



**ASIC**

Australian Securities & Investments Commission

# **A regulator's perspective on key challenges**

*A speech by Tony D'Aloisio, Chairman, Australian Securities and Investments Commission*

*National Consumer Congress 2010*

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Good afternoon and thank you for inviting me to speak with you today at the National Consumer Congress. Congratulations to the organisers for putting on such an important and successful event.

Today I want to talk with you about how ASIC goes about discharging its role of assisting and protecting retail investors and consumers in the financial markets and the financial economy. In doing so, I will convey to you not only the challenges we face but importantly how we have met these challenges for the benefit of retail investors and financial consumers.

Assisting and protecting them is one of ASIC's top 3 priorities in the regulation of financial markets. The other 2 important and complementary priorities for the financial markets are maintaining confidence in the integrity of the capital markets and assisting the inflow of investment and dealing with the aftermath of the global financial crisis.<sup>1</sup>

And our priority of assisting and protecting retail investors and financial consumers is backed by real resources.

Following ASIC's strategic review in 2007/08,<sup>2</sup> we put in place dedicated teams such as the retail investor and financial consumer group and teams to deal with superannuation, financial advisers, investment managers and credit providers. We are therefore tackling this priority on the supply side by working to lift standards and on the demand side by assisting and protecting retail investors and financial consumers.

Each of our 5 Commissioners has a cluster of responsibility for our priorities. This particular priority falls primarily within my role as Chairman and that of Commissioner Medcraft and with the new Credit regime, Commissioner Boxall. I can assure you that the priority has our attention.

It is also important to mention that beyond Commissioner level, we have a number of important senior executive leaders and teams—most notably Delia Rickard, Greg Kirk and Ged Fitzpatrick and their teams who are known to many of you.

In performing our functions we also work extensively with industry and consumer groups (e.g. Consumer Advisory Panel). And of course with other agencies—most notably the ACCC and the various fair trading and consumer groups in the States and Territories.

Two weeks ago, ASIC held its annual Summer School, one of the leading opinion conferences held each year and attended by over 400 participants.<sup>3</sup> Protecting retail investors and financial consumers was a significant focus of the event. A number of

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<sup>1</sup> ASIC has six Strategic Priorities. They are: 1. Assist and protect retail investors and consumers in the financial economy. 2. Build confidence in the integrity of Australia's capital markets. 3. Facilitate international capital flows and international enforcement. 4. Manage the domestic and international implications of the global financial crisis. 5. Lift operational effectiveness and service levels for all ASIC stakeholders. 6. Improve services and reduce costs by using new technologies and processes.

<sup>2</sup> MR08-93 ASIC announces results of its strategic review <<http://www.asic.gov.au/asic/asic.nsf/byheadline/08-93+ASIC+announces+results+of+its+strategic+review?openDocument>> 8 May 2008

<sup>3</sup> ASIC's 15<sup>th</sup> Summer School was held in Melbourne from 1-3 March 2010. It focused on 'Securities and Investment Regulation after the Crisis'.

commentators there, including Catriona Lowe and Professor Dimity Kingsford-Smith, talked about the limits of disclosure and alternative approaches for improving investor and consumer protection—some of which I'll touch on today. Paul Clitheroe noted that the financial crisis had been a great teacher—giving all of us a lesson in how risk and reward really works. Elaine Henry, CEO of the Smith Family, reminded us of that sector of the community bearing the brunt of the financial crisis.

Let me now move to how we are dealing with this important priority of assisting and protecting retail investors and financial consumers.

ASIC's role in this area is, put simply, to implement the regulatory framework.

This framework—notably the Corporations Act—is self-executing. That is, laws are prescribed and it is up to market participants to comply. The underlying philosophy of the Act is to allow markets to operate with a minimum of interference.

The policy is very much influenced by the Efficient Markets Hypothesis and the Wallis Inquiry<sup>4</sup> whose recommendations have shaped our Corporations Act. Put simply, the regulation prohibits certain forms of conduct (e.g. insider trading) and requires disclosure so that financial consumers and retail investors can make an informed choice. The legislation relies on disclosure of risks as the protective mechanism. So you have a balance in the Act between 'buyer be careful' with minimum standards and certain prohibited conduct and disclosure.

