



**ASIC**

Australian Securities & Investments Commission

## REPORT 553

# Overview of licensing and professional registration applications: July 2016 to June 2017

November 2017

### About this report

This report outlines ASIC's decisions on applications for the period from 1 July 2016 to 30 June 2017 (relevant period) for:

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

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Disclaimer

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

The statistical information provided in this report is sourced from a range of ASIC's databases and includes both objective data (e.g. date of the decision) and subjective data (e.g. whether an amendment to an authorisation was recorded as an additional condition or a change in an authorisation). We have not undertaken individual verification of each figure in this report, and the statistical information should be regarded as approximate only. In addition, examples are for illustration only and are not exhaustive nor intended to impose or imply particular rules or requirements.

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

Report number	Report date
REP 503	7 December 2016
REP 478	31 May 2016
REP 448	24 September 2015
REP 433	20 May 2015

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## Overview

### ASIC's role

- 1 ASIC is an integrated corporate, markets, financial services and consumer credit regulator. Our regulatory strategic priorities are to:
  - (a) promote investor and financial consumer trust and confidence;
  - (b) ensure fair, orderly and transparent markets; and
  - (c) provide efficient and accessible registration.
- 2 We regulate entities at every point from 'cradle to grave'—from their incorporation through to their winding up.
- 3 Our various statutory licensing responsibilities are undertaken within two particular areas of ASIC. Applications for Australian financial services (AFS) licences, Australian credit licences (credit licences) and professional registration are assessed by our Licensing team (part of ASIC's Assessment and Intelligence group), while applications for Australian market licences, clearing and settlement (CS) facility licences and Australian derivative trade repository (ADTR) licences are assessed by our Markets Infrastructure team.
- 4 For further background on ASIC's licensing and professional registration responsibilities, please refer to [Report 433](#) *Overview of licensing and professional registration applications: July to December 2014* (REP 433), issued May 2015, paragraphs 1–18.

### ASIC's service charter

- 5 We recently advised applicants and service providers who assist licence applicants with their applications that we have changed our service charter standard for applications for new or varied AFS licences and credit licences.
- 6 Under the changes our target timeframe for processing licence applications will increase and we will aim to make a decision:
  - (a) within 150 days of receiving a complete application in at least 70% of cases (previously 60 days); and
  - (b) within 240 days of receiving a complete application in at least 90% of cases (previously 120 days).
- 7 We recognise that the time taken to assess licence applications can have a significant impact on applicants and their businesses.
- 8 We are committed to ensuring that we conduct thorough assessments of licence applications in the interests of protecting consumers.

- 9 This priority is consistent with the recommendations of a number of parliamentary and government inquiries in recent years that recognise the important role the licensing process plays in improving and maintaining standards across the financial services sector. It also reflects community expectations that ASIC's licensing function will serve to prevent future harm to consumers, and promote trust and confidence in the financial services industry by ensuring licences are not granted to unfit providers.
- 10 We are applying an increasingly robust and risk-based approach to our assessment of licence applications. This increased focus on regulatory requirements means we will often need to do more detailed reviews of those applications in higher-risk areas, or where we see difficulties with the application, leading to longer processing timeframes. However, those applications in low-risk areas, where there are no difficulties with the application, will be processed in a much shorter timeframe.
- 11 Further, the resources for assessing licence applications need to be considered alongside all of ASIC's other regulatory responsibilities and priorities. As a result, we will not be able to meet the previous target timeframes set out in our service charter.
- 12 Applicants rely on our published service charter and reasonably expect us to set achievable targets. For this reason, we are updating our service charter standard now so that we are transparent about the processing times our stakeholders can expect. The changes to our service charter will apply to both applications currently under assessment and new applications received.

## Industry funding model

- 13 The industry funding model for ASIC commenced on 1 July 2017. The purpose of industry funding is to ensure that those who create the need for, and benefit from, regulation bear the costs of that regulation, rather than the general community.
- 14 Industry funding does not necessarily affect the overall maximum resourcing available to ASIC to carry out our various regulatory responsibilities, such as our licensing function, which will continue to be set by Government.
- 15 Under the proposed industry funding model, the costs of ASIC's regulatory activities will be recovered through a combination of ongoing levies on regulated entities and individual fees for user-initiated regulatory functions (such as licence applications).
- 16 While the quantum of both the individual fees and levies applicable to each subsector for this financial year are yet to be finally determined, a number of components of the levy depend on the particular authorisations held by the AFS or credit licensees. Further details can be found in the *Cost recovery*

*implementation statement* released on 6 October 2017, which is available from ASIC's website.

- 17 Given the new levy, it is possible that we may see an increase in existing licensees seeking variations to their licence to remove or amend authorisations on which they are not currently relying in coming months. This may result in an increase in the volume of applications under assessment which may in turn impact on assessment times. We would advise licensees who may be considering seeking a variation for this reason to act early.

## Purpose and scope of this report

- 18 As foreshadowed in [Report 503](#) *Overview of licensing and professional registration applications: January to June 2016* (REP 503), ASIC is now publishing this report on an annual basis covering the full financial year, starting with this report for 2016–17.
- 19 The regulatory outcomes in relation to licensing or registration applications discussed in this report relate to:
- (a) rejection—applications that are rejected for lodgement because they are manifestly defective and do not meet the minimum standards relating to the information and content included in the application;
  - (b) withdrawal