



**ASIC**

Australian Securities & Investments Commission

REGULATORY GUIDE 263

# Financial Services and Credit Panel

November 2017

## About this guide

This guide sets out the principles and processes of the Financial Services and Credit Panel (FSCP).

The FSCP sits alongside ASIC's existing administrative processes and assists us with making administrative decisions on certain matters relating to retail financial services and credit activities.

### 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.

### Document history

This guide was issued in November 2017 and is based on legislation and regulations as at the date of issue.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and National Credit Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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

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## A Overview of the Financial Services and Credit Panel

### Key points

The Financial Services and Credit Panel (FSCP) is a pool of industry participants that ASIC draws upon when forming individual sitting panels (sitting panels). Each sitting panel comprises two members from the FSCP and an ASIC staff member.

Sitting panels operate alongside our existing administrative decision-making processes for retail financial services and credit activities by providing an element of peer review.

Sitting panels decide whether we will make banning orders against individuals for misconduct in the course of providing retail financial services and/or engaging in credit activities.

A banning matter may be referred to an individual sitting panel where we consider it appropriate for peer review because of its significance, complexity or novelty.

- RG 263.1 This guide should be read in conjunction with regulatory guides and information sheets we have published on our administrative decision-making processes and how we will administer the financial services provisions of the *Corporations Act 2001* (Corporations Act) and the *National Consumer Credit Protection Act 2009* (National Credit Act): see 'Related information'.

### Purpose and composition

- RG 263.2 Members of the FSCP are appointed by ASIC and comprise a pool of industry participants with relevant expertise in the financial services or credit fields.

Note: A list of the current FSCP members is published on ASIC's website.

- RG 263.3 We draw upon the FSCP to form sitting panels to decide whether we will make banning orders against individuals for misconduct in the course of providing retail financial services and/or engaging in credit activities where the matter is appropriate for peer review.
- RG 263.4 Sitting panels operate alongside our existing administrative processes and add an element of peer review to our decisions.
- RG 263.5 In forming each sitting panel, we take into account the nature of each matter and the relevant expertise and experience of the available pool of FSCP members.

- RG 263.6 Sitting panels consist of three members to ensure that an outcome is achieved if there are differences of view among the members.
- RG 263.7 Each sitting panel includes two members from the FSCP (external members) and an ASIC staff member (internal member).
- RG 263.8 Certain matters may benefit from the experience of the external members by:
- (a) ensuring that ASIC's administrative decisions are based on a thorough understanding of current industry practice and standards; and
  - (b) bringing a broader range of experiences and perspectives into the decision-making process.
- RG 263.9 Internal members are specialised and trained in the types of decisions each sitting panel makes, but are not from the areas of ASIC that investigate an affected person's misconduct.
- RG 263.10 The internal member acts as chair of that sitting panel. The chair deals with procedural fairness issues (e.g. applications for adjournment) in line with ASIC policy.

## Legal framework

- RG 263.11 Decision making by sitting panels is not established by statute. As a matter of law, the power to make banning orders is conferred on ASIC under s920A of the Corporations Act and s80 of the National Credit Act.
- RG 263.12 To enable a sitting panel to impartially make these decisions:
- (a) a Division of ASIC consisting of three Commissioners has been established to exercise the powers in question;
  - (b) each Commissioner delegates their functions and powers as a member of the Division to each member of the FSCP;
  - (c) the delegation directs each FSCP member to take into account ASIC's published policies when making a decision, but does not direct the FSCP member on how to decide a particular matter; and
  - (d) the members of the sitting panel convened for a particular matter constitute the Division of ASIC dealing with the matter and, as such:
    - (i) they are able to conduct hearings under Div 6 of Pt 3 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act); and
    - (ii) their decisions are the decisions of ASIC.

Note: Division 2 of Pt 4 of the ASIC Act deals with the establishment of Divisions of ASIC. Members of ASIC may delegate their functions and powers under s119A. Under s119A(3), a delegate of a member is subject to the member's direction.

## ASIC administrative action

RG 263.13 ASIC is responsible for regulating persons who carry on a financial services or credit business in Australia, including:

- (a) licensing those persons;
- (b) monitoring licensees for ongoing compliance with their licence and other legal obligations; and
- (c) taking action, where appropriate, to enforce the laws we administer when they are breached by a licensee (or a person acting on their behalf).

