



A YEAR OF achievement

ASIC Annual Report
09–10



ASIC

Australian Securities & Investments Commission

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ASIC

Australian Securities & Investments Commission

TONY D'ALOISIO

Chairman

100 Market Street, Sydney
GPO Box 9827 Sydney NSW 2001
DX 653 Sydney

7 October 2010

The Hon David Bradbury, MP
Parliamentary Secretary to the Treasurer
Parliament House
CANBERRA ACT 2600

Dear Mr Bradbury,

In accordance with subsection 136(1) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), I am pleased to present you with the annual report of the Australian Securities and Investments Commission (ASIC) for the year ended 30 June 2010.

The report has been prepared in accordance with section 136 of the ASIC Act and the *Requirements for annual reports for departments, executive agencies and FMA Act bodies*, approved by the Joint Committee of Public Accounts and Audit in June 2010.

The theme of our report is 'A Year of Achievement' to emphasise the outcomes and benefits ASIC is delivering within its areas of responsibility.

I note that under subsection 136(3) of the ASIC Act, a copy of this report will be tabled in each House of Parliament within 15 sitting days of that House after the day on which you receive the report.

Yours sincerely,

Tony D'Aloisio

Chairman

AT A glance 09–10

We're using

the full suite of regulatory powers to assist and protect investors

... working hard

to educate and protect investors, recover investors' money when such actions are warranted, and punish wrongdoers

... building confidence

in Australia's financial system through well-informed industry surveillance and compliance

ASIC's role

Under s1(2) of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), ASIC is responsible for:

- ♦ maintaining, facilitating and improving the performance of the financial system
- ♦ promoting confident and informed participation in the financial system

- ♦ administering laws effectively and reducing regulatory costs
- ♦ receiving and managing information and making public information available as quickly as possible
- ♦ enforcing the law.

ASIC's vision

For our functions in the financial economy: to exercise our powers to make a real difference by improving confidence in financial market integrity and protecting investors and consumers.

For our functions in the real economy: to deliver outstanding and cost-effective services.

For our priorities and outcomes, see pages 20 and 54.

... deterring

illegal behaviour by pursuing legal cases, including difficult ones where it's in the public interest to test important principles and clarify the law

... advising

on changes for improving the regulatory regime in Australia and overseas

... accepting

new responsibilities to improve markets and streamline oversight of areas, including consumer credit, ASX supervision and the registration of business names nationally

ASIC's activities

ASIC regulates 1.77 million companies across Australia, 4,874 financial services businesses and 16 financial markets.

ASIC works to improve Australia's financial system, including superannuation, managed funds, insurance, credit, deposit-taking and financial advice.

We also work to protect and educate retail investors and financial consumers.

ASIC works with Australian and international regulators on the regulatory reform agenda in financial markets, and gives advice to Australia's Commonwealth Government to aid its policy formulation and decision making.

ASIC's budget

ASIC's operating expenditure for 2009–10 was \$386.6 million.

ASIC's people

ASIC maintained an average of 1,932 full time employees in 2009–10 in offices in every state and territory.

ASIC's governance

ASIC is a Commonwealth Government body, led by six Commissioners, accountable to the Minister and the Parliament under the ASIC Act, and through administrative and judicial review.

chairman's REPORT

I am pleased to report that ASIC continues to deliver results for all our stakeholders – for the 1.77 million businesses that are registered through ASIC, the 4,874 licensees we license, and the many consumers, investors and creditors who rely on our work.

There have been many significant achievements this year, along with a few setbacks in high-profile court cases. This report details these achievements in 2009–10 in terms of our six strategic priorities, which relate to the financial economy and the real economy.

Our four financial economy priorities focus on retail investors, capital market integrity, capital flows and managing the domestic and international implications of the global financial crisis (GFC). Our two real economy priorities centre on lifting operational effectiveness and using new technology and processes to improve services and reduce costs. These will remain our priorities in the coming year, though we will gradually shift to a renewed focus on assisting small to medium business as the financial crisis abates.

Economic recovery

The dominant feature of the past year was the recovery in financial conditions after the extreme weakness seen during the GFC.

The ASX All Ordinaries Index rose by 9.5% in 2009–10. The S&P 500 in the United States rose by 11.6%. Credit markets also eased and companies continued to reduce gearing levels. The initial public offering (IPO) market bounced back, with \$11.5 billion raised, compared with only \$1.9 billion in 2008–09.

Even so, total market values remained below historical highs and there was continued volatility. Many businesses and individuals also continued to grapple with capital losses and other issues caused by the downturn.

Assisting retail investors

In this fragile environment, ASIC worked hard to assist and protect retail investors by promoting financial literacy, improving the quality of information given to investors and vigorously enforcing the law.

During the year, ASIC published a wide range of educational material and forced greater disclosure from those seeking to raise funds. We also completed 30 civil proceedings and obtained more than \$287 million in recoveries, costs and fines, with \$15.5 million in assets frozen.