It is important to understand this otherwise there may be expectations that cannot be met. For example, risky products are not prohibited. ASIC does not have the role of issuing 'red flags' or to go into board rooms and tell companies what products they can and cannot sell. Product development and release is left to the market.

ASIC's role is very much to oversee the market. Put another way, ASIC is not the guarantor of last resort.

Essentially, if I can use a loose analogy in relation to ASIC's work, people are free to drive on our roads. Accidents happen. We turn up at the scene of an accident. We clear the mess, care for the injured, punish wrongdoers. We examine the intersection and make or recommend changes in width of road or safety barriers.

We use our resources to proactively look for dangers and look for roads where accidents can happen and try and fix them ahead of time. However, we cannot be on every road. It is simply not the intention of the Act and consequently ASIC is not resourced to be on every road and every intersection.

That's not to say, however, that we do not perform an important role. In our oversight role, ASIC does play and deliver important value to retail investors and financial

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<sup>4</sup> On 30 May 1996, the Treasurer established an inquiry into the Australian financial system. The Financial System Inquiry was chaired by Mr Stan Wallis and reported its findings to the Government on 9 April 1997.  
<<http://fsi.treasury.gov.au/content/default.asp>>

consumers and I would like to expand on our role under 3 headings which I have related to the themes of this conference:

- ‘When things go wrong—ensuring consumer complaints are fairly resolved’. Here I’ll talk about our role in enforcement and access to dispute resolution schemes.
- ‘Helping investors make smart choices’. Here I’ll talk about a raft of work we are doing to improve disclosure, education and financial literacy.
- ‘Prevention is better than cure: Getting policy right’. Here I’ll talk about our work with Treasury on policy. ASIC has, essentially, a small ‘p’ role in policy. Primarily to focus on policy issues around our regulatory work and to assist Treasury, which carries prime responsibility for the big ‘P’ policy of the Corporations Act.

I’ll draw examples both from our new credit responsibilities - because I know it is an area that many of you are particularly interested in - and from our retail investor protection work.

I have been Chairman of ASIC for 3 years and see close at hand, each day, the work we do in these areas. Our staff is dedicated and is delivering significant value to the community. Generally speaking they are motivated by working to make a difference in these important public interest areas.

Now, I recognise that protection of financial consumers (e.g. borrowers) is well known but in recent years and following ASIC’s strategic review we have extended this work to include retail investors.

What we have seen in Australia, in recent years, as a product of our good economic times, is increased savings. These savings need to be invested, whether in term deposits, in debentures or superannuation, or other forms of investment.

Protecting this form of wealth is important for Australia, particularly those nearing retirement. It is as important as assisting financial consumers with credit card management or responsible lending. We need to bear in mind that a number of the collapses which followed the GFC involved retail investors.

We do not see ‘investment’ as something for the big end of town. Looking after savings, particularly for retirees who cannot re-enter the workforce, is key to their future.

Let me cover each of the 3 areas to give you an outline on what we are doing.

### **When things go wrong—ensuring consumers’ complaints are fairly resolved**

Under this heading I would like to cover our work on dispute resolution and enforcement—our work in assisting financial consumers without expensive court processes, punishing wrongdoing and recovering money for those who have suffered loss where we can.

Turning to recovery without expensive processes: in the context of Australia's financial services regulatory regime there is a three-tiered system for resolving disputes which ASIC administers.

First, all Australian Financial Services and Credit Licensees are (or will be) required to have an internal complaints handling process that complies with the relevant international standard which has been adopted here.<sup>5</sup> This is not just a tick-a-box exercise on a licensing application. As the Regulator, we seek to monitor how well IDR is working and when there are concerns we will probe further.