RG 263.14 Our powers to take administrative action, including holding hearings, are exercised by specialised ASIC staff with relevant training and expertise with delegated power (delegates) under the ASIC Act and the National Credit Act.

Note: Delegates have all the powers given to ASIC under Div 6 of Pt 3 of the ASIC Act and Div 2 of Pt 6-5 of the National Credit Act, and are guided by the principles set out in [Regulatory Guide 8](#) *Hearings practice manual* (RG 8).

RG 263.15 As set out in [RG 8](#), s59(1) of the ASIC Act and s285 of the National Credit Act, we must conduct administrative hearings with as little technicality and formality, and as expeditiously, as possible. However, we must bear in mind the need for a proper consideration of the issues in question and the legislative requirements of the financial services and credit legislation (other than the excluded provisions).

## Types of matters to be referred to the FSCP

RG 263.16 Sitting panels are responsible for a subset of ASIC's administrative decisions, namely for determining whether ASIC will make a banning order against individuals for misconduct in the course of providing retail financial services and/or engaging in certain credit activities where the matter is appropriate for peer review because of its significance, complexity or novelty.

### ASIC's power to make a banning order

RG 263.17 A financial services banning order is a written order by us that prohibits the banned person from providing financial services, whether as an Australian financial services (AFS) licensee or as a representative of such a licensee. We can make an order that either prevents a person from providing all financial services, or from providing specified financial services, in specified circumstances.

RG 263.18 A banning order under the National Credit Act is a written order that prohibits a person from engaging in credit activities. National Credit Act banning orders may prohibit a person from engaging in any credit activities or from providing specified credit activities in specified circumstances or capacities.

Note: See also s920B of the Corporations Act and s81 of the National Credit Act for the definition of a banning order in the financial services and credit contexts, respectively.

RG 263.19 We list the circumstances where we may make a banning order against a person under s920A of the Corporations Act in [Regulatory Guide 98 Licensing: Administrative action against financial services providers \(RG 98\)](#).

Note: See RG 98.28 of [RG 98](#).

RG 263.20 We list the circumstances where we may make a banning order against a person under s80 of the National Credit Act in [Regulatory Guide 218 Licensing: Administrative action against persons engaging in credit activities \(RG 218\)](#).

Note: See RG 218.32 of [RG 218](#).

RG 263.21 [RG 98](#) and [RG 218](#) also set out the factors we consider when deciding to make a banning order. These factors include those listed in Table 1 in [RG 98](#), which include:

- (a) the nature and seriousness of the suspected misconduct;
- (b) internal controls;
- (c) conduct after the alleged contravention occurs;
- (d) the expected level of public benefit;
- (e) the likelihood that:
  - (i) the person's behaviour will change in response to a particular action; or
  - (ii) other industry participants will be deterred from engaging in similar conduct through greater awareness of its consequences; and
- (f) mitigating factors.

RG 263.22 Under both the Corporations Act and the National Credit Act, a banning order may be permanent or for a specified period. For examples of factors likely to lead to a banning for a specific period of time in the financial services context, see Table 2 in Section C of [RG 98](#). For examples of factors likely to lead to a banning order for a specific period of time in the credit context, see Table 2 in Section C of [RG 218](#).

RG 263.23 In determining the period of a banning order, it is appropriate that we assess the risk that the person poses to investors and consumers if they are not

banned. A longer banning period may apply to a person assessed as posing a higher risk.

RG 263.24 Multiple instances of misconduct can increase the degree of risk that the person poses to investors and consumers if they are not banned, and may lead to a longer banning period. We emphasise that each case will be assessed on its merits and matters will be determined on a case-by-case basis.

RG 263.25 Generally, ASIC can only make a banning order after giving the affected person the opportunity to appear or to be represented at a private hearing before us and to make submissions.

Note: See s920A(3) of the Corporations Act and s80(5) of the National Credit Act.

RG 263.26 Not all banning matters are referred to the FSCP. A matter may be referred to the FSCP where ASIC considers the matter appropriate for peer review because of its significance, complexity or novelty: see RG 263.27.