A key focus has been to use s50 of the ASIC Act to seek compensation for investors who lose funds through failed investment schemes. This was done in the case of Westpoint, which collapsed in 2006, owing \$388 million to approximately 4,000 investors. Actions launched by ASIC have so far recovered \$24.5 million for Westpoint investors. Another \$49.2 million obtained through the liquidation process has also been distributed, a figure that is expected to reach \$56 million. Returns from companies not in liquidation are expected to reach \$22.5 million.

In all, investors are expected to see a return of about \$100 million of the \$388 million in losses. Further Westpoint proceedings are continuing with respect to directors, auditors and three Australian Financial Services (AFS) licensees. ASIC hopes to resolve more of these claims during 2010–11.

We also investigated the collapse of Storm Financial Limited. At the end of the financial year, ASIC was engaged in confidential

discussions seeking a commercial resolution that could be recommended to investors. This was one of numerous ongoing investigations.

Improving confidence in market integrity

Confidence is the bedrock of Australia's financial markets. ASIC increased its focus on continuous disclosure and deterring market abuse, such as insider trading and market manipulation.

We have 11 industry teams covering the key participants and gatekeepers in our financial markets, including accountants and auditors, corporations and emerging mining and resources interests, investment banks, investment managers, superannuation funds, financial advisers, brokers and market operators. These teams engage in extensive surveillance and compliance work aimed at lifting standards and, ultimately, confidence.

At year-end, ASIC had 69 enforcement matters relating to market integrity underway and achieved eight significant outcomes from 1 July 2009 to 30 June 2010 – one conviction for insider trading, one conviction and one civil penalty for market manipulation, one conviction and one civil penalty for making false and misleading statements to the ASX, and the banning of three stockbrokers from providing financial services due to market misconduct.

In other activities, ASIC reviewed the financial reports of 480 listed and unlisted entities, inspected audit firms and external administrators, and contributed to a range of government inquiries.

Engaging in global regulatory change

Through our membership of the International Organization of Securities Commissions (IOSCO), ASIC has influenced global policy responses to the GFC. We co-led work on the regulation of securitisation and credit default swap (CDS) markets, and played an active role in IOSCO's work on supervising hedge funds, over-the-counter (OTC) markets, regulating credit rating agencies and regulatory cooperation in the supervision of cross-border activity.

This involvement led to a recommendation that the Government amend Australia's *Corporations Act 2001* to further manage short selling activity, and guided ASIC's approach to licensing for credit rating agencies operating in Australia. It also informed our investigations of local hedge fund issues.

Real economy

ASIC continued to provide a high quality of service to businesses and individuals through our registry, licensing, contact centre and other real economy operations. We registered 157,667 new companies during the year and saw Australia recognised by the World Bank as the second fastest, and third easiest, place in the world to start a business where a strong regulatory framework is in place.



Chairman's report (continued)

ASIC also received 13,372 complaints from the public alleging misconduct and breaches of licence conditions. We took court action against 726 company directors, resulting in the successful prosecution of 554 individuals.

The ASIC Contact Centre fielded 646,770 phone calls and 63,827 emails – 8,000 more emails than in the previous year, with 98% being answered within two business days.

ASIC Summer School

The 15th ASIC Summer School was held in March 2010 in Melbourne and attracted 290 external participants from Australia and overseas, as well as 76 ASIC delegates, including Commissioners and senior leaders. It featured in-depth analysis of the issues, current thinking and the challenges for regulation of global and local securities markets following the GFC.

The Summer School is an important forum promoted by ASIC to broaden public policy debate. For more information, see www.asic.gov.au/summerschool.

New responsibilities

Highlighting the Government's confidence in ASIC, the organisation has been charged with a number of new responsibilities.

Markets supervision

ASIC assumed responsibility from the ASX for the supervision of trading on Australia's licensed equity, derivatives and futures markets on 1 August 2010. To manage a seamless transition, we put in place an integrated market surveillance system and developed a streamlined markets analysis methodology and relationship management model. We also built and trained a quality Market and Participant Supervision team within ASIC.

In a related activity, we commenced work on the regulatory implications of the Government's in-principle approval to introduce competition between markets for trading in listed shares in Australia and the approval of a new licensed market operator. This would effectively introduce a competitor to the ASX and require a regulatory framework that considers, among other things, market stability and rules about best execution and pre- and post-trade transparency.

Consumer credit

On 1 July 2010, ASIC became the national regulator for consumer credit and finance broking. This means that home loans, personal loans, credit cards, consumer leases, pre-arranged overdrafts and line of credit accounts, among other products and services, are now regulated under Commonwealth legislation and administered by ASIC.

Consumer credit was formerly regulated by the states and territories. The transfer to ASIC has involved extensive engagement with industry and other stakeholders, education and the establishment of an efficient registration and licensing process. Over 14,700 credit businesses registered with ASIC prior to 1 July 2010. ASIC also expanded its team and number of call centres to accommodate this expanded workload and increase in inquiries.

Trustee companies

On 6 May 2010, ASIC became responsible for the regulation of trustee companies.

Consumer Law

As part of the new Australian consumer law, from 1 July 2010, ASIC administers laws to deal with unfair terms in consumer contracts for financial products and financial services.