For example, for some time now we've received a steady stream of consumer feedback questioning how effectively IDR is working within some general insurers. We are undertaking an inquiry across the general insurance industry to examine claims handling and the set-up and operation of IDR processes. In this way we will be able to test the concerns raised by consumer advocates and look at best practice across the industry.

The second tier of dispute resolution in the financial services sector is the independent external dispute resolutions (EDR) schemes—Financial Ombudsman Service (FOS) and Consumer Ombudsman Service Limited (COSL). All licensees are required to belong to one of these ASIC approved schemes and they help literally thousands of consumers and investors resolve their complaints each year.

A priority for ASIC has been expanding access to these independent, efficient and fair schemes. Consequently, we have made important changes to our regulatory policy which determines whether or not we will approve a scheme. In particular we have:

- Increased the amount that these schemes can award so that by 1 January 2012 they will be able to award up to \$280,000 per complaint (a significant increase, for example, on the \$100,000 limit for financial advice claims that existed when we started work on our recent review)
- We have also made changes so that they can hear complaints involving amounts of up to \$500,000 even though the amount of redress they can provide is lower. This brings many more complaints within the system than the previous status quo where complaints involving more than the monetary limit for redress couldn't be heard.
- In the credit area, we've also worked with consumers, the schemes and industry to ensure that there will be wide access to the schemes, including in limited cases where legal proceedings for default judgments have commenced.

All of this work is important because it will create vastly greater access to the schemes. The challenge now is ensuring that FOS and COSL have the capacity to deal with all of

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<sup>5</sup> Dispute resolution requirements for AFS licensees and credit licensees are set out in the Corporations Act and the National Consumer Credit Protection Act. ASIC regulatory guide RG165 and consultation paper CP112 explain ASIC's dispute resolution requirements and proposals further.

**RG165 Licensing: Internal and external dispute resolution**

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument>

**CP112 Dispute resolution requirements for consumer credit and margin lending**

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Consultation+papers?openDocument>

these extra complaints in a timely manner—and this is something we are presently talking to the schemes about.

Next, enforcement and deterrence ... Operators in the markets need to be aware that ASIC will take strong enforcement action as a deterrent to misbehavior. Examples are:

- banning of licensees
- banning of directors
- seeking jail sentences where there is fraud and other ‘rip offs.’<sup>6</sup>

This deterrence work has been expanded to taking action to recover loss or damages.

For example, the investors in Westpoint-related products had a total capital invested of \$388 million outstanding as at January 2006 (Mums and Dads and retirees in many cases). Since November 2007, ASIC has commenced 19 civil actions seeking to recover funds for investors. Our actions have been against auditors, directors and financial advisers. Following Court approval of ASIC’s most recent settlement with State Trustees Ltd, ASIC actions have recovered \$22 million to date. In overall terms, with recoveries of approximately \$80 million by liquidators, investors will see a potential return to date of some \$100 million of the \$388 million invested and we have a number of actions still before the courts.<sup>7</sup>

Another example is Opes Prime, where ASIC worked with the liquidator to secure the settlement of some \$250 million to be paid out to retail investors.<sup>8</sup> Storm Financial is another matter which ASIC has under investigation, advice will be likely to see what recoveries are available for retail investors.

In some instances, rather than commence actions we may simply intervene in existing proceedings to assist financial consumers.

Streetwise was a case where ASIC intervened in foreclosure proceedings by the lenders who were seeking to enforce ‘Low-Doc’ mortgages.<sup>9</sup> ASIC chose to intervene because the case provided a good vehicle to test the legal and regulatory framework that applies to enforcement action by low doc lenders.

ASIC submitted that it was both unconscionable under the ASIC Act, and unjust under the Contracts Review Act, for lenders to enter into and rely on mortgage securities where the risk of fraudulent conduct and irresponsible lending by an intermediary:

- were inherent in the lenders’ business model,

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<sup>6</sup> In 2008-09, ASIC in collaboration with the CDPP completed 39 criminal proceedings, with 34 criminals convicted, including 19 jailed. ASIC also completed 35 civil proceedings and obtained over \$14.5million in recoveries, costs and fines, with \$13.8million in assets frozen for investors and creditors. ASIC cancelled or suspended 5 AFS licenses, banned 42 people from providing financial services and disqualified 49 directors.