### **Whether a matter is appropriate for peer review**

RG 263.27 When deciding whether the banning matter is appropriate for peer review because of its significance, complexity or novelty, we will consider the following relevant factors:

- (a) current areas of ASIC's regulatory priority;
- (b) the potential impact of the banning order on industry practices;
- (c) legal or factual complexity; and
- (d) new areas of market practice or regulatory oversight for ASIC.

RG 263.28 An affected person does not elect if their matter should be considered by a sitting panel.



## B Processes and procedures of the FSCP

### Key points

A sitting panel holds an administrative hearing, which is conducted in accordance with the relevant provisions of the ASIC Act and as set out in [RG 8](#).

This section explains the role of the FSCP secretariat and sets out the processes that sitting panels follow for:

- pre-hearing procedures;
- hearings; and
- making and communicating their decisions.

RG 263.29 The processes and procedures for a sitting panel closely follow those set out in RG 8, which explains the principles and procedures we adopt when conducting administrative hearings to give a person their statutory right to be heard.

RG 263.30 As a matter of general principle, we must give persons who may be affected by many of our decisions an opportunity to be heard. RG 8 and this regulatory guide refer to some sections of the relevant laws. Sometimes their content is stated briefly and therefore readers should refer to the actual terms of the statute. Readers should not rely on these short summaries to state accurately or fully the effect of a section.

### Secretariat

RG 263.31 The FSCP has a secretariat. The secretariat is responsible for ensuring that thorough processes are in place to identify and manage conflicts of interest.

RG 263.32 The secretariat is also responsible for assisting FSCP members with administrative tasks and the FSCP's ongoing operation.

### Pre-hearing procedures

#### Referring a matter to a sitting panel

RG 263.33 Where ASIC considers that a banning matter is appropriate for peer review because of its significance, complexity or novelty, we may refer it to a sitting

panel. In doing so, we will take into account the considerations set out in RG 263.27.

### **Convening a sitting panel**

RG 263.34 Once we decide that a banning matter ought to be referred to a sitting panel, we will nominate one internal and two external members of the FSCP to form a sitting panel to consider that particular matter.

### **Managing conflicts of interest**

RG 263.35 We will undertake checks for conflicts of interest before nominating external or internal members to a sitting panel.

RG 263.36 If an external member is aware of an interest that could conflict with the proper performance of their functions in determining a matter they are to hear, or are hearing, they must disclose that interest to the chair of the sitting panel. In these circumstances, the relevant external member will not be able to hear, or continue to hear, the matter.

RG 263.37 The chair of the sitting panel will inform an affected person of the identity of the sitting panel members who have been nominated to consider their matter. The chair of the sitting panel will request that the affected person advise us of any concerns or issues they may have about the composition of the sitting panel.

### **Notice of hearing**

RG 263.38 We will serve a notice of hearing on the affected person.

Note: See s28A of the *Acts Interpretation Act 1901* (Cwlth).

RG 263.39 Generally, a notice of hearing will tell the affected person:

- (a) under what provisions of the Corporations Act, or National Credit Act, we are conducting the hearing;
- (b) the purpose of the hearing;
- (c) the hearing date, time and place (see s57 of the ASIC Act and s283 of the National Credit Act);
- (d) that, if they do not want to appear, they may write a submission which we will take into account (see s57(3) of the ASIC Act and s283(3) of the National Credit Act);
- (e) what will happen if they do not respond to the notice (i.e. we will make a decision on the basis of the information available);
- (f) the issues of concern to us; and
- (g) how to obtain further information about the hearing, if required.

## Declining to appear at a hearing

- RG 263.40 If the affected person does not wish to appear at the hearing, they may:
- (a) make written submissions, including any material they want the sitting panel to consider; or
  - (b) choose not to respond to the notice of hearing, in which case the sitting panel will make a decision on the basis of the information available.
- RG 263.41 We do not envisage any case in which the sitting panel would compel the affected person to attend the hearing. This is because the purpose of the hearing is to give them an opportunity to provide information or an explanation of events which may assist the sitting panel's decision. If they do not wish to attend, the sitting panel is entitled to make a decision based on the submissions and documents before it.

## Hearing procedures

- RG 263.42 The FSCP hearing process consists of the five stages listed in Table 1.