National Business Names

From April 2011, ASIC will be responsible for the National Business Names register. We are taking over this responsibility from the states and territories and working with the Australian Taxation Office (ATO) to cut time and costs for business to register under a new national regime.

Refined structure

On 28 June 2010, ASIC refined its operating structure to ensure we continue to efficiently and effectively deliver our functions.

The structure put in place in 2008 has been retained, but there has been a reallocation of responsibilities between the Chairman and Deputy Chair. ASIC's Market Integrity teams were also placed under the new Commissioner, Shane Tregillis. These changes will rebalance work within the Commission and ensure there is

a full-time Commissioner to oversee the critical transfer of surveillance from the ASX and the proposed introduction of market competition.

ASIC also streamlined its team structure, reducing the number of deterrence teams from eight to six, and reducing 14 stakeholder teams to 11. This enhancement of operational efficiency is aimed at maximising positive outcomes for consumers and investors and improving the service we deliver to stakeholders.

.....

ASIC refined its operating structure to ensure we continue to efficiently and effectively deliver our functions.

.....

Commission changes

ASIC welcomed the appointment of Shane Tregillis to the Commission and Belinda Gibson to the position of Deputy Chair.

Mr Tregillis was appointed as an ASIC Commissioner on 7 May 2010 and brings more than 20 years of experience in senior regulatory roles in Australia and Singapore. Prior to his appointment, Mr Tregillis was Deputy Managing Director (Market Conduct) of the Monetary Authority of Singapore, and he formerly held senior executive positions within ASIC.

Ms Gibson has been a Commissioner since 2007 and was formerly a Partner at law firm Mallesons Stephen Jaques. She has extensive knowledge of corporate governance and accounting practices in Australia.

These changes follow the departure of Deputy Chairman Jeremy Cooper to chair the Government's review of the Australian superannuation system from July 2009. Mr Cooper completed a five-year term as a Commissioner and Deputy Chairman, and ASIC is grateful for his excellent contribution.

Our people

The contribution of ASIC staff, their dedication and their desire to make a difference in public service is at the heart of ASIC's achievements. The community is fortunate to have such a dedicated group of people.

We launched the ASIC Senior Executive Leadership Program to support and drive the required culture to better enable ASIC to deliver on its strategic objectives. This involves assessment, executive coaching and development through the Macquarie Graduate School of Management.

As part of our commitment to developing the credentials of our professional staff, ASIC established the Lawyer Network Mentor Program. More than 100 ASIC lawyers are now being mentored by more senior staff, building legal excellence and supporting retention of critical skills.

ASIC introduced a new learning management system to facilitate online learning programs, webinars and podcasts, and Communities of Practice continue to be used to encourage networks of knowledge. We also ran a program to better understand our approach to employment.

Community involvement

Staff donate a proportion of their pay to 25 charities through ASIC's Workplace Giving program, as well as making a substantial contribution to the community through other fundraising and environmental initiatives.

This year, ASIC's people donated a total of \$137,000 through Workplace Giving and other events. They also gave their time through volunteering and providing pro bono professional services. ASIC supports these activities by providing staff with a day of paid volunteering leave.

Outlook

In 2010–11, ASIC will focus on implementing its significant new responsibilities, while ensuring we continue to deliver for all stakeholders in our six strategic priority areas.

On behalf of the Commission, I would like to thank all our stakeholders for their support during the year. I am particularly grateful for the contributions of the External Advisory Panel, the Australian Government Financial Literacy Board, the Market Advisory Panel and the Real Economy Business Advisory Committee. I'm also grateful to my fellow Commissioners and to our staff for their role in delivering the achievements outlined in this report and more broadly.

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Commissioners

Tony D'Aloisio, Chairman

BA, LLB (Hons)

Mr D'Aloisio became ASIC Chairman on 13 May 2007 for a four-year term. He held the position of ASIC Commissioner between 22 November 2006 and 13 May 2007.



Mr D'Aloisio has extensive commercial and legal experience and has been involved in business policy and regulation.

From 2004 to 2006, he was Managing Director and Chief Executive Officer at the Australian Stock Exchange. Before this, he was Chief Executive Partner at Mallesons Stephen Jaques from 1992 to 2004. Mr D'Aloisio joined Mallesons in 1977 where he practised as a commercial lawyer until taking up his role as Chief Executive Partner.

As ASIC Chairman, he has been an active member of the International Organization of Securities Commissions (IOSCO) Technical Committee and the IOSCO Executive Committee (since 2007), including co-chairing its Task Force on Unregulated Markets and Products. He is the Chair of the international Joint Forum, which is made up of senior bank, insurance and securities supervisors representing IOSCO, the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors.

Prior to joining ASIC, Mr D'Aloisio held a number of directorships and was on the Board of Taxation from 2002 to 2004.

Belinda Gibson, Deputy Chair

BEc, LLB (Hons), LLM (Hons)

Ms Gibson was appointed as ASIC Deputy Chair on 7 May 2010, having become a Commissioner on 5 November 2007.



