDPS or IDPS-like scheme; or
  - (b) being included as an investment option on an IDPS platform.

### Authorisations

- 27 We have also tailored a number of AFS licence authorisations to reflect the specific nature of web-based marketplace lending platforms. For example:
- Operate the following kind of registered managed investment scheme (including the holding of any incidental property) in its capacity as responsible entity:
- [*Scheme name*] scheme (ARSN: xxx xxx xxx), a scheme through which:
- (1) offers by funders (being the members of the scheme) and borrowers (being natural persons) are matched using a single online loan exchange platform provided by [*Licensee's name*] at the website [www.\[Licensee's web address\]](#); and
  - (2) loans are entered between borrowers (being natural persons) and the custodian of the scheme property to retail and wholesale clients.

### Digital advice

- 28 We have received a number of AFS licence applications from businesses intending to provide digital advice (commonly known as robo-advice), and we continue to see businesses commencing operations under an authorised representative model. This development has followed the growing popularity of digital advice overseas, including in the United States and Europe. Digital advice describes the provision of automated financial product advice to consumers.
- 29 While ASIC has recently announced the Innovation Hub and an Innovation Hub taskforce (see paragraphs 17–21), we have also established a separate internal digital advice taskforce—the Robo-advice taskforce. This is because we consider that the majority of digital advice initiatives will be proposed by existing licensees rather than start-up businesses (which are the area of focus of the Innovation Hub).

- 30 The Robo-advice taskforce is currently examining a number of issues, including:
- (a) the adequacy of compensation arrangements;
  - (b) training and competency standards;
  - (c) algorithms (testing, supervision and risk management); and
  - (d) the interaction between scaled advice and the best interests duty.
- 31 We have observed that some start-up businesses may offer a specific or scaled advice service—for example, advice on superannuation options or portfolio investments. Scaled advice must still be in the best interests of the client. This means that:
- (a) it should be clear to the consumer what services are being provided and what services are not being provided; and
  - (b) the digital advice provider needs a triage system that will identify consumers for whom this type of advice is not in their best interests, and who should not be provided with automated advice.
- 32 A further observation is that start-up businesses that only wish to provide general advice need to ensure that their service or digital interaction with clients does not create the impression that they are providing personal financial advice.

### **Limited licensing**

- 33 The current ‘accountants’ exemption’ under reg 7.1.29A of the Corporations Regulations 2001 permits ‘recognised accountants’ to provide a recommendation in relation to an SMSF without the need for an AFS licence. As part of the Future of Financial Advice (FOFA) reforms, this exemption will cease to apply on 1 July 2016.
- 34 ASIC has been assisting the various industry bodies, applicants and their advisers with the transition to the new licensing requirements. We have been reminding accountants without an AFS licence, and who do not intend to become an authorised representative of an AFS licensee, to start applying soon for a limited AFS licence if they wish to continue providing SMSF advice after 30 June 2016. As at 26 August 2015, we have received 160 applications for a limited AFS licence and granted 70 of these licences.
- 35 Accountants who do not lodge applications that meet ASIC’s requirements by 1 March 2016 run a significant risk that their application will not be assessed before 30 June 2016.

36 We issued a media release to warn accountants of this risk, and to provide additional guidance on meeting the requirements when applying for a limited AFS licence.<sup>8</sup> In that media release, ASIC Deputy Chairman Peter Kell said:

Accountants should ensure they've allowed enough time to properly prepare an application and to undertake any relevant training. Where an application is in good order ASIC can assess the application within four weeks, but if further details are required because the information provided is insufficient this will take longer.

### **Consumer leases and Centrepay**

37 The provision of leases to low-income consumers has been an area where ASIC has had to take repeated action in the last few years.

38 We have continuing concerns about the conduct of lessors, despite multiple enforcement actions by ASIC. Misconduct by lessors identified by ASIC has included targeting financially vulnerable consumers with limited access to alternative forms of finance (e.g. in regional communities). We are concerned about the risk of this conduct continuing to occur, given the high use of leases by financially vulnerable consumers, such as those in receipt of Centrelink payments.

39 We note that some lessors obtain payments through the Centrepay system operated by the Department of Human Services (DHS). This allows lessors to obtain priority access to Centrelink payments, and can reduce the risk of default by the consumer.

40 DHS commissioned an independent review of the Centrepay system, published in June 2013. The review (at page 71) identified examples of conduct by lessors, 'that could be perceived as "unconscionable" or lacking in any moral or ethical sensibility toward customers'.

41 DHS has recently implemented one of its recommendations—that only lessors who were offering leases regulated by the National Credit Act and hold a credit licence should be able to be registered with DHS and able to use the Centrepay system. This has resulted in a number of applications for a credit licence by lessors who offered unregulated leases, where payments were made through Centrepay.

42 Lessors are required to comply with the responsible lending obligations under the National Credit Act, including an obligation to ensure the consumer can afford the rental payments under the lease. ASIC is concerned that unlicensed lessors may have relied on priority access to the consumer's income through Centrepay as a substitute for testing whether the consumer could afford the

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<sup>8</sup> Media Release (15-227MR) *Applying for a limited AFS licence – the time to act is now* (25 August 2015).

rental payments, and that they may therefore lack the skills, experience or business systems to comply with the responsible lending obligations.

- 43 Under s37(1) of the National Credit Act, ASIC must grant a credit licence if (and must not grant a licence unless) we are satisfied that the applicant meets a number of requirements. One of these requirements is that ASIC has no reason to believe that the applicant is likely to contravene the general conduct obligations that will apply under s47 if a licence is granted. One of the conduct obligations in s47 requires the licensee to comply with the credit legislation, including the responsible lending obligations.
- 44 As part of the Licensing team’s assessment, we are closely testing whether an applicant is able to demonstrate their capacity to comply with the responsible lending obligations.
- 45 In addition, as part of our recent work in this area—and after we found that, ‘It is not uncommon for consumers to pay three or four times more than the purchase price of the leased goods. In some cases it can be up to six times’<sup>9</sup>—we have developed a ‘Rent vs buy’ calculator to enable consumers to make better decisions in relation to whether or not to acquire electrical goods or furniture through a consumer lease.

## Current areas of focus: ASIC policy and procedures

### AFS licensing kit (Regulatory Guides 1, 2 and 3)

- 46 We are looking to revise our AFS licensing kit with the aim of making the assessment more efficient and reducing the time it will take between lodgement and finalisation. The scope of this work will include:
- (a) ensuring that all the required relevant information (including relevant non-core proofs) is submitted with the application (rather than being left to requisition); and
  - (b) requiring applicants to make submissions in support of their application that enables the Licensing team to form the view that ASIC has no reason to believe the applicant is likely to contravene the obligations that will apply if a licence is granted.

### Policy proposals

- 47 As mentioned in REP 433, we intend to review our regulatory guides relating to AFS and credit licensing to ensure that we are providing adequate guidance on what information and documentation we require when assessing applications.

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<sup>9</sup> Media Release (15-181MR) *New ‘Rent vs buy’ calculator for consumers on ASIC’s MoneySmart website* (13 July 2015).

48 As part of this review, we will also consider whether any of the assumptions or principles we apply to our assessments need to be updated or enhanced (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 for outsourced functions).

### **ASIC's service charter: Our assessment objectives**

49 We have published a service charter that sets out the most common interactions we have with the public and specifies how quickly we expect to respond to telephone calls, emails, or licence applications. We report results against the service charter each year.

50 The Licensing team aims to:

- (a) decide whether to grant or vary 70% of AFS or credit licence applications within 60 days of receiving a complete application; and
- (b) decide 90% of complete applications within 120 days.

51 Before 1 July 2015, we calculated our completion time without including the time taken for applicants to respond to requests for information. From 1 July 2015, we have been calculating our completion time for licence applications on an elapsed time basis. This is consistent with how ASIC measures other activities.

52 We note some applications will take longer if they raise regulatory concerns, are complex or relate to new policy issues, or if we need additional information or to consult with other regulators. For more information, see [www.asic.gov.au/afslicensing](http://www.asic.gov.au/afslicensing).

## **Summary of outcomes for the relevant period**

### **Licensed financial markets, CS facilities and trade repositories**

53 The number of licensed financial markets, CS facilities or trade repositories has not changed, so there are no outcomes to report during the relevant period.

### **AFS and credit licensing and professional registration**

54 In the relevant period, we received 1,465 AFS and credit licensing and professional registration applications across the various application and registration types: 83% of these related to applications for either an AFS licence (i.e. new licences (277) and variations to existing AFS licences (355)) or a credit licence (i.e. new licences (225) and variations to existing credit licences (365)).