**Table 1: The five stages of the FSCP hearing process**

| Stage  | Description   |
|--|---|
| 1. The affected person receives the notice of hearing                    | ASIC informs the affected person that their matter will be heard by a sitting panel and informs them of the identities of the panel members who have been nominated to determine the matter.<br><br>If a hearing is to be held, ASIC will inform the affected person, in writing, of the details of the hearing: see RG 263.38–RG 263.39.   |
| 2. The hearing is conducted by the sitting panel                         | When required, the sitting panel will conduct a hearing to determine whether to make a banning order: see RG 263.33–RG 263.73.<br><br>During the hearing, the affected person may provide material and make submissions.  |
| 3. A banning order may be made by the sitting panel                      | Regardless of whether a hearing is conducted, the sitting panel takes into account all submissions and material, and decides whether to make a banning order.   |
| 4. The sitting panel's decision is communicated to the affected person   | The decision is communicated to the affected person: see RG 263.74–RG 263.75.   |
| 5. Publication by ASIC and updating ASIC's publicly accessible registers | If a banning order is made, ASIC must publish a notice in the <i>ASIC Gazette</i> .<br><br>In addition, when we make a banning order against a person, we must add the person to our AFS banned/disqualified persons register or credit banned/disqualified persons register: see RG 263.79.<br><br>When the banning order is made under the National Credit Act, we must also publish notice of the action on ASIC's website: see RG 263.79. |

## Guiding principles for conducting administrative hearings

RG 263.43 FSCP members conducting administrative hearings are guided by the general principles set out in Table 2.

**Table 2: Principles for administrative hearings**

| Principle                                  | Explanation   |
|--|---|
| The opportunity to be heard                | <p>Generally, the affected person must have the opportunity to be heard before the sitting panel makes a decision that may be adverse to their interests. This opportunity includes their right to appear before the sitting panel and present:</p> <ul style="list-style-type: none"> <li>• submissions—either in writing or orally; and</li> <li>• material that addresses the issues of significance or concern to the sitting panel.</li> </ul> |
| The entitlement to a notice                | <p>The affected person is entitled to:</p> <ul style="list-style-type: none"> <li>• know the subject matter of the hearing and, in particular, the issues which are of concern to the sitting panel and for which there is a risk of an adverse finding;</li> <li>• know the circumstances that may cause the sitting panel to make a decision against them; and</li> <li>• have reasonable time to prepare their response.</li> </ul>              |
| The right to an impartial decision maker   | The affected person has the right to have the decision made by a person who has an open mind on the matter.   |
| Findings of fact are made on a sound basis | Any findings of fact that the sitting panel is required to make in a hearing must be based on material that is relevant, credible and probative, but the rules of evidence do not apply: see s59(2)(a) of the ASIC Act and s285(2)(a) of the National Credit Act.   |
| There is no onus of proof                  | In administrative hearings, there is generally no burden of proof. It is simply a matter of the facts that the sitting panel finds established on all the material before them. As a practical matter, however, sometimes the affected person may need to present material that supports them.  |
| Court practice does not apply              | The technical rules of evidence and the usual court rules of procedure and practice do not apply to ASIC's administrative hearings: see s59(2)(a) of the ASIC Act and s285(2)(a) of the National Credit Act. The procedures the FSCP uses, however, give the affected person the opportunity to present material and to make submissions.   |
| Applying policy and precedents             | A sitting panel will determine each matter on its merits. But, when making a decision, the sitting panel is entitled to consider policy and precedent.  |

**Entitlement to a notice**

- RG 263.44 The process for serving a notice of hearing is outlined in RG 263.38–RG 263.39. We consider that, in most cases, 28 days from the date the notice of hearing is served is a reasonable time for the affected person to send us written submissions and/or to appear in person and arrange representation if they wish.

**Impartiality of decision makers**

- RG 263.45 To be impartial, a decision maker must be free from bias. This does not mean that each sitting panel member is not allowed to have any knowledge or view about particular issues in question. Rather, it means that they must approach the hearing with an open mind so that they can be persuaded to change any tentative opinion they may have formed.
- RG 263.46 The process for managing actual or perceived conflicts of interest is outlined in RG 263.35–RG 263.37.