Prior to her appointment, Ms Gibson was a Partner at Mallesons Stephen Jaques where she specialised in transactional advice and in corporate and securities law. Ms Gibson has managerial experience through her role as Partner in Charge of the Sydney office of Mallesons from 2000 to 2003. Through her practice she has extensive knowledge of corporate governance and accounting practices in Australia.

She was also a director of Air Services Australia from 2001 to 2004, and a charitable body, the Sir Robert Menzies Memorial Foundation, from 1990 to 2007.

Dr Peter J. Boxall AO

BEc (Hons), MEd, PhD

Dr Boxall joined ASIC as a Commissioner on 2 February 2009.



Dr Boxall was previously Secretary of the Department of Resources, Energy and Tourism, following six years as Secretary of the Department of Employment and Workplace Relations and five years as Secretary of Finance and Administration with the Australian Government.

He is an economist, with a doctorate from the University of Chicago.

Dr Boxall commenced his career with the Reserve Bank of Australia (RBA), then spent seven years at the International Monetary Fund (IMF) in the United States, followed by graduate studies at the University of Chicago and a graduate fellowship at The Brookings Institution.

On returning to Australia in 1986, Dr Boxall joined the Department of Treasury. He was Senior Economic Adviser to the Leader and Deputy Leader of the Opposition in the late 1980s and early 1990s. He was Secretary of the Department of Treasury and Finance in South Australia, then Principal Adviser to the Treasurer, the Hon Peter Costello MP.

In 2007, Dr Boxall was made an Officer of the Order of Australia (AO) for services to economic and financial policy development and reform in the areas of accrual budgeting, taxation and workplace relations.

Greg Medcraft

BComm

Mr Medcraft joined ASIC as a Commissioner on 2 February 2009.

Prior to joining ASIC, Mr Medcraft was Chief Executive Officer and Executive Director at the Australian Securitisation Forum (ASF).

He spent nearly 30 years in investment banking at Société Générale (SG) in Australia, Asia, Europe and the Americas, where he became the Managing Director and Global Head of Securitization based in New York. Prior to his roles at SG, Mr Medcraft was a chartered accountant at KPMG.

In 2002, Mr Medcraft co-founded the American Securitization Forum and was its Chairman from 2005 until 2007, when he returned to Australia.

Mr Medcraft has been a director on the boards of various fund management companies both in Australia and overseas.

He has also been actively involved in the community, including as former Mayor of Woollahra (NSW) and Box Hill (Vic.), former Director and Deputy Chairman of KU Children's Services Pty Ltd and Director of the American Australian Association (AAA).



Michael Dwyer

MBA

Mr Dwyer became a Commissioner on 16 February 2009.

He has extensive experience as a chartered accountant and an



insolvency practitioner, including a term as National President of the Insolvency Practitioners Association of Australia. He also held positions as the National Chairman of the Business Recovery Group at Howarth Australia Ltd and as Partner in Charge of Corporate Recovery Practice at KPMG in Adelaide. Mr Dwyer has strong international knowledge of financial and operational restructuring.

Shane Tregillis

BComm, LLB, MComm

Mr Tregillis was appointed as an ASIC Commissioner on 7 May 2010.

He has over 20 years experience in senior regulatory roles in Australia and Singapore.

Prior to his appointment, Mr Tregillis was Deputy Managing Director (Market Conduct) of the Monetary Authority of Singapore, where he was responsible for capital market and business conduct regulation in Singapore. He was also Chair of the Financial Education Steering Committee.

Before joining MAS in November 2001, Mr Tregillis was Executive Director, Policy and Markets Regulation and a member of the National Executive Committee at ASIC. In this position he was responsible for regulatory policy, corporate finance (fundraising and takeovers) and markets regulation. He held senior executive positions at ASIC and its predecessors, with a wide range of regulatory and management responsibilities covering major market and clearing and settlement reforms, transition from the ASC to ASIC, and implementation of the managed investments regime.

Mr Tregillis has been actively engaged in international and regulatory developments, including as co-chair of the IOSCO-CPSS Joint Task Force on securities settlement systems.



Financial summary

ASIC's use of taxpayers' money for the outcomes approved by Parliament

	2009–10	2008–09	2007–08
Operating expenses			
Total	\$387m	\$295m	\$274m
Annual change	+31%	+8%	+7%
Fees and charges raised for the Commonwealth			
Total	\$582m	\$552m	\$545m
Annual change	+5%	+1%	+5%

Raised for the Commonwealth

ASIC raised \$582 million for the Commonwealth in fees and charges, up 5% in 2009–10, largely due to an increase in the number of newly incorporated companies over recent years.

ASIC expenses increased to \$387 million to sustain operations, further enhance ASIC's monitoring and enforcement capabilities, and prepare for the implementation of consumer credit regulation and the supervision of real-time trading on Australia's domestic licensed markets. There was also an increase in deterrence activities funded from the Enforcement Special Account.

\$582 million raised for the Commonwealth in fees and charges, up 5% in 2009–10

Appropriations and revenue

ASIC received \$370 million in appropriations and \$11 million in revenue from the sale of services and other sources, including \$1.6 million in recoveries for court and investigation costs.