55 Table 1 shows the number of applications under consideration (available for assessment) and the number that were approved during the relevant period. These are broken down by the period in which they were lodged (i.e. either before or during the relevant period).

**Table 1: Licensing and professional registration applications available for assessment—1 January to 30 June 2015**

Type of application		Received or initiated before Jan	Approved Jan–Jun*	Received or initiated Jan–Jun	Approved Jan–Jun**	Finalised (not approved) Jan–Jun <sup>#</sup>	Under assessment at 30 Jun
Licensing	New AFS licence	144	75	277	74	106	166
	Variation of AFS licence	194	98	355	139	102	210
	New credit licence	81	41	225	94	72	99
	Variation of credit licence	40	24	365	311	41	29
Registration	Registration as liquidator	6	3	14	10	0	7
	Registration as official liquidator	3	3	14	12	0	2
	Registration as company auditor	37	24	85	13	6	79
	Registration as approved SMSF auditor	80	53	130	14	23	120
<b>Total</b>		<b>585</b>	<b>321</b>	<b>1,465</b>	<b>667</b>	<b>350</b>	<b>712</b>

\* These figures include applications that were received or initiated before the relevant period but approved during the relevant period.

\*\* These figures include applications that were both received or initiated, and approved, during the relevant period.

<sup>#</sup> These figures include applications that were rejected, withdrawn or refused during the relevant period. For more details, see Table 4 and Table 5.

56 The combined number of AFS and credit licensing and professional registration applications available for assessment during the relevant period totalled 2,050, of which 988 (48%) were approved. The remaining applications were rejected, withdrawn or refused, or were still being assessed at the end of the period: see Table 2.

57 Over 30% more licensing and registration applications were received or initiated in the relevant period compared with the previous six-month period (i.e. June to December 2014). However, the majority of this higher volume related to credit licence variations (i.e. 220 applications) initiated by ASIC as a result of the removal of a pro forma condition about professional indemnity insurance in circumstances where it was not a required condition. The remaining additional volume related to a higher level of professional registrations (particularly, applications for approval as an approved SMSF auditor).

**Table 2: Percentage approval of licensing and professional registration applications under consideration—1 January to 30 June 2015**

Application type	Under consideration*	Approved
AFS licence (new licence and variations)	970	386 (40%)
Credit licence (new licence and variations)	711	470 (66%)
Registration	369	132 (36%)
<b>Total applications</b>	<b>2,050</b>	<b>988 (48%)</b>

\* The total includes all applications under consideration during the relevant period, whether they were received/initiated before or during the relevant period.

- 58 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 services or products that a licensee may offer; or
    - (ii) the credit activities that a licensee may undertake.
- 59 Of the 856 AFS licence and credit licence applications that were approved (including both new licences and licence variations), 488 (57%) were approved in a form different in scope to the licence authorisations sought by the applicant or the standard conditions. For AFS licence applications only, approximately 71% were approved with changes to the form of the licence, while for credit licence applications that proportion was approximately 46%.

### **New AFS licences and licence variations**

- 60 There were 970 AFS licence applications under consideration during the relevant period. Of those, 386 were approved, 113 were rejected for lodgement, 88 were withdrawn, seven were refused and the remaining 376 were undergoing assessment at the end of the relevant period. Of the 386 approved applications, 274 (71%) were approved with alterations to the original application: see Section B for details.

### **New credit licences and licence variations**

- 61 There were 711 credit licence applications under consideration during the relevant period. Of those, 470 were approved, 17 were rejected for lodgement, 94 were withdrawn, two were refused and the remaining 128 were undergoing assessment at the end of the relevant period. Of the 470 approved applications, 215 (46%) were approved with alterations to the original application: see Section C for details.

## **Registration of liquidators and auditors**

- 62            During the relevant period, we registered:
- (a) 13 liquidators;
  - (b) 15 official liquidators;
  - (c) 37 company auditors (with an additional six applications for registration withdrawn); and
  - (d) 67 approved SMSF auditors (with an additional 23 applications withdrawn).
- 63            We cancelled the registration of 81 SMSF auditors.
- 64            For more details, see Section D.

## 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, licence variation or 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.

### Regulated population: Licensing and registration

65 We have provided key statistics (as at 1 July 2015) on the selected areas shown in Table 3.

**Table 3: ASIC's AFS and credit licensing and registration responsibilities**

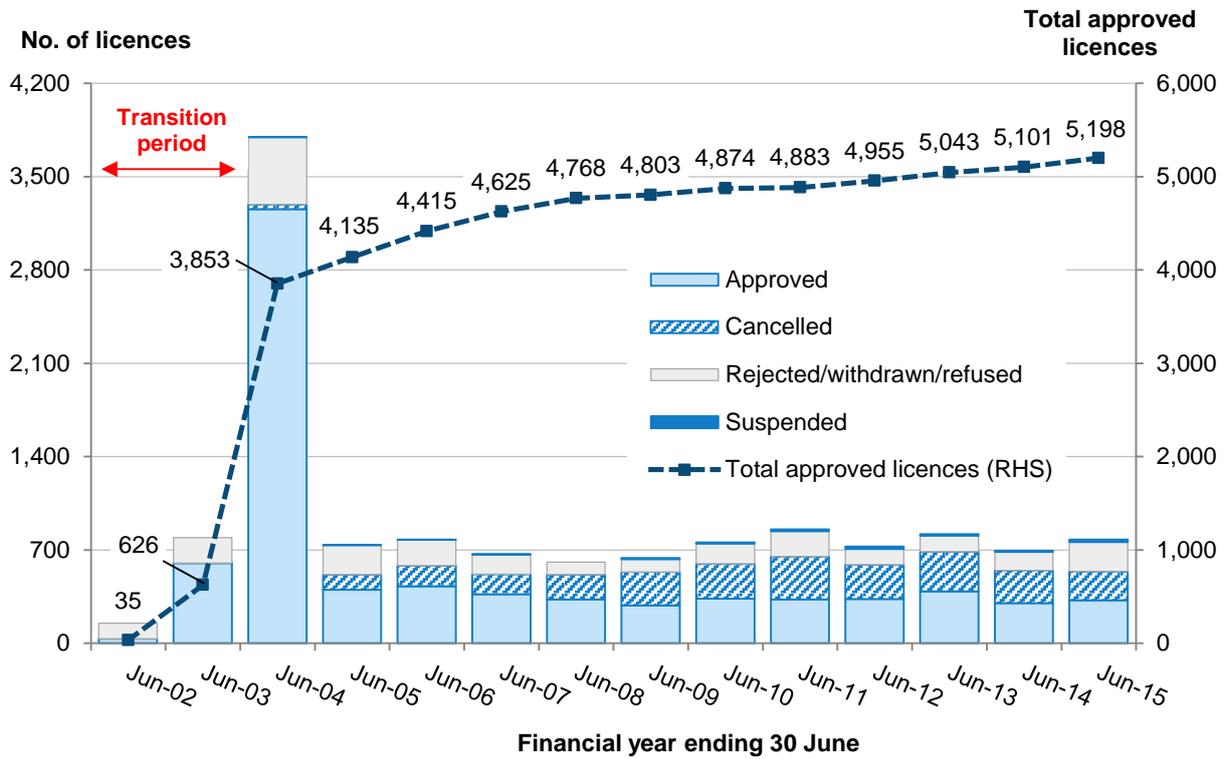
Activity	Date started with ASIC
Liquidator and company auditor registration*	<i>Corporations Act 1989</i> —Assented on 14 July 1989
AFS licensing	11 March 2002 (end of transition period 10 March 2004)
Credit licensing	1 July 2010
Approved SMSF auditor registration	1 January 2013

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

66 The four graphs below show the regulated population for AFS licensees, credit licensees, liquidators and auditors.

67 The number of AFS licensees continues to grow steadily at an average annual rate of approximately 2.8% since the end of the AFS licensing transition period (i.e. 10 March 2004) to 30 June 2015: Figure 1.