<sup>7</sup> For more information on the steps ASIC has taken to recover funds for the benefit of Westpoint investors, see <https://westpoint.asic.gov.au/>

<sup>8</sup> AD09-135, **Opes Prime Schemes of Arrangement Approved** <<http://www.asic.gov.au/asic/asic.nsf/byheadline/AD+09-135+Opes+prime+schemes+of+arrangement+approved?openDocument>> 4 August 2009.

<sup>9</sup> AD09-169, **Streetwise investors’ retain homes** <<http://www.asic.gov.au/asic/asic.nsf/byheadline/09-169AD+Streetwise+investors%27+retain+homes?openDocument>> 10 September 2009.

- were within the lenders' power to eliminate or manage and
- were beyond the ability of the borrowers to control.

The case looked at where loss caused by the broker should fall—on the lender who had established its lending structure relying on the broker or on the consumer borrowers.

The court found that the loss should fall on the lenders—noting that there is a public interest in ensuring that prudent lending practices are followed and that this includes the conduct of relationships between loan providers, mortgage managers and finance brokers. The judge noted that: 'This must be the case in Low-Doc lending where reliance is placed by the lender on the accuracy of the information provided in the loan application documentation.'<sup>10</sup> The case is now subject to appeal.

Another important matter taken on by ASIC a few years ago also looked at the responsibilities of lenders who relied upon brokers whose conduct was inappropriate—this instance involved systemic problems with car loan lending to remote Indigenous consumers in a number of States.<sup>11</sup> In that matter ASIC worked with the major banks involved to change lending practices, have a number of the loans written off and terms renegotiated other loans and to have a bank pay for an Indigenous Financial Counselor to service the areas where the conduct occurred. We also took direct action in relation to a number of the brokers involved.

This sort of matter will always be a high priority for a regulator because:

- it involved an important issue and real financial consumer detriment;
- it had the potential to achieve systemic change across the industry; and
- the possibility of providing consumer redress was real.

Finally, before I leave enforcement—I would note that many of our most efficient and effective 'enforcement actions' never get to court. A good example of this is our recent work with Citigroup where it came to our attention that some telephone sales of consumer credit insurance may have been misleading or likely to mislead consumers.<sup>12</sup>

In that matter Citigroup cooperated with our investigation and in order to address ASIC's concerns implemented a number of changes to the calling script for its operators and wrote to customers who purchased the CCI product in the problem circumstances in order to resolve any customer concerns, including potentially refunding affected customers in appropriate cases.

<sup>10</sup> Justice Derek Price, *Permanent Trustee Co Ltd v O'Donnell* [2009] NSWSC 902, para 419. 4 September 2009.

<sup>11</sup> MR 06-010, **CBA agrees to change lending practices in remote Indigenous communities** <<http://www.asic.gov.au/asic/asic.nsf/byheadline/06-010+CBA+agrees+to+change+lending+practices+in+remote+Indigenous+communities?openDocument>> 19 January 2006.

<sup>12</sup> AD09-238, **Citigroup responds to ASIC concerns about telephone sales**, <<http://www.asic.gov.au/asic/asic.nsf/byheadline/09-238AD+Citigroup+responds+to+ASIC+concerns+about+telephone+sales?openDocument>> 1 December 2009.



So as you can see we are doing a number of things, to ensure that financial consumer (and retail investor) complaints are fairly resolved. The examples I have given you cover:

- deterrence
- intervention
- resolution before court proceedings
- enabling financial consumers to have their own access to simpler and cheaper resolution schemes

Let me move to the second area I wish to cover.

## Helping investors make smarter choices

Few would doubt, to relate back to the car accident analogy, that if it is easy to read road sign warning of danger and if there is education on road use, accidents could be avoided or risks minimized. While the analogy is not perfect, ASIC uses its regulatory powers to assist retail investors and financial consumers to make smart choices (with the theme of the conference) usually through:

- providing more accessible and relevant disclosure;
- building the capacity of consumers and investors to make decisions; or
- improving market integrity.