In the Portfolio Budget Statements for 2010–11, ASIC received additional funding across the next four years of:

- ♦ \$53 million for the expansion of the Australian Business Number and Business Names Registration System
- ♦ \$5 million for sustaining the capabilities of the Superannuation Complaints Tribunal.

See ASIC's financial statements on page 82.

Parliament funds ASIC to achieve the following outcomes:

- ♦ improved confidence in financial market integrity and protection of investors and consumers through research, policy, education, compliance and deterrence that mitigates emerging risks
- ♦ streamlined and cost-effective interaction and access to information for business and the public through registry, licensing and business facilitation services.

ASIC outcomes*

	2009–10	2008–09	Change
Improved confidence in financial market integrity and protection of investors and consumers through research, policy, education, compliance and deterrence that mitigates emerging risks	\$301.5m	\$240.1m	+26%
Streamlined and cost-effective interaction and access to information for business and the public through registry, licensing and business facilitation services	\$85.0m	\$54.7m	+55%
Total	\$386.6m	\$294.8m	+31%

* Internal service costs are apportioned to these outcomes (more on page 54).

ASIC received \$370 million in appropriations and \$11 million in revenue from the sale of services and other sources.



ASIC staff in Perth took part in a team-building cricket match in February this year.

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Regulating through and beyond the crisis

Global and Australian financial conditions improved through much of 2009–10 after the extreme turbulence of the previous year, but markets remain volatile and fragile. Australia continues to fare better than most, both financially and economically, but Australian markets have not been immune to shocks from abroad and sharp swings in expectations.

The global economic improvement in 2009–10 was driven by an unprecedented combination of fiscal and monetary stimulus and recapitalisation of many systemically important financial institutions. However, since the start of 2010, concern has arisen over the sustainability of sovereign debt burdens, especially in some European countries, and the flow-on implications for holders of those debts. With many major developed economies running significant government budget deficits and high government debt-to-GDP ratios, markets have begun to anticipate greater fiscal restraint, paring back expectations of further global economic recovery.

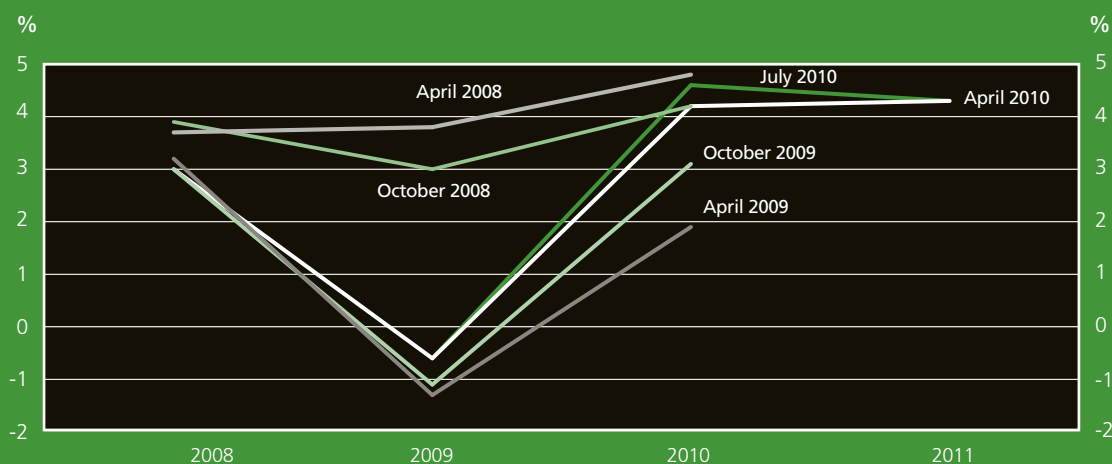
Important steps have been taken in 2009–10 to reduce the likelihood of a recurrence of the conditions that led to the GFC.



Alex Erskine, Chief Economist

Important steps have been taken in 2009–10 to reduce the likelihood of a recurrence of the conditions that led to the GFC.

IMF global real growth outlook



Source: IMF

Discussions on possible major reform to banking sector liquidity and capital requirements are in progress within the Basel framework. The UK, France and Germany have announced plans to implement a bank tax to repay bailout funds, and which will also provide funding for any future bailout, if required. The US also recently passed the US Financial Regulation Reform Bill.

The ASX All Ordinaries rose by 9.5% in 2009–10, despite a significant market contraction from mid-April 2010. In 2009–10 the US S&P 500 Index rose similarly, by 11.6%.

However, from 15 April to 30 June 2010 there was a significant decline in global equity markets. During this period, the ASX All Ordinaries Index fell 13.9% and the S&P 500 fell 14.9%.

When credit markets began to thaw in 2008–09, market pressures eased somewhat on companies with complex and geared business models. Companies, however, continued to de-leverage their balance sheets throughout 2009–10 by retiring debt, issuing new equity capital and/or increasing cash holdings.

The ASX All Ordinaries rose by 9.5% in 2009–10, despite a significant market contraction from mid-April 2010.