**Burden of proof**

- RG 263.47 The concept of ‘burden of proof’ arises in court processes, but has no place in ASIC’s administrative hearings. An administrative hearing gives the affected person an opportunity to provide the sitting panel with information which may affect its decision. Generally, the affected person does not have to prove or disprove anything. Rather, they are given the opportunity to persuade the sitting panel to make a decision in their favour.

**Rules of evidence and court practice**

- RG 263.48 The rules of evidence do not apply in our administrative hearings: see s59(2)(a) of the ASIC Act and s285(2)(a) of the National Credit Act. ASIC’s hearings cannot, and should not, be compared with proceedings in a court of law; their purpose and nature is quite different. The hearing by a sitting panel is an inquiry to determine the facts and any other aspect of the matter on which the particular power should be exercised. The hearings are not run in an adversarial manner, but rather in an ‘inquisitorial manner’—that is, as an inquiry to find the true position.
- RG 263.49 The use of terms such as ‘examination’ and ‘cross-examination’, ‘particulars’ and ‘onus of proof’ is not appropriate and is misleading in the context of our administrative hearings. The sitting panel must be satisfied that:
- (a) all the issues relevant to the subject matter of the hearing have been clearly identified;
  - (b) the affected person has been given the opportunity to address them; and
  - (c) the statutory requirements for each sitting panel member are met.

## Material presented at the hearing

- RG 263.50 An affected person needs to decide:
- (a) what material or information they want to present at the hearing;
  - (b) the form in which they want to present it;
  - (c) how much material they want to present; and
  - (d) if they want to dispute the accuracy or adequacy of the factual material on which the sitting panel is contemplating acting.
- RG 263.51 An affected person should carefully consider how they present information they believe to be relevant to the sitting panel's decision. For example, they may choose to:
- (a) rely entirely on the material we identified in the notice of hearing;
  - (b) give material themselves;
  - (c) provide the sitting panel with documents, such as written statements about the facts or copies of records, which are relevant to the hearing; and/or
  - (d) make submissions, either in writing or orally.
- RG 263.52 When deciding the form of their material, the affected person should remember that the sitting panel is not bound by the rules of evidence and that any relevant and credible material may be presented. For example, often written statements from persons with knowledge of relevant events and other circumstances will be sufficient without the need for the affected person to call them as witnesses to give evidence in person.
- RG 263.53 The sitting panel will allow the affected person (or the witness) a reasonable opportunity to explain or give their own version of events. The sitting panel may ask questions to clarify any matters on which the affected person (or the witness) has made submissions or given evidence.
- RG 263.54 It is an offence to give evidence at a hearing which is false or misleading in a material particular.

Note: See s64(2) of the ASIC Act and s291(1) of the National Credit Act.

## The affected person's right to be represented

- RG 263.55 The affected person's right to have legal representation at a hearing is specifically recognised by s59(8) of the ASIC Act and s285 of the National Credit Act. They may be represented by a barrister or solicitor of the Supreme Court of a state or territory or of the High Court.
- RG 263.56 Other persons may appear as the affected person's representative provided the sitting panel has given its approval.

### Other people who may attend

- RG 263.57 Section 56(1) of the ASIC Act and s282 of the National Credit Act give each sitting panel the discretion to allow, in addition to the affected person and their legal or approved representative, other persons to attend a hearing. For example, the sitting panel may allow the affected person to have a friend or a relative attend to provide practical or moral support. Central to the sitting panel's decision about whether to allow others to attend is the question of fairness to the affected person and whether the other person's presence will assist in the conduct of the hearing.
- RG 263.58 If the affected person wants another person to attend the hearing, they should contact ASIC as soon as possible after receiving the notice of hearing.
- RG 263.59 The sitting panel may, subject to any appropriate conditions, also allow a person to intervene in the hearing. A person who intervenes may be allowed to present additional material to the sitting panel or to make submissions on the matter, or both. Generally, the affected person will be invited to comment on whether another person should be allowed to intervene.

Note: See s59(2)(b) of the ASIC Act and s285(2)(b) of the National Credit Act

- RG 263.60 Witnesses who the affected person has called to give oral evidence will be allowed to stay while they give their evidence. Ordinarily, they will not be allowed to be present during other parts of the hearing.