Let me go through some examples to illustrate our work.

First, we have been making disclosure more effective. (And while I know many of you believe there has been an over reliance on disclosure as the primary consumer protection mechanism for financial services, I think we can all agree that it remains an essential part of the solution.)

There have been two streams to our recent work on disclosure:

- A series of ‘if not, why not’ approaches where we have said to the providers of some risky products—such as those in the unlisted and unrated debenture area and for property trusts and mortgage trusts—that they need to disclose certain things such as the percentage of their own money they have in an investment, liquidity and so on.<sup>13</sup> This is based on saying, that we think these forms of investment should meet certain benchmarks. If they do not, you should tell consumers and hence ‘if not, why not’. At the same time we’ve produced a guide explaining each of the ‘if not why not’ benchmarks and why they are important as an aid to understanding how risky the investment is.<sup>14</sup> We are working with product

<sup>13</sup> RG69 **Debentures—improving disclosure for retail investors**; CP123 **Debentures: Strengthening the disclosure benchmarks**; RG45 **Mortgage schemes—improving disclosure for retail investors**; RG46 **Unlisted property schemes—improving disclosure for retail investors**

<<http://www.asic.gov.au/asic/ASIC.NSF/byHeadline/New%20regulatory%20documents>>

<sup>14</sup> ASIC has released the following investor guides, ‘Investing in Debentures?’, ‘Investing in Mortgage Trusts?’ and ‘Investing in Property Trusts’, to assist investors to understand these products better.

<<http://www.fido.gov.au/fido/fido.nsf/byHeadline/Brochures>>



providers to ensure that we get the investor guide in the hands of investors at the time they are considering one of these investments.

These are designed to focus the mind of the investor or consumer on what is relevant and what questions should be asked. They are designed to allow the product issuer to ask the same questions.

- The second stream of our disclosure work is focusing on making disclosure shorter and more relevant to consumers and investors. We are part of the team that has produced a six page model Product Disclosure Statement for First HomeSaver accounts. And as part of the Financial Services Working Group, currently finalizing a number of other short form product disclosure statements. The challenge in all of this is making sure that investors have sufficient information to truly understand the proposed investment and the risks and costs associated with it without swamping them with the enormous 100+ page documents.

Another, extremely important stream of our work to enable consumers and investors to make smarter choices, revolves around improving the financial literacy of Australians. There are numerous initiatives under this stream, but for today's purposes I want to focus on just two:

- Ensuring financial literacy is firmly embedded in the new national curriculum for all Australian students from Kindergarten to Year 10—here we have been lobbying the Australian Curriculum, Assessment and Reporting Authority (ACARA), the body responsible for the new curriculum, and have engaged teacher professional associations to help us provide detailed comments on the recently released draft curriculum documents; and
- Equipping the Australian population to better manage their involvement with credit.

There is, of course, a great deal of overlap between both these financial literacy initiatives since credit and budgeting are core financial literacy skills.

On the credit side, as well as the high quality paper and web based materials and tools that people are used to seeing from ASIC, we will also have a 14 person credit outreach team that will work with specific groups within our population and, in particular, with consumer and community workers. They will deliver targeted education programs to those with the greatest need or on issues that are causing the greatest problems within our community such as housing stress.

They will also work closely with our Indigenous outreach team so that we can better reach those most in need of assistance. The very first project of the new credit outreach team is a national road show scheduled for May to educate financial counselors and community workers about the new credit regime, what it means and its implications for how you interact with ASIC, dispute resolution schemes and others.

Another part of our financial literacy work I'll mention is 'Investing Between the Flags'.<sup>15</sup> This is an education initiative targeted particularly at pre-retirees and retirees. It grew out of recent collapses where we saw tragedy after tragedy of hard working Australians losing all of their retirement savings through single investments. The goal of our Investing Between the Flags program isn't to turn us all into Warren Buffet –it is to teach us enough of the basics to avoid the rips and the sharks—basics such as diversification and 'if it sounds too good to be true then it probably isn't true'.