Secondary issuance on the ASX in 2009–10 was valued at \$58.8 billion, down by one-third from the previous year. It is likely the decline was due primarily to continuing business caution, the lower debt-to-equity ratios in the corporate sector and a much better capitalised financial sector.

Capital raised from Initial Public Offerings (IPO) was valued at \$11.5 billion in 2009–10 – well above the \$1.9 billion raised in the previous financial year. Drivers of this recovery include higher equities market valuations (and hence increased market confidence) as well as pent-up activity following very low issuance in 2008–09.

Australian All Ordinaries and US S&P 500

S&P 500 Index

ASX All Ordinaries Index



Source: Bloomberg

Regulating through and beyond the crisis (continued)

ASX domestic equity market capitalisation reached \$1.3 trillion in June 2010, having risen by 14.1% in the 2009–10 financial year.

Average end-of-day bid–ask spreads for the 50 largest companies listed on the ASX fell to 0.55% in 2009–10, down from 1.04% in 2008–09. This is indicative of increased liquidity in Australian equity markets, driven by improved investor sentiment. By comparison, in 2009–10 the average bid–ask spreads for the largest 50 stocks were 0.08% on the New York Stock Exchange, 0.09% on the London Stock Exchange and 0.24% on the Toronto Stock Exchange.

Share market trading volumes in 2009–10 on average were higher than in 2008–09, but showed an overall tendency to decline, falling from a daily average of \$1,982 million in August

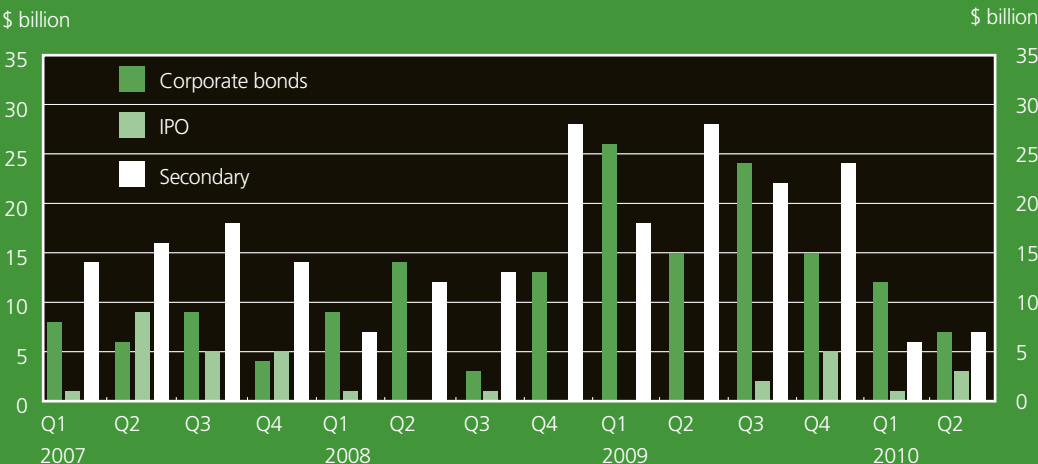
2009 to a low of \$1,055 million in December 2009. In June 2010 average daily trading volume reached \$1,248 million per day.

ASX domestic equity market capitalisation reached \$1.3 trillion in June 2010, having risen by 14.1% in the 2009–10 financial year. ASX domestic equity market capitalisation remained approximately 23.7% below the \$1.6 trillion peak reached in September 2007. In June 2010 there were 2,192 firms listed on the ASX – a slight reduction from the 2,198 firms listed in June 2009.

Corporate credit risk (more specifically, the risk of default) can be measured via the credit default swap (CDS) spread on a firm's debt. CDS spreads hence provide an overview of credit and financial conditions, as perceived by the market.

CDS spreads for Australian corporations, as measured by the iTraxx Australia CDS index, declined by 29.3% during 2009–10, implying that the market's perception of the credit risk of Australian corporations has improved. This development has been driven in part by the general de-leveraging by Australian corporations.

Australian corporate bond and equity issuance (IPO and secondary issues)