### Witnesses

- RG 263.61 As a matter of general principle, we consider that it will not be necessary for the sitting panel to call any witnesses.
- RG 263.62 If the affected person wants someone to give evidence on their behalf, a written statement by the witness will usually be sufficient.
- RG 263.63 On occasion, it may assist the sitting panel for factual issues to be clarified by a person giving oral evidence. We expect that such circumstances will be rare.
- RG 263.64 When credibility is an issue and the sitting panel has asked for the affected person to call a witness, it is generally up to the affected person to have their witness available at the hearing.

### Summoning a witness to attend

- RG 263.65 We do not envisage that there will be many instances when a sitting panel would summon a witness to attend. We know that being required to attend to give evidence or to produce documents may involve substantial cost or inconvenience, or both. The sitting panel will only exercise the power to

summon a witness or compel the production of documents when there is a demonstrated need for it.

- RG 263.66 Before issuing a summons, the sitting panel would need to be satisfied that:
- (a) the person can give relevant evidence or produce relevant documents; and
  - (b) there is a need to do so.

### Confidentiality

- RG 263.67 Any confidential or commercially sensitive information that is provided to a sitting panel will be protected. Hearings of a sitting panel will be held in private and FSCP members are subject to confidentiality obligations. ASIC itself is required by law to take all reasonable measures to prevent the unauthorised use or disclosure of confidential information.
- RG 263.68 Our [privacy policy](#) sets out how we handle and use personal information, including when we may disclose personal information and how to complain about breaches of privacy by ASIC.

### Taking an oath or affirmation

- RG 263.69 At a hearing, evidence may be taken under oath or affirmation: see s58(2) of the ASIC Act and s284(2) of the National Credit Act. The oath or affirmation given must be appropriate to the culture and religion of the person giving evidence.
- RG 263.70 It is a matter for the affected person or, where relevant, their witness, to determine whether evidence will be given under oath, by way of affirmation or neither.

Note: If a person is summoned to appear at a hearing as a witness under s58(1) of the ASIC Act or s284(1) of the National Credit Act, the sitting panel may require them to take an oath or make an affirmation. See s58(2) of the ASIC Act and s284(2) of the National Credit Act. Section 63(3) of the ASIC Act and s290(2) of the National Credit Act provide that it is an offence to fail to comply with a requirement made under s58(2) of the ASIC Act or s284(2) of the National Credit Act.

### Hearing adjournments

- RG 263.71 Circumstances may arise when the sitting panel must consider whether to grant an adjournment. When doing so, the sitting panel must decide what is fair in light of the circumstances of the case. (For example, if new material information has come to light which may be adverse to the affected person, and they have not been given an opportunity to comment, it may be appropriate to adjourn the hearing.)



- RG 263.72 If the affected person requires an adjournment, they should notify the chair of the sitting panel as soon as possible.
- RG 263.73 We consider that it is usually desirable to complete hearings as soon as practicable.

## Decisions of the sitting panel

### Written reasons

- RG 263.74 The sitting panel will give reasons for its final decision when it tells the affected person what that decision is. Section 85 of the National Credit Act requires a statement of reasons to be provided to the affected person when making a banning order. Similarly, s915G and 920F(1) of the Corporations Act require us to provide a statement of reasons when making a banning order. We do not publish the reasons of a sitting panel. RG 263.76–RG 263.81 describe the information we publish when banning orders are made.
- RG 263.75 If the sitting panel does not provide the reasons for their decision, the affected person may ask for a written copy of them. The request should be in writing and made within 28 days of being notified of the final decision.

### Publicising our decisions

- RG 263.76 We are obliged to strive to maintain, facilitate and improve the performance of the financial system, and to promote the confident and informed participation of investors and consumers in the financial system: see s1(2)(a) and (b) of the ASIC Act and s760A of the Corporations Act.
- RG 263.77 As a general principle, it is our view that there is significant public interest in ensuring that investors and consumers and the broader community are aware of and informed about action we take. Transparency and disclosure are important factors in market integrity and investor and consumer confidence. They serve to educate, as well as deter misconduct and promote compliance, by demonstrating the regulatory consequences of engaging in unacceptable conduct.
- RG 263.78 If a banning order is made, ASIC must publish a notice in the *ASIC Gazette*.
- RG 263.79 Where we have made a banning order against a person, we must add that person to our AFS banned/disqualified persons register or credit banned/disqualified persons register. Where the banning order is made under the National Credit Act, we must also publish notice of the action on ASIC's website.