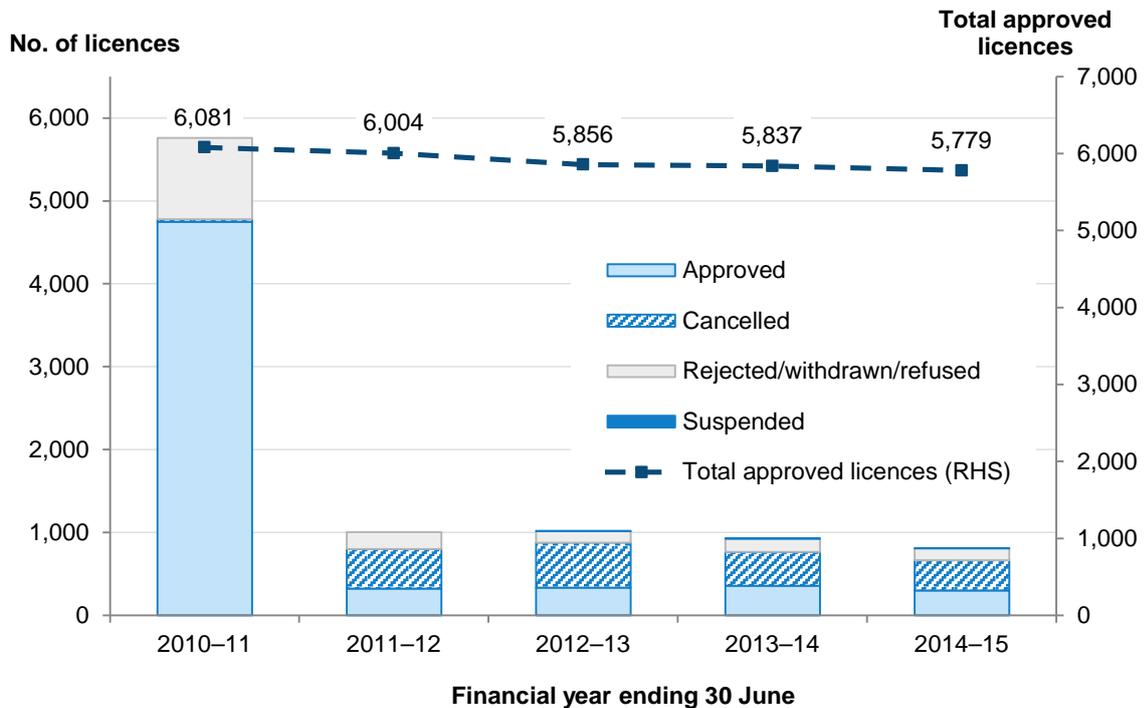
**Figure 1: Number of AFS licences per financial year by status**



68

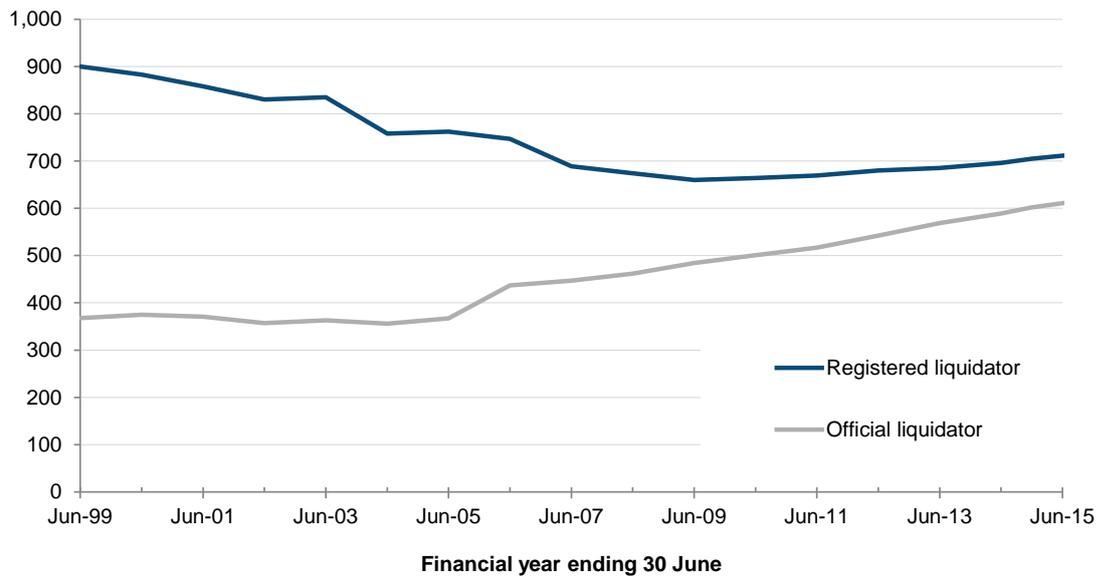
The number of credit licensees continues to fall (at an average annual rate of 1.3%), suggesting that consolidation in the industry is still occurring: Figure 2.

**Figure 2: Number of credit licences per financial year by status**



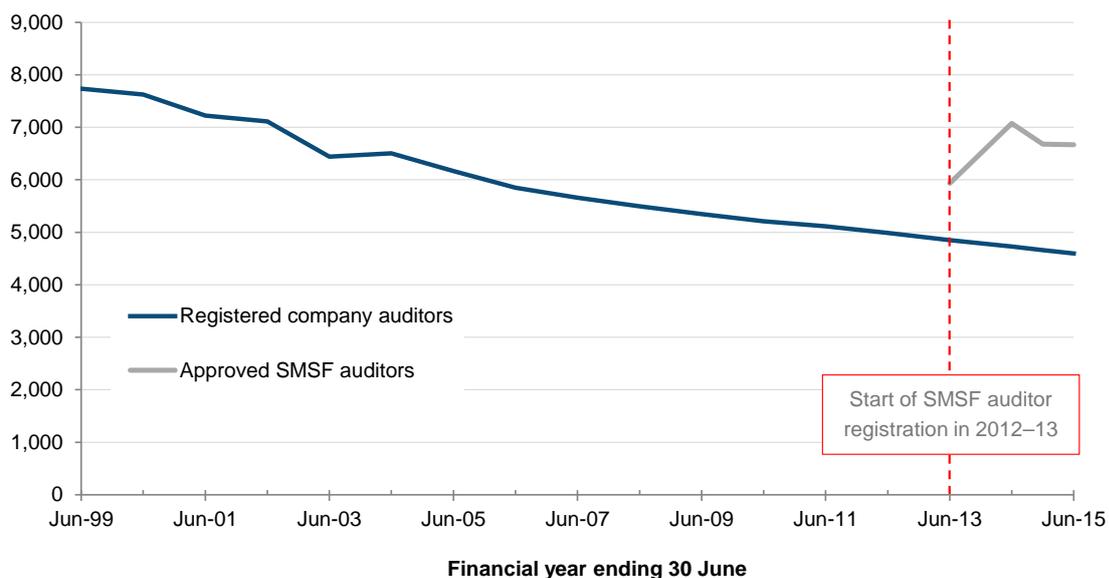
69 The number of registered liquidators fell between 1999 and 2009, but seems to be slowly picking up again since then. The number of official liquidators, after a period of reasonable stability, started to go up following a change in legislation in 2005, and is growing at a faster rate than the number of registered liquidators: Figure 3.

**Figure 3: Number of registered and official liquidators to 30 June 2015**



70 The number of registered company auditors continues its decline, reflecting (among other things) a large number of cancellations at the auditor’s request. The number of approved SMSF auditors has stabilised in the last six months, after an initial growth spike in mid-2014: Figure 4.

**Figure 4: Number of registered company auditors and approved SMSF auditors to 30 June 2015**



\* From 1 July 2013, SMSF auditors have to be registered with ASIC.

## How AFS and credit licensing and professional registration applications are determined

- 71           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).
- 72           A detailed explanation about how AFS and credit licensing and professional registration applications are determined—including rejection, approval, withdrawal and refusal—is set out in our first report: see paragraphs 53–64 of REP 433.

## B AFS licences

### Key points

During the relevant period, we considered 970 AFS licence applications (comprising 632 received during the relevant period and 338 received before the relevant period), and finalised 61% (594) of these in the period.

Of the 594 AFS licence applications finalised, we granted 149 new licences and 237 licence variations. Of the 386 AFS licence applications we approved (including variations), we imposed:

- a key person condition on 239 licences;
- an additional responsible manager requirement on 19 licences (seven new and 12 variations); and
- modified licence authorisations on 128 licence applications.

We declined to accept five responsible managers nominated by the AFS licensee (two new licences and three licence variations), as we were concerned they did not have the knowledge and skills to meet the organisational competence obligations, even though the licence applications were approved.

Eighty-eight AFS licence applications were withdrawn before we made a formal determination. We refused seven AFS licence applications. We believe the number of applications 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.