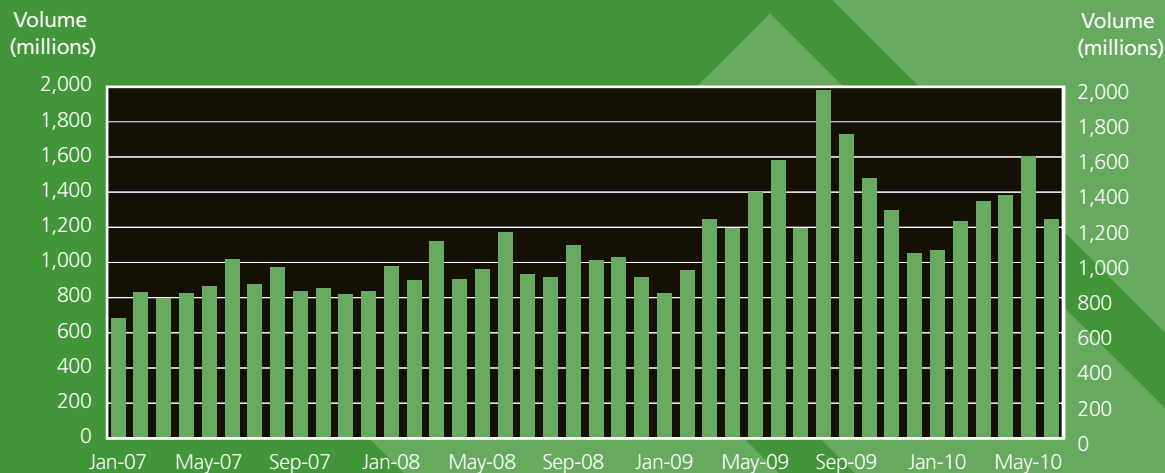
Source: Bloomberg and ASX

International and Australian debt market conditions also improved in 2009–10, although global liquidity has not returned to its pre-GFC level. Corporate bond issuance in Australia reached \$58.1 billion in 2009–10, up slightly from \$57.4 billion in 2008–09. In 2009–10, financial corporations raised \$56.2 billion through corporate bond issues while \$1.9 billion was raised by non-financial corporations. Despite the significant bond issues in the 2009–10 financial year, the vast majority of this issuance occurred in the third and fourth quarters of 2009 as firms sought to lock in future funding.

The Australian securitised mortgage market remained subdued during 2009–10. From June 2009 to March 2010, the value of securitised mortgages outstanding fell 14.7% to \$122.3 billion.

International and Australian debt market conditions also improved in 2009–10, although global liquidity has not returned to its pre-GFC level.

Average daily trading volume by month



Source: Bloomberg

year of action

Deterrence: summary and major actions

Criminal and civil prosecutions

With the Commonwealth Director of Public Prosecutions (CDPP), ASIC completed 23 criminal proceedings in 2009–10, with 22 criminals convicted, including 12 jailed.

ASIC's deterrence actions led to three convictions for market misconduct, including insider trading, manipulation and providing false information.

We completed 30 civil proceedings and obtained more than \$287 million in recoveries, costs and fines, with \$15.5 million in assets frozen.

ASIC was successful in 94% of civil litigation and 80% of criminal matters – an average of 91% overall. We concluded 156 matters during the year.

ASIC completed 23 criminal proceedings in 2009–10, with 22 criminals convicted, including 12 jailed.

Opes Prime

ASIC investigated issues arising from the collapse of Opes Prime and was part of a mediation to recover \$253 million in compensation for Opes Prime creditors. Clients have received a dividend of 37 cents in the dollar. Earlier this year, ASIC also brought criminal charges against the directors of Opes Prime Stockbroking for breaching their duties as directors (see more detail on page 22).

Storm Financial

ASIC is investigating a range of issues relating to Storm Financial Limited and its collapse, including investment home lending, margin lending and related advice. These investigations formally started on 12 December 2008 and are continuing. ASIC is seeking a commercial resolution – rather than protracted litigation – that can be recommended to investors.

ASIC has created a dedicated Storm website at: www.asic.gov.au/storm.

Westpoint

Since 2007, ASIC has launched 19 actions for the benefit of Westpoint investors. Following a global mediation in June 2009, continuing negotiations have resulted in a number of settlements whereby compensation has been or will shortly be paid to a number of Westpoint investors. Those settlements totalled \$24.5 million as of August 2010. Another \$49.2 million obtained through the liquidation process has also been distributed, a figure that is expected to reach \$56 million. Returns from companies not in liquidation are expected to reach \$22.5 million.

In all, investors are expected to see a return of about \$100 million of the \$388 million in losses. Further Westpoint proceedings are continuing with respect to directors, auditors and three Australian financial services (AFS) licensees. ASIC hopes to resolve more of these claims during 2010–11.

Property development (Letten)

In the 2009–10 financial year and July and August of 2010, the Federal Court in Victoria made declarations that 15 property development related managed investment schemes (MISs) associated with Melbourne-based company director Mark Ronald Letten were unregistered. The Court appointed receivers from KPMG to the unregistered MISs and 42 related companies. ASIC believes that approximately 1,000 investors placed more than

\$80 million in the projects, and the action taken will result in maximising the return to those investors. ASIC's investigation into this matter is continuing.

Banning directors

Targeted action led to 90 directors being banned for a total of 320 years. As a result of convictions obtained by ASIC during the year, a further 22 people were automatically disqualified from managing corporations for a total of 110 years from the date of their conviction or release from prison.

These cases included 10 directors from James Hardie who were banned for between five and 15 years for making false statements in 2001 about the adequacy of the company's asbestos compensation funding. Other bans related to directors' involvement in phoenix activity, company failures and market manipulation.

Phoenix trading

ASIC has conducted a long-running campaign to crack down on phoenix trading – where directors evade creditors by moving assets from an indebted company to another entity, and then put the first business into administration.

This year, the New South Wales Supreme Court found eight directors of unrelated companies to have acted in breach of the Corporations Act 2001 in illegal phoenix activity, and that their legal adviser, Timothy Donald Somerville, also contravened the Act by being involved in the directors' breaches. The eight directors and Mr Somerville were banned from managing corporations for a total of 22 years. This is the first time ASIC has successfully taken action against an adviser for involvement in facilitating illegal phoenix activity.