Another area of our work in assisting consumers and investors to make smarter choices, is giving them confidence in the integrity of our markets and the products that are delivered.

Following a major restructure of ASIC we created a number of teams. The goal behind the restructure was to focus on lifting confidence in the integrity of these markets. Influence the conduct and behavior of the supply side. By doing that, retail investors and consumers will be better protected. They will be able to have greater confidence in what is delivered.

Let me illustrate:

- Our Superannuation team realized that many consumers needed advice on their super but couldn't afford it. The team therefore developed our guidance on 'intra-fund advice' which aims to give super fund members greater access to simple and affordable advice about their benefit in their fund.<sup>16</sup> It focuses on advice about contributions, insurance, investment options and financial hardship. It encourages members to take an interest in their superannuation which has in turn paved the way for members to make smarter choices about their super benefit.
- Also relevant is the work of our Financial Advisers team who, as well as presently reviewing whether we need to raise the competency standards of advisers, have a detailed program of industry surveillances planned for the rest of the year and are planning ASIC's next shadow shopping exercise.
- Our deposit takers, credit and insurance team has recently undertaken a 'health check' on the term deposit market. Their review found that seven out of the eight ADIs looked at promoted their term deposits by advertising only the highest term deposit rates, while maintaining lower rates for all other deposit products.<sup>17</sup> The terms which had attractive rates were regularly changed. This dual pricing, coupled with the potential for term deposits to rollover by default if the investor does not take action, creates a very real risk that a retail investor could inadvertently end up in a much lower interest term deposit. ASIC has made a series of recommendations designed to improve outcomes for investors as well as producing a consumer guide. These recommendations have been communicated to industry, as has the

<sup>15</sup> In November 2009, ASIC released 'Investing between the flags – A practical guide to investing' to help investors understand the basic principles of investing. <<http://www.fido.gov.au/fido/fido.nsf/byHeadline/Brochures>>

<sup>16</sup> RG200 Advice to super fund members <<http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument>>

<sup>17</sup> AD10-37, ASIC releases results of term deposit health check, <<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-37AD+ASIC+releases+results+of+term+deposit+health+check?openDocument>> 1 March 2010.

fact that ASIC will again review this sector in 12 months time. This is a good example of ASIC working with the industry to achieve solutions which benefit retail investors and financial consumers.

In this area of helping investors make smart choices, there is a debate on whether ASIC's role should extend to prohibiting or 'red flagging' certain products. This is a policy matter for Government. On the one hand it may better protect retail investors and financial consumers to prohibit use and flag products, but it needs to be balanced against restricting choice and the impact such regulation could have on the efficiency of the financial markets. That efficiency with all its imperfections has delivered substantial benefit for our economy in the past 20 years.

The related issue to this debate is whether disclosure is an adequate tool or whether additional statutory duties should be imposed on manufacturers and distributors of products. An example of this recently has been the duties relating to responsible lending. In other words, a body of literature and analysis is building around the limitation of disclosure to protect and assist retail investors and financial consumers and the possible need to additional protection. Again this is a policy matter for Government.

I now come to the third area I said I would cover.

### **Prevention is better than cure: Getting policy right**

Treasury handles big 'P' policy with ASIC's role being to assist and, as necessary, put its views or provide advice to Government. For the most part, ASIC feeds in its experience and practices in the market. That is a valuable source of independent material for Treasury and Government to assess. ASIC has a Strategic Policy unit and the Office of Chief Economist. These have been created and resourced to enable ASIC to input to small 'p' policy work (e.g. statutory relief and regulatory guides). We also of course respond to Government Inquiries.