- RG 263.80 In addition to publishing the orders in the *ASIC Gazette*, on ASIC's website, or on ASIC's banned and disqualified registers, we will publish a media release.
- RG 263.81 We do not usually publicise a hearing at an early stage because it may significantly disadvantage the affected person when the issues leading to the hearing have not been discussed and determined.

### **Right of review**

- RG 263.82 ASIC will advise affected persons of their rights of review on the decisions made. Decisions of sitting panels are reviewable by the Administrative Appeals Tribunal (AAT).

## Key terms

| Term                                   | Meaning in this document   |
|--|--|
| affected person                        | A person who receives a notice of hearing issued by ASIC, and is the potential recipient of a banning order made by a sitting panel  |
| 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<br><br>Note: This is a definition contained in s761A of the Corporations Act. |
| AFS licensee                           | A person who holds an AFS licence under s913B of the Corporations Act<br><br>Note: This is a definition contained in s761A of the Corporations Act.  |
| ASIC                                   | Australian Securities and Investments Commission   |
| ASIC Act                               | <i>Australian Securities and Investments Commission Act 2001</i>   |
| banning order                          | A written order by ASIC that prohibits a banned person from providing financial services or engaging in credit activities  |
| Corporations Act                       | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act   |
| credit                                 | Credit to which the National Credit Code applies<br><br>Note: See s3 and 5–6 of the National Credit Code.  |
| credit activity (or credit activities) | Has the meaning given in s6 of the National Credit Act   |
| 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 an Australian credit licence under s35 of the National Credit Act   |
| delegate                               | An ASIC staff member delegated the power to hold hearings and make decisions under Div 6 of Pt 3 of the ASIC Act or Div 2 of Pt 6-5 of the National Credit Act   |
| external member                        | An industry participant appointed by ASIC as a member of the FSCP  |
| financial service                      | Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act   |

| Term                        | Meaning in this document  |
|-----------------------------|---|
| financial services business | A business of providing financial services<br>Note: This is a definition contained in s761A of the Corporations Act. The meaning of 'carry on a financial services business' is affected by s761C.  |
| FSCP                        | ASIC's Financial Services and Credit Panel through which we may exercise our power to make a banning order  |
| hearing                     | Has the meaning given in s5 of the ASIC Act   |
| internal member             | An ASIC staff member appointed by ASIC as a member of the FSCP  |
| 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  |
| notice of hearing           | Notification in writing to the affected person by ASIC of the date, time and place for the hearing of the banning matter by a sitting panel. It includes the identity of the FSCP members nominated to convene a sitting panel to hear the matter |
| Pt 6-5 (for example)        | A part of the Corporations Act, the ASIC Act or National Credit Act, as the case may be (in this example numbered 6-5)  |
| RG 8 (for example)          | An ASIC regulatory guide (in this example numbered 8)   |
| s35 (for example)           | A section of the Corporations Act, the ASIC Act or National Credit Act, as the case may be (in this example numbered 35)  |
| sitting panel               | Two external members and one internal member of the FSCP convened to hear and decide on a banning matter  |

## Related information

### Headnotes

affected person, AFS licence, AFS licensees, banning order, conflicts of interest, credit, credit licence, credit licensees, Financial Services and Credit Panel, FSCP, hearing, notice of hearing, sitting panel

### Regulatory guides

[RG 8](#) *Hearings practice manual*

[RG 98](#) *Licensing: Administrative action against financial services providers*

[RG 218](#) *Licensing: Administrative action against persons engaging in credit activities*

### Legislation

*Acts Interpretation Act 1901*, s28A

ASIC Act, s1, 56, 57, 58, 59, 63, 64, 119A

Corporations Act, s760A, 915G, 920A, 920B, 920F

National Credit Act, s80, 81, 282, 283, 284, 285, 290, 291

### Consultation papers and reports

[CP 281](#) *Financial Services Panel*

[REP 551](#) *Response to submissions on CP 281 Financial Services Panel*