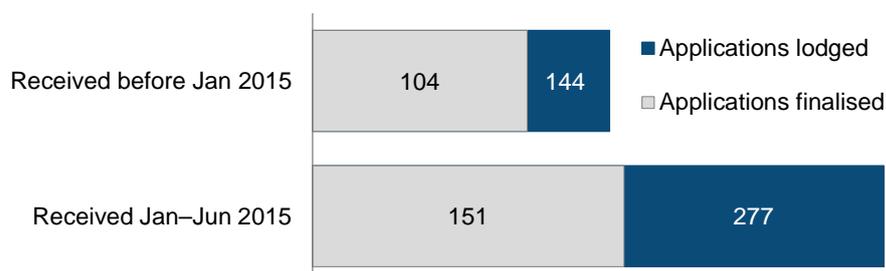
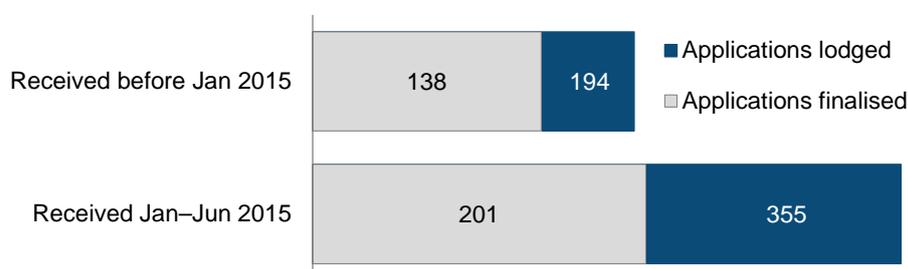
Nine AFS licences were suspended and 98 AFS licences were cancelled.

### Applications and regulatory outcomes

- 73 An application for an AFS licence may be rejected for lodgement, approved, withdrawn or refused. An application that is approved may also have additional regulatory outcomes. For further information, see paragraphs 66–68 of REP 433.
- 74 Overall, the regulatory outcomes do not indicate any observable trends on which to report generally. Specific comments on sample applications assessed during the relevant period are discussed below.

### Applications finalised

- 75 Figure 5 summarises the number of new AFS licence and AFS licence variation applications that we finalised during the relevant period in comparison with those lodged.

**Figure 5: Number of lodged and finalised AFS licence applications—1 January to 30 June 2015****New AFS licence applications****AFS licence variation applications**

76

Table 4 provides a breakdown of how the AFS applications we finalised during the relevant period were decided.

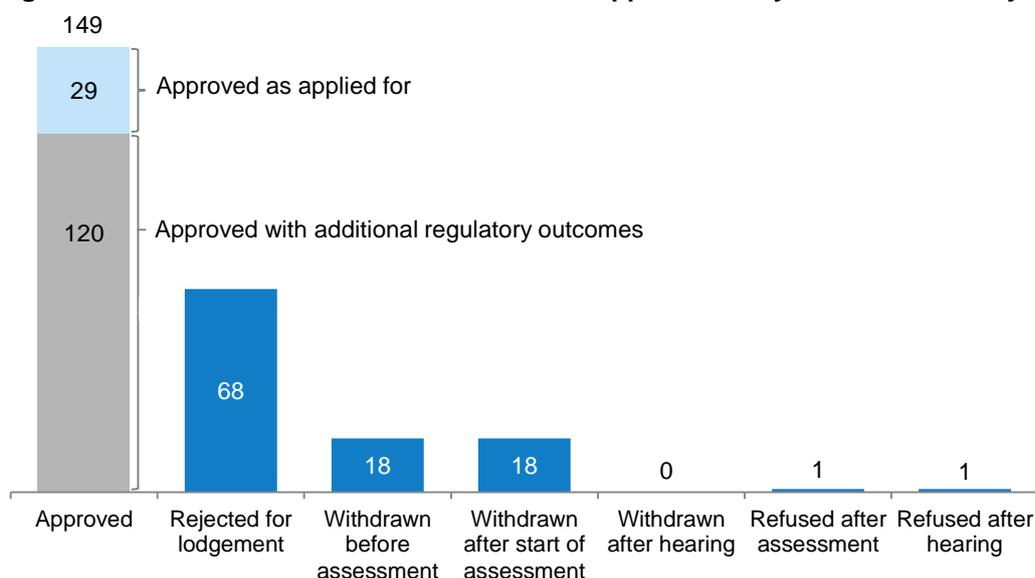
**Table 4: How finalised AFS licence applications were decided—1 January to 30 June 2015**

Status of applications finalised Jan–Jun 2015	New AFS licence applications		AFS licence variation applications	
	Received/initiated before Jan 2015	Received/initiated Jan–Jun 2015	Received/initiated before Jan 2015	Received/initiated Jan–Jun 2015
Approved (with and without additional regulatory outcomes)	75	74	98	139
Rejected for lodgement (pre-lodgement)	10	58	14	31
Withdrawn before start of assessment (pre-lodgement)	4	14	7	22
Withdrawn after start of assessment (post-lodgement)	13	5	14	9
Withdrawn after hearing	0	0	0	0
Refused after assessment	1	0	5	0
Refused after hearing	1	0	0*	0*
<b>Total applications finalised</b>	<b>104</b>	<b>151</b>	<b>138</b>	<b>201</b>

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

- 77 During the relevant period, 112 (29%) of the 386 approved AFS licence applications were approved as applied for by the applicant (i.e. without requiring any additional regulatory outcomes).
- 78 Figure 6 shows the status of new AFS licence applications we finalised in the relevant period. The graph highlights how applications were dealt with expeditiously—that is:
- by ASIC rejecting the application for lodgement because the applicant omitted material content; or
  - as a result of the applicant withdrawing its application before ASIC having to make a formal determination because we clearly communicated to the applicant that it was unlikely the application would be approved.

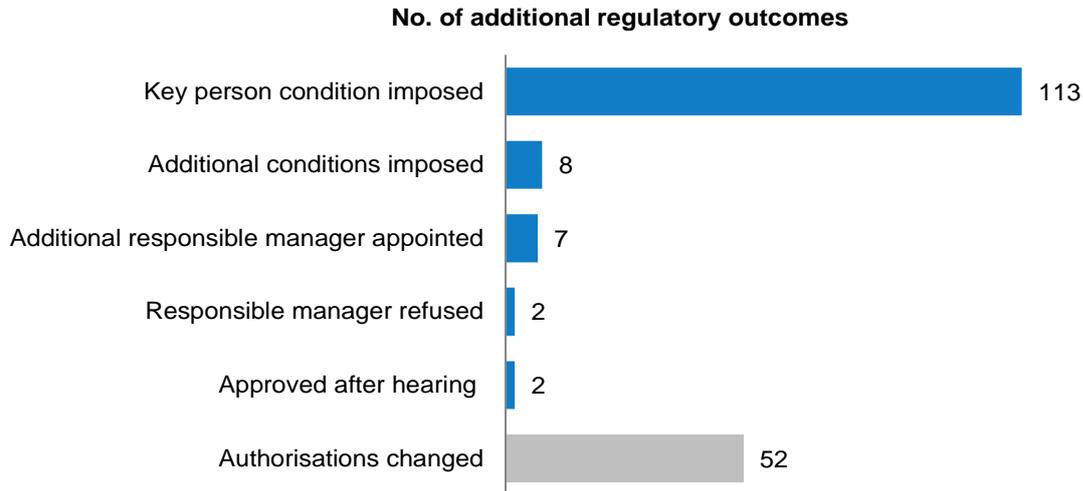
**Figure 6: Number of finalised new AFS licence applications by status—1 January to 30 June 2015**



- 79 Figure 7 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.
- 80 Figure 7 also shows the changes we made to new AFS licence authorisations on 52 occasions by modifying, tailoring, reducing or refusing the authorisations sought. For example, we have changed authorisations to:
- relate to wholesale advice or dealing, or only apply to named managed investment schemes rather than the broader authorisation of ‘kinds of schemes’;
  - relate to the provision of general financial product advice rather than personal financial product advice;
  - restrict the dealing authorisation to the more limited authorisation of ‘arranging to deal’;
  - to restrict the ‘asset holding’ authorisation from the more general ‘operate a registered managed investment scheme’ to the holding of client assets in a specific fashion or subject to specific requirements;

- (e) restrict the provision of certain financial services in relation to financial products in OTC FX and derivatives to the Australian jurisdiction only; and
- (f) delete financial services or financial product authorisations that are obsolete (i.e. carbon units).