Let me illustrate with some examples of our work in the policy area:

Putting to the Ripoll/PJC Inquiry into Financial Products and Services that the two reforms that ASIC thinks likely to have the most significant impact on protecting retail investors are:<sup>18</sup>

- Clarifying the standard of care for advisers by ensuring they act in the best interests of their client (i.e. imposing a statutory fiduciary-style duty to act in the best interests of the clients) and
- Preventing remuneration structures (including asset based fees) that may create conflicts of interest that adversely affect the quality of advice.

In the credit area, two areas to mention:

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<sup>18</sup> Parliamentary Joint Committee on Corporations and Financial Services - Inquiry into Financial Products and Services in Australia <[http://www.aph.gov.au/Senate/committee/corporations\\_ctte/fps/index.htm](http://www.aph.gov.au/Senate/committee/corporations_ctte/fps/index.htm)>. ASIC's Submission dated August 2009 can be found at No. 378 <[http://www.aph.gov.au/Senate/committee/corporations\\_ctte/fps/submissions/sublist.htm](http://www.aph.gov.au/Senate/committee/corporations_ctte/fps/submissions/sublist.htm)>

- First, we worked with the industry association for the reverse mortgages industry, SEQUAL, to ensure that 'no negative equity' guarantees were included in all of their members' products. Reverse mortgages, while addressing a real need, also have the capacity to leave people with insufficient funds in the later years of their lives when they aren't able to recoup losses. These products are being looked at by Treasury in stage two of the credit reforms. You can be assured that ASIC is sharing our experience with this sector, and our concerns about aspects of these products, with Treasury.
- More recently, our focus has been on how we provide guidance on, and implement, the Government's very important new Responsible Lending provisions which are part of the new National Credit regime. Our Regulatory Guide on this issue was released in late February.<sup>19</sup> Going forward we will be closely monitoring its implementation and issuing further guidance or taking enforcement action where needed.

Preventing bad lending practices lies at the heart of both of these credit related themes. We have continuously interacted with the consumer sector in forming our views—and I am sure we will continue to do so.

Finally on the theme of Getting Policy Right, ASIC keenly engages with all its stakeholders. We listen closely to the issues raised with us by our Consumer Advisory Panel and take action in relation to many of those issues—the activities of debt collectors being but one recent example. You are an extremely important early warning system for us.

We assist the consumer sector to participate in policy debates both by providing briefings on issues and, where the body running an important consultation can't or won't provide financial assistance so a consumer submission can be prepared, we have a small portion of the CAP budget that can be drawn upon to ensure that submissions can be compiled and the consumer voice is heard.

And I said earlier, we also work closely with the Financial Literacy Board.

Our consultation does not stop there. We have an External Advisory Panel and hold regular Regional Liaison meetings in each State and Territory.

## Conclusion

Let me conclude. Like you, ASIC is working to ensure that the financial road which retail investors and financial consumers are travelling is easier to navigate and safer.

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<sup>19</sup> 10-32AD ASIC releases guidance for credit licensees about responsible lending obligations

<<http://www.asic.gov.au/asic/asic.nsf/byheadline/10-32AD+ASIC+releases+guidance+for+credit+licensees+about+responsible+lending+obligations?openDocument>> 26 February 2010.

RG209 Credit licensing: Responsible lending conduct

<<http://www.asic.gov.au/asic/asic.nsf/byheadline/Regulatory+guides?openDocument>> February 2010.

I hope that the examples which I have used demonstrate our achievements and through those you can appreciate our challenges:

- that through our enforcement actions, we are working to ensure consumer complaints are fairly resolved and retail investor losses recovered;
- that we are using our power of compliance and surveillance to enable consumers to make smarter choices; and
- that we are using our role in policy, to assist in setting policy, to set small 'p' policy regulation and assist Government with big 'P' policy.

To go back to the car accident analogy, we use a range of tools to minimize accidents. In doing that we use our regulatory powers to the maximum extent possible. Ultimately, however, the policy of the Corporations Act is for ASIC as an oversight body. ASIC is not a guarantor of last resort. In the end, under our current regulatory regime, retail investors and financial consumers will carry risk and need to continue to be vigilant in protecting themselves.

Thank you.