ASIC banned 70 company directors from managing companies for insolvency-related offences, which was an increase of 43% over 2008–09. (See page 37 'Complaints handling'.)

ASIC was successful in 94% of civil litigation and 80% of criminal matters – an average of 91% overall. We concluded 156 matters during the year.

Market integrity

Over the past 18 months, ASIC has put additional resources into improving confidence in the integrity of our markets by targeting insider trading and market manipulation. At year-end, we had 69 enforcement matters underway relating to market integrity (see page 28).

Australian Capital Reserve

Three former directors of Australian Capital Reserve Limited (ACR), Samuel Pogson, Murray Lapham and Steven Martin, were charged under the *Crimes Act 1900* (NSW) with one count each of making a false statement to obtain a financial advantage for ACR. Mr Pogson has also been charged under the Corporations Act with one count of making a false or misleading statement in a document lodged with ASIC. ASIC also accepted enforceable undertakings from partners of accounting practice Moore Stephens Sydney, Christopher Chandran and Scott Whiddett, not to practise as registered auditors for 12 months, as well as other obligations.

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Deterrence: summary and major actions (continued)

Centro

ASIC launched civil penalty proceedings in the Federal Court of Australia against current and former directors and a former chief financial officer of various entities within the Centro Properties Group and Centro Retail Group. Central to ASIC's action is the responsibility of directors and chief financial officers to take reasonable steps to ensure information contained in financial reports and disclosed to the market is accurate, complies with relevant accounting standards and is not misleading.

Fincorp

The former Chairman and CEO of Fincorp Investments Limited, Eric Krecichwost, was charged with three counts of dishonestly using his position as a director of a company with the intention of directly or indirectly gaining an advantage for himself and others. Former Finance Director Jacob Lee Quigley faces one count of the same charge.

Fincorp collapsed in 2007 with losses to investors of approximately \$100 million.

One.Tel

On 26 February 2010, ASIC announced it would not appeal against the decision of the NSW Supreme Court dismissing ASIC's civil penalty proceedings against One.Tel's former Managing Director, Jodee Rich, and the company's former Finance Director, Mark Silbermann. ASIC was required to pay legal costs of \$13 million.

Octaviar

ASIC commenced civil penalty proceedings in the Supreme Court of Queensland against five former officers of various entities within the Octaviar (formerly MFS) group of companies in relation to the use of \$147.5 million in funds of the Premium Income Fund. In taking this action, ASIC addressed the core obligations of a responsible entity and its directors and officers to operate the fund with care and diligence, and in the best interests of the fund's members.

Convictions

Imprisonments	12
Suspended sentences/fines	11

Financial services offences

- ♦ Shaun White stole \$428,000 from self-managed superannuation funds: 4 years, 2 months
- ♦ Gerard Little unlawfully facilitated early access of superannuation funds: 2 years
- ♦ Atan Ona Kassongo unlawfully facilitated early access of superannuation funds: 2 years
- ♦ Samuel Saunders misappropriated over \$460,000 from investors: 2 years, 3 months

Unlicensed conduct

- ♦ Hugh Gordon carried on a financial services business without holding an AFS licence: 18 months
- ♦ Russell Collins-McBride aided, abetted, counselled and procured Power Financial Planning Pty Ltd to carry on a financial services business without an AFS licence: 6 months, fully suspended
- ♦ Barry Silver aided and abetted his company in carrying on a financial services business without holding an AFS licence: 6 months

Investment fraud

- ♦ Oliver Banovec was convicted of five fraud charges relating to a series of loans of almost \$500,000 where he fraudulently failed to on-lend the funds in accordance with the terms of the loan. He was also convicted on two counts of perjury: 7 years

Dishonest company directors and officers

- ♦ Keith McCoy failed to act in good faith in the best interests of a company of which he was company secretary: 2 years
- ♦ Joseph Wong misappropriated \$330,000 from a company of which he was the sole director: 2 years

Insider trading

- ♦ John Francis O'Reilly engaged in insider trading: 10 months (immediately released; fined \$30,000; 18 months good behaviour; and ordered to pay a pecuniary penalty to the Commonwealth of \$61,600)

Market misconduct

- ♦ Landan Roberts provided false and misleading information to the Australian Securities Exchange: 8 months
- ♦ Geoffrey Newing engaged in market manipulation: 22 months

Operating an unregistered MIS

- ♦ Brett Best operated an unregistered managed investment scheme and dishonestly gained a financial advantage for himself: 13 years

Bans, cancellations, suspensions, disqualifications, 2009–10

Financial services bannings	
Up to 3 years	1
3 to 5 years	6
5 to 10 years	7
Permanent	8
Total	22
AFS licence cancellations/suspensions	
Licences cancelled	16
Licences suspended	3
Disqualification from managing corporations	
Up to 3 years	46
3 to 5 years	40
5 to 10 years	3
Over 10 years	1
Total	90



ASIC Deputy Chair Belinda Gibson talks with a stakeholder at ASIC's Summer School in Melbourne, March 2010.