**Figure 7: Number and type of additional regulatory outcomes in approved new AFS licence applications—1 January to 30 June 2015**

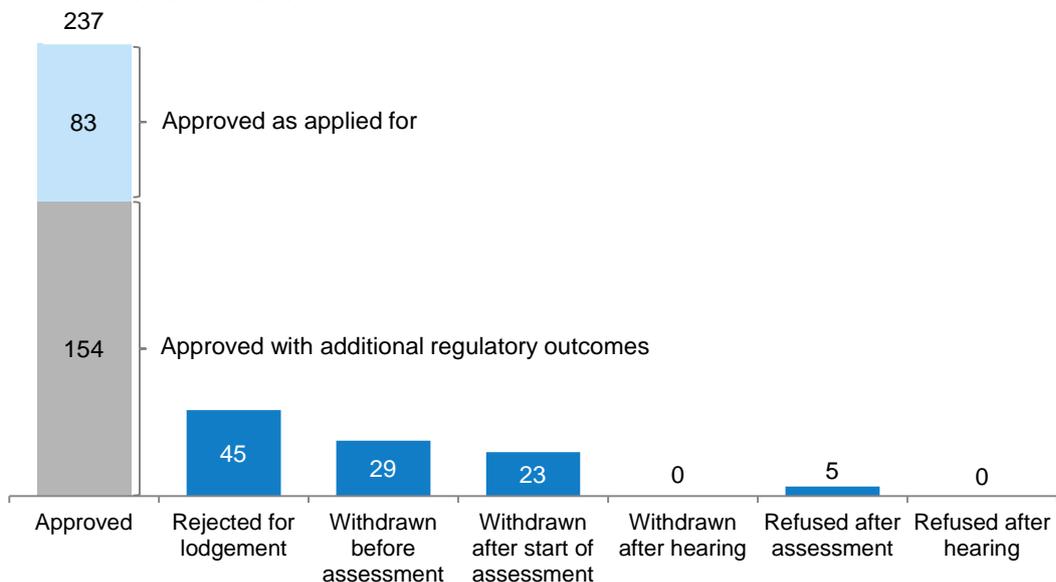


Note 1: There may be more than one additional regulatory outcome for each approved licence application. For example, we could impose a key person condition after requiring an additional responsible manager to be appointed.

Note 2: 'Responsible manager refused' indicates ASIC's decision not to 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).

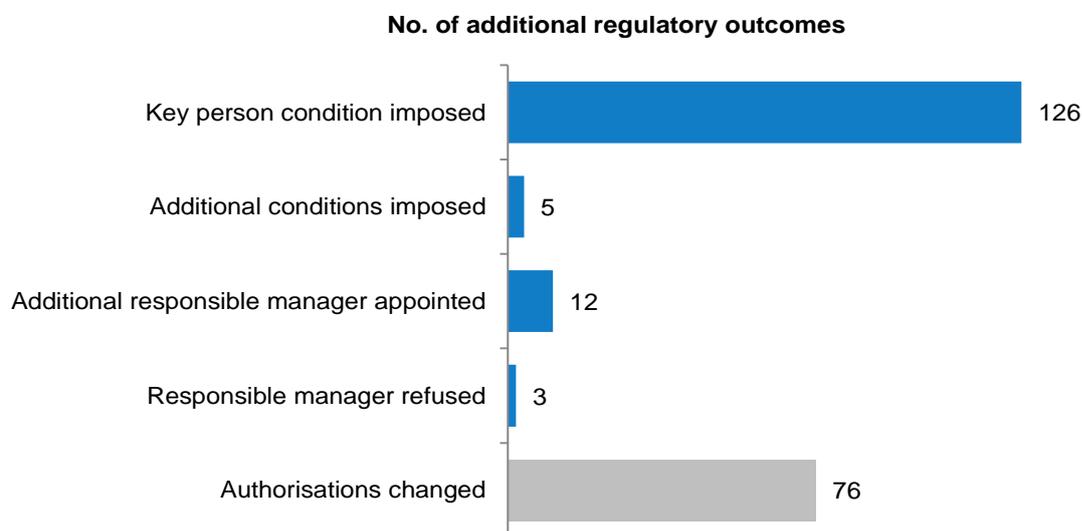
81 Figure 8 shows the AFS licence variation applications we finalised in the relevant period. This graph also shows the number of approved AFS licence variation applications where we approved the variation the applicant applied for in their initial application without imposing additional regulatory outcomes.

**Figure 8: Number of finalised AFS licence variation applications by status—1 January to 30 June 2015**



82 Figure 9 shows the AFS licence variation applications we approved with additional regulatory outcomes, broken down by type of regulatory outcome.

**Figure 9: Number and type of additional regulatory outcomes in approved AFS licence variation applications—1 January to 30 June 2015**



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 not to 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 RG 105.

## Applications approved with additional regulatory outcomes

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

### Additional conditions imposed on AFS licences

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

#### Key person condition

85 The most common AFS licence condition we impose continues to be the key person condition. If an AFS licensee is heavily dependent on the competence of one or more responsible managers, we will require that they are 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 RG 105.83–RG 105.86.

- 86 During the relevant period, we imposed a key person condition on:
- (a) 113 of the approved new AFS licences (76% of approved applications); and
  - (b) 126 of the approved AFS licence variations (53% of approved applications).

#### **Other conditions**

87 We may impose other special or non-standard conditions on an AFS licence where we consider that an applicant may need further monitoring, or should be specifically required to undertake some additional process. These special or non-standard conditions are in addition to those that may be imposed by other requirements (e.g. ASIC legislative instruments, the Corporations Act and the Corporations Regulations 2001).

88 During the relevant period, we imposed an additional condition on:

- (a) eight of the approved new AFS licences; and
- (b) five of the approved AFS licence variations.

89 We imposed additional conditions on 13 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 four licensees to:

- (a) appoint a compliance expert to comprehensively review the licensee's compliance measures;
- (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; and
  - (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 the licensee and ASIC with a second report detailing whether the recommendations set out in the first report have been complied with.

90 We imposed a special condition on seven AFS licensees to restrict the number of authorised representatives appointed to no more than five. In two other cases, we imposed a restriction on the manner in which scheme property is to be held.

#### **Responsible managers**

91 An applicant must demonstrate competence in relation to each financial service and product authorisation they have sought. Where competence has only been shown for some financial services and products, we may offer a licence that contains fewer financial service and product authorisations than were sought.

- 92 Ordinarily, the descriptions of financial services and 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 service or product authorisation that is being requested, or for which the applicant has demonstrated 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 or some other type of specialised asset.
- 93 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.
- 94 During the relevant period, we requested the appointment of an additional responsible manager for:
- (a) seven approved new AFS licences; and
  - (b) 12 approved AFS licence variations.
- 95 We have also not accepted responsible managers nominated by applicants for the purposes of satisfying us about the applicant's organisational competence in:
- (a) two applications for a new AFS licence; and
  - (b) three applications to vary an existing AFS licence.

### **Authorisations not granted in the manner requested**

- 96 During the relevant period, we modified the authorisations sought in 128 cases (with 52 of these relating to new AFS licences and 76 relating to AFS licence variations). Of these:
- (a) in 98 cases, we approved licences with authorisations that were different to those sought by the applicant or refused to grant the authorisation sought; and
  - (b) in 30 cases, we approved authorisations that were specific to that applicant (we refer to this as a 'tailored' authorisation).

### **Applications rejected or withdrawn**

- 97 We will reject for lodgement an application if it does not include all core proof documents. An applicant may also withdraw their application before or after our assessment. 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 not to 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.

- 98 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.
- 99 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 registered managed investment 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.
- 100 We rejected for lodgement 113 applications during the relevant period (68 in relation to new applications and 45 variation applications).
- 101 During the relevant period, 88 AFS licence applications were withdrawn, comprising:
- (a) 36 new AFS licence applications (18 of these related to applications accepted for lodgement but withdrawn before assessment, and 18 were withdrawn after assessment); and
  - (b) 52 AFS licence variation applications (29 of these related to applications accepted for lodgement but withdrawn before assessment, and 23 were withdrawn after assessment).

## Applications refused

- 102 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.
- 103 ASIC must not grant an AFS licence application unless:
- (a) we have no reason to believe that the applicant will be likely to contravene the obligations that will apply under s912A of the Corporations Act if the licence is granted (see s913B(1)(b)); and/or
  - (b) we have no reason to believe that the applicant's responsible officers are not of good fame or character (see s913B(3)(a)(i)).

- 104 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.<sup>10</sup>
- 105 We refused seven AFS licence applications during the relevant period (two of these related to a new AFS licence and the other five related to licence variations).
- 106 We are of the view that the number of AFS licence applications refused would be much higher if applicants did not voluntarily withdraw their applications before the need for a formal determination by an ASIC delegate.
- 107 We refused applications for a range of reasons, including because:
- (a) the applicant provided false or misleading information to ASIC on a number of occasions during our 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.

## AFS licences suspended or cancelled

- 108 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.
- 109 During the relevant period, we suspended nine AFS licences due to the licensee's circumstances (e.g. where the licensee enters into external administration), or as initiated by ASIC. Such suspensions may originate from complaints by the public or from surveillance activities initiated by ASIC or other persons (e.g. a breach notification provided by the auditor or where the licensee fails to comply with the conditions on its licence).
- 110 Where a cancellation or suspension occurs, we may still specify that statutory obligations remain in place. Such obligations may include the continuation of

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<sup>10</sup> Also see *One RE v ASIC* 2012 AATA 294, as discussed at paragraph 99 of REP 433.

professional indemnity insurance, continuation of membership with an external dispute resolution scheme and continuation of the obligation to lodge accounts.

- 111 During the relevant period, we cancelled 98 AFS licences. Of these:
- (a) 82 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. In four cases, ASIC cancelled the licences due to a failure by the licensee to lodge audited annual statements. In a media release, Deputy Chairman Peter Kell said, ‘In our experience, a licensee’s failure to comply with reporting obligations can indicate a poor compliance culture.’<sup>11</sup>

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<sup>11</sup> Media Release (15-100MR) *ASIC cancels AFS licences for failing to lodge annual statements* (5 May 2015).

## C Credit licences

### Key points

During the relevant period, we considered 711 credit licence applications (comprising 590 received during the relevant period and 121 received before the relevant period), and finalised 82% (583) of these in the period.

Of the 583 credit licence applications finalised, we granted 135 new licences and 335 licence variations. Of the 470 credit licence applications (including variations) that we approved during the relevant period, we imposed:

- a key person condition on 207 licences; and
- an additional responsible manager requirement on six licences.

We rejected for lodgement 17 credit licence applications. Ninety-four credit licence applications were withdrawn before we made a formal determination. We refused two applications.

Two credit licences were suspended and 192 credit licences were cancelled.

## Applications and regulatory outcomes

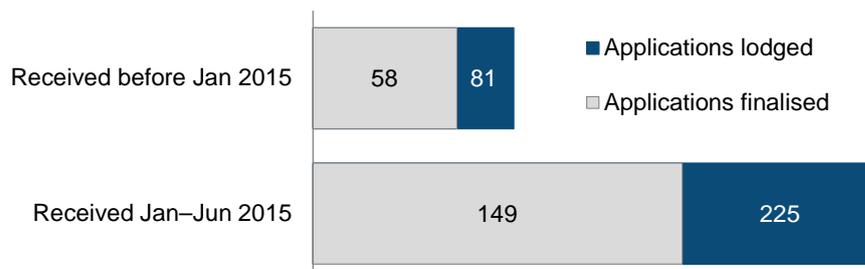
- 112 An application for a credit licence may be rejected for lodgement, approved, withdrawn or refused. An application that is approved may also have additional regulatory outcomes. For more information, see paragraphs 108–110 of REP 433.

## Applications finalised

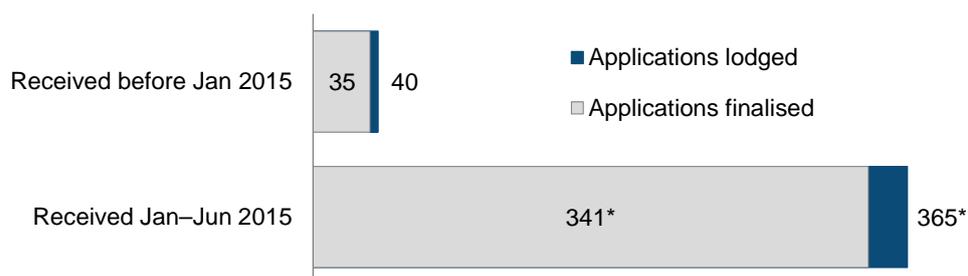
- 113 Figure 10 summarises the number of new credit licence and credit licence variation applications that we finalised during the relevant period in comparison with those lodged.

**Figure 10: Number of lodged and finalised credit licence applications—1 January to 30 June 2015**

### New credit licence applications



### Credit licence variation applications



\* Approximately 220 variations were initiated by ASIC due to a pro forma condition about professional indemnity insurance being removed as this condition was not applicable to the licensee's circumstances.

114 Table 5 provides a breakdown of how the credit licence applications we finalised during the relevant period were decided. A total of 113 applications were either rejected for lodgement, withdrawn by the applicant or refused during the relevant period.

**Table 5: How finalised credit licence applications were decided—1 January to 30 June 2015**

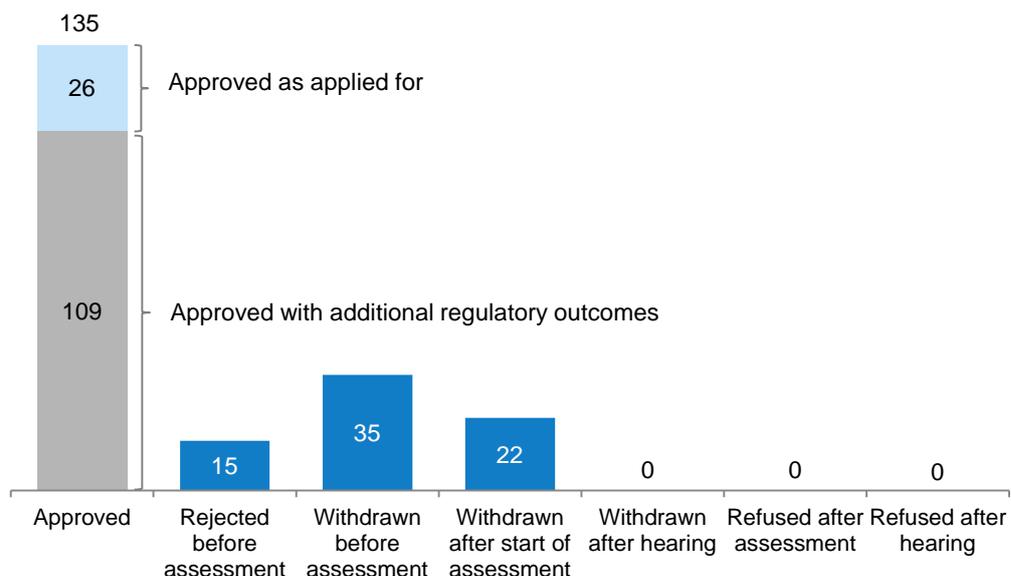
Status of applications finalised Jan–Jun 2015	New credit licence applications		Credit licence variation applications	
	Received/initiated before Jan 2015	Received/initiated Jan–Jun 2015	Received/initiated before Jan 2015	Received/initiated Jan–Jun 2015
Approved (with and without additional regulatory outcomes)	41	94	24	311**
Rejected for lodgement (pre-lodgement)	1	14	0	2
Withdrawn before start of assessment (pre-lodgement)	0	35	5	9
Withdrawn after start of assessment (post-lodgement)	16	6	4	19
Withdrawn after hearing	0	0	0	0
Refused after assessment	0	0	2	0
Refused after hearing	0	0	0*	0*
<b>Total applications finalised</b>	<b>58</b>	<b>149</b>	<b>35</b>	<b>341**</b>

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

\*\* Approximately 220 variations were initiated by ASIC due to a pro forma condition about professional indemnity insurance being removed as this condition was not applicable to the licensee's circumstances.

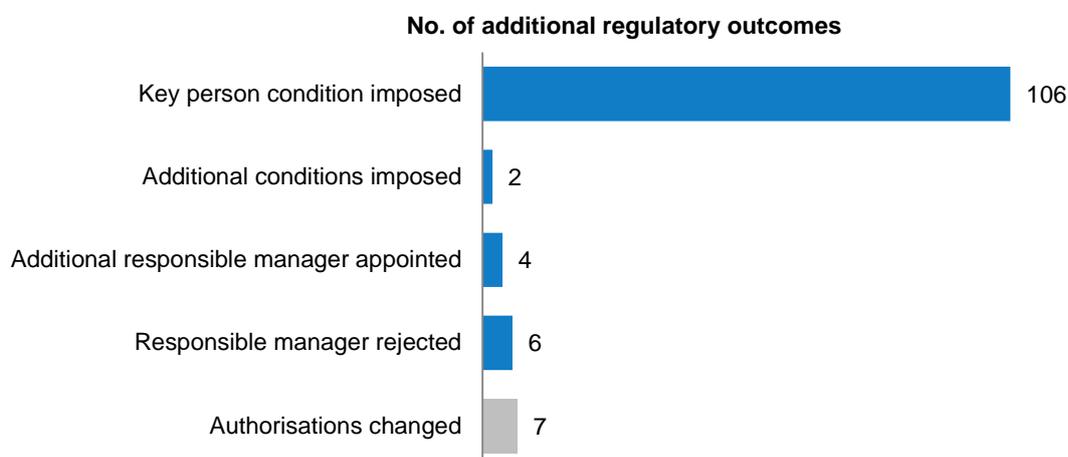
115 Figure 11 shows the status of new credit licence applications we finalised in the relevant period. This graph also shows the number of applications we approved in the form requested by the applicant.

**Figure 11: Number of finalised new credit licence applications by status—1 January to 30 June 2015**



116 Figure 12 shows the new credit licence applications we approved with additional regulatory outcomes during the relevant period, broken down by the type of regulatory outcome.

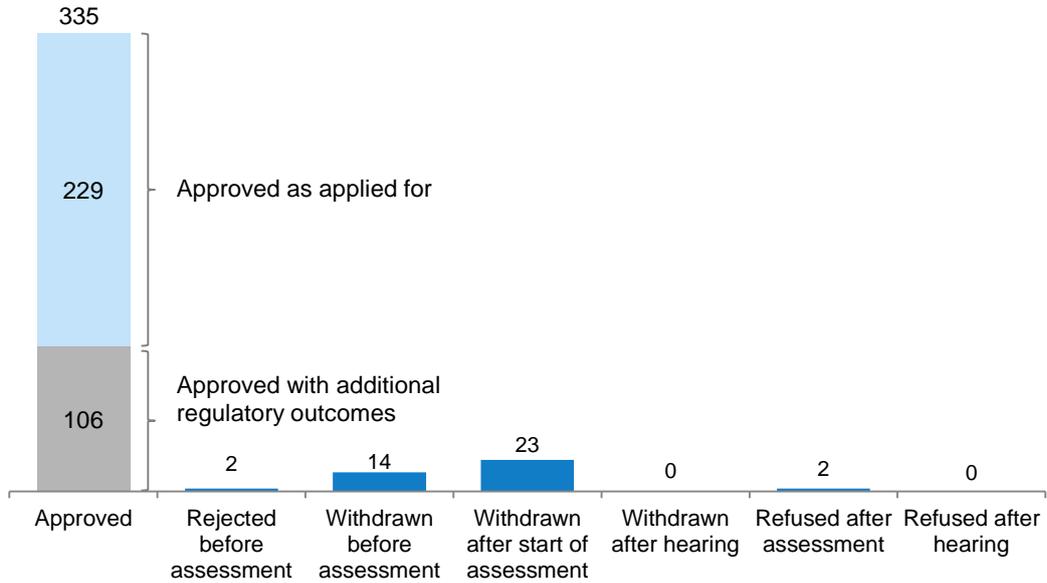
**Figure 12: Number and type of additional regulatory outcomes in approved new credit licence applications—1 January to 30 June 2015**



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.

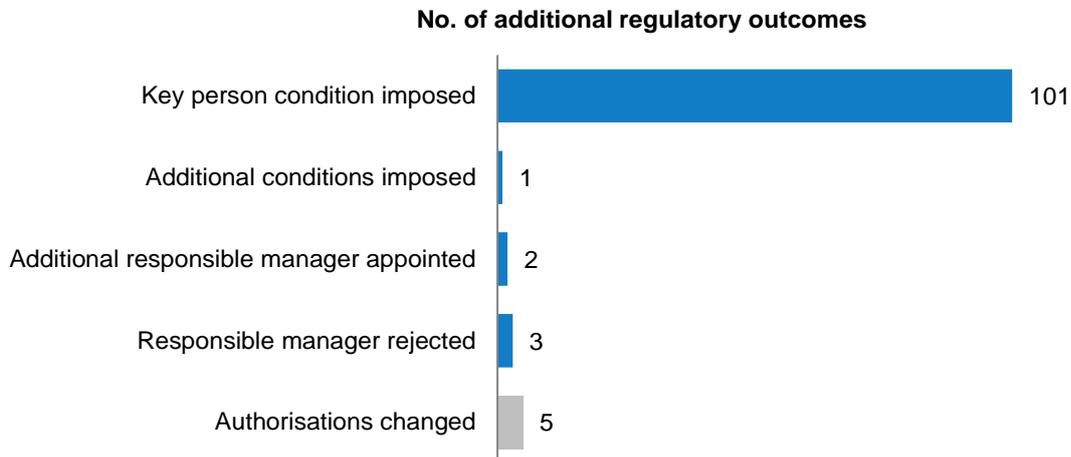
117 Figure 13 shows the status of credit licence variation applications we finalised in the relevant period, with a breakdown of those we approved with additional regulatory outcomes and those we approved in the form requested by the applicant.

**Figure 13: Number of finalised credit licence variation applications by status—1 January to 30 June 2015**



118 Figure 14 shows the credit licence variation applications we approved with additional regulatory outcomes, with a breakdown of the regulatory outcomes achieved.

**Figure 14: Number and type of additional regulatory outcomes in approved credit licence variation applications—1 January to 30 June 2015**



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

119 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 54% of credit licence applications, we granted the licence or variation in the form applied for by the applicant.

### Key person condition

120 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 are named on the credit licence as a key person condition. An example is where a licensee has a sole responsible manager (fit and proper person).

121 During the relevant period, we imposed a key person condition on:

- (a) 106 of the applications for new credit licences (79% of approved applications); and
- (b) 101 of the applications for credit licence variations (30% of approved applications).

### Other conditions

122 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.

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

124 We initiated a variation to one credit licence to add a compliance expert condition, due to the outcome of surveillance by the Deposit Takers, Credit and Insurers team. This condition requires 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 review is documented in written reports and is provided to the licensee and ASIC.

## Responsible managers

- 125 We will require the appointment of an additional responsible manager or managers when our assessment of the application concludes that the nominated responsible managers do not demonstrate sufficient competence for the authorisations sought.
- 126 During the relevant period, we requested the appointment of an additional responsible manager for four new credit licence applications and for two credit licence variation applications. In eight instances, the nominated responsible managers were refused on the grounds of not meeting our organisational competence standards and, in one case, the refusal was due to concerns that the nominated responsible manager would not have the capacity to meet the requirements, given their other commitments, roles, duties and responsibilities with other entities.

## Authorisations not granted in the manner requested

- 127 We approved seven applications for a new credit licence and five for a credit licence variation with changes to the authorisation sought

## Applications rejected or withdrawn

- 128 Applicants may withdraw their licence applications. The most common reason for withdrawals is linked to the quality of the application, where we communicate to the applicant, and the applicant concedes, that the final outcome is likely to be a refusal if the matter proceeds to a hearing.
- 129 The application might lack relevant information or might be linked to individuals who do not meet the competence requirements to perform their duties. Ultimately, however, it is the applicant's decision whether or not to proceed with their application.
- 130 Reasons for credit licence withdrawals are similar to those for an AFS licence, with withdrawals occurring before and after lodgement.
- 131 During the relevant period, we rejected for lodgement 15 new credit licence applications, 35 new credit licence applications were withdrawn before assessment and 22 were withdrawn after our assessment.
- 132 In addition, we rejected for lodgement two applications to vary an existing credit licence, 14 variation applications were withdrawn before assessment and another 23 were withdrawn after our assessment.

## Applications refused

- 133 Under s37 of the National Credit Act, we must refuse a credit 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 103.
- 134 We may also refuse a credit 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.
- 135 We refused two credit licence variation applications during the relevant period.
- 136 We believe that there would have been a number of other credit licence applications refused if applicants did not voluntarily withdraw their applications before the need for a formal determination by an ASIC delegate.

## Credit licences suspended or cancelled

- 137 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) ceases to carry on a financial services business; or
  - (e) applies to ASIC for a suspension or cancellation.
- 138 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.
- 139 During the relevant period, there were 192 cancellations: 30 ASIC-initiated cancellations (non-enforcement) and 162 cancellations initiated by the credit licensee. Two suspensions occurred during the relevant period.

## D Liquidator, company auditor and approved SMSF auditor registrations

### Key points

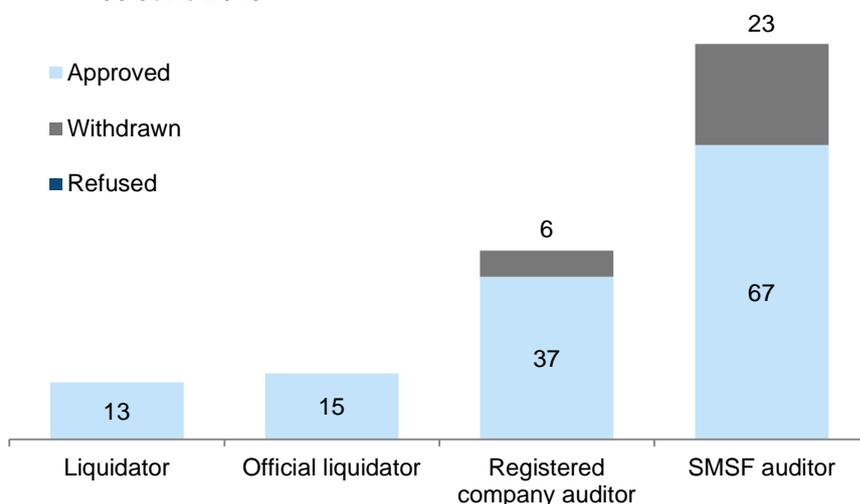
In the relevant period, we:

- approved 13 applications for registration as a liquidator, approved 15 applications for registration as an official liquidator and cancelled the registration of eight registered liquidators;
- registered 37 company auditors, received withdrawal requests from six applicants and cancelled the registration of 104 company auditors and one authorised audit company; and
- registered 67 approved SMSF auditors, received withdrawal requests from 23 SMSF auditors and cancelled 81 SMSF auditor registrations.

### Outcomes of registration applications

140 Figure 15 summarises the outcomes of applications for registration as a liquidator, official liquidator, registered company auditor or approved SMSF auditor.

**Figure 15: Number of finalised liquidator and auditor registration applications by status—1 January to 30 June 2015**



### Liquidators

#### Registration

141 Under s1282(2) of the Corporations Act, we must grant an application for registration as a liquidator if certain requirements are satisfied. For further information on the registration process, see paragraph 136 of REP 433.

142 During the relevant period, we approved 13 applications for registration as a liquidator and 15 applications for registration as an official liquidator.

### **Withdrawals**

143 No applications for registration as a liquidator or 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. We may apply to CALDB to suspend a liquidator's registration: s1292(2) of the Corporations Act.

146 We only have 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 CALDB.

148 During the relevant period, eight registered liquidators voluntarily cancelled their registration, six of whom were also official liquidators.<sup>12</sup>

149 For more detailed information, please see our report specifically covering the regulation of registered liquidators.<sup>13</sup>

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<sup>12</sup> 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 six ceased official liquidators, they were also among the eight registered liquidators who ceased to be registered.

<sup>13</sup> The 2015 report on registered liquidators will be published in the fourth quarter of 2015. For 2014, see Report 430 *ASIC regulation of registered liquidators: January to December 2014* (REP 430).

## Company auditors

### Registration

150 Under s1280 of the Corporations Act, we must grant an application for registration as a company auditor if certain requirements are met. For further information, see paragraph 150 of REP 433.

151 During the relevant period, we registered 37 company auditors.

### Withdrawals

152 Six applications for registration were withdrawn during the relevant period.

### Refusals

153 No applications were refused during this period.

### Suspensions and cancellations

154 There were 104 company auditors and one authorised audit company that ceased to be registered during the relevant period. A common reason for this is the retirement or death of the registered individual.

## Approved SMSF auditors

### Registrations

155 Under s128B of the *Superannuation Industry (Supervision) Act 1993* (SIS Act), we must grant an application for registration as an approved SMSF auditor if the applicant (who must be an Australian resident) meets certain requirements regarding qualifications and practical experience and has passed the competency examination required in the SIS Act. For further information, see paragraphs 159–161 of REP 433.

156 During the relevant period, we registered 67 applicants as approved SMSF auditors.

### Withdrawals

157 Twenty-three applications for registration of an approved SMSF auditor were withdrawn during the relevant period.

## **Refusals**

- 158 We did not refuse any applications for registration as an SMSF auditor during the relevant period.

## **Suspensions and cancellations**

- 159 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.
- 160 During the relevant period, we cancelled 81 SMSF auditor registrations:
- (a) 80 were cancelled at the request of the SMSF auditor. Reasons are not recorded—however, these generally related to retirement, different career path and death; and
  - (b) one was cancelled following action initiated by ASIC—in this case, a disqualification order (not a fit and proper person).

## Key terms

Term	Meaning in this document
ADTR licence	Australian derivative trade repository 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 AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
AFS licensing kit	Regulatory Guides 1–3, including: <ul style="list-style-type: none"> <li>• <i>Part 1: Applying for and varying an AFS licence</i> (RG 1);</li> <li>• <i>Part 2: Preparing your AFS licence or variation application</i> (RG 2); and</li> <li>• <i>Part 3: Preparing your additional proofs</i> (RG 3)</li> </ul>
approved SMSF auditor	Has the meaning given in s10(1) of the SIS Act after 31 January 2013
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
Australian derivative trade repository (ADTR) 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
consumer lease	Has the meaning give in s169 of the National Credit Code
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001
credit legislation	Has the meaning given in s5 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 facilities	Clearing and settlement facilities as defined by s768A of the Corporations Act

Term	Meaning in this document
DHS	Department of Human Services
digital advice	See 'robo-advice'
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
FX	Foreign exchange
investor directed portfolio service (IDPS)	Unregistered managed investment scheme for holding and dealing with one or more investments selected by investors. IDPSs are managed investment schemes because investors have the expectation of cost savings (e.g. through the netting of transactions or the pooling of funds to acquire investments) or access to investments that would not otherwise be available to them
limited AFS licence	An AFS licence that authorises the provision of one or more of the following limited financial services: <ul style="list-style-type: none"> <li>• financial product advice on SMSFs and a client's existing superannuation holdings in certain circumstances;</li> <li>• class of product advice on: <ul style="list-style-type: none"> <li>– superannuation products;</li> <li>– securities;</li> <li>– general and life risk insurance;</li> <li>– basic deposit products; or</li> <li>– simple managed investment schemes (as defined in reg 1.0.02 of the Corporations Regulations); and</li> </ul> </li> <li>• arranging to deal in an interest in an SMSF</li> </ul>
liquidator	A person registered by ASIC under s1282 of the Corporations Act
marketplace lending	Facilitation of loans outside the traditional banking system by connecting borrowers with lenders or investors to expose lenders to the risks and benefits of particular loans via an online platform
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
National Credit Code	National Credit Code at Sch 1 to the National Credit Act
National Credit Regulations	National Consumer Credit Protection Regulations 2010
official liquidator	A person registered by ASIC under s1283 of the Corporations Act
OTC derivatives	Over-the-counter derivatives
relevant period	1 January 2015 to 30 June 2015

<b>Term</b>	<b>Meaning in this document</b>
REP 433 (for example)	An ASIC report (in this example numbered 433)
RG 105 (for example)	An ASIC regulatory guide (in this example numbered 105)
robo-advice	Financial advice that is either completely automated advice (i.e. with no human involvement), or automated advice with some human input
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	Self-managed superannuation fund
trade repository	A derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported

## Related information

### Headnotes

ADTR licence, AFS licence, AFS licensee, application, approved SMSF auditor, authorisation, cancellation, company auditor, credit licence, credit licensee, financial market, foreign exchange, licence variation, liquidator, marketplace lending, official liquidator, OTC derivatives, refusal, registration, rejected for lodgement, responsible manager, robo-advice, SMSF auditor, 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 or variation application*

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

RG 98 *Licensing: Administrative action against financial services providers*

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 180 *Auditor registration*

RG 186 *External administration: Liquidator registration*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

RG 218 *Licensing: Administrative action against persons engaging in credit activities*

RG 243 *SMSF Auditor registration*

### Legislation

Corporations Act, Pts 7.6 (Licensing of financial services providers), 9.2 (Registration of auditors and liquidators) and 9.2A (Authorised audit companies)

Corporations Regulations, Pts 7.6 (Licensing of financial services providers), 9.2 (Registration of auditors and liquidators) and 9.2A (Authorised audit companies)

National Credit Act, Ch 2 (Licensing of persons who engage in credit activities)

National Consumer Credit Protection Regulations 2010, Ch 2 (Licensing of persons who engage in credit activities)

SIS Act, Pt 16 (Actuaries and auditors of superannuation entities), Div 1A (Approved SMSF auditors), Subdiv A (Registration of approved SMSF auditors)

Superannuation Industry (Supervision) Regulations 1993, regs 9A.01, 9A.02, 9A.03, 9A.04, 9A.05 and 14.1

## **Reports**

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*

REP 433 *Overview of licensing and professional registration applications: July to December 2014*

## **Cases**

*One RE v ASIC* 2012 AATA 294

## **Media releases**

15-100MR *ASIC cancels AFS licences for failing to lodge annual statements* (5 May 2015)

15-108MR *ASIC cancels FX company's licence* (12 May 2015)

15-120MR *ASIC requires FX Primus to cease targeting Australian investors* (21 May 2015)

15-211MR *Innovation Hub: ASIC update* (5 August 2015)

15-217MR *ASIC suspends retail OTC derivative licence after change of control* (11 August 2015)

15-233MR *Two overseas entities agree to stop providing unlicensed FX services* (27 August 2015)

## **Information sheets**

INFO 179 *Applying for a limited AFS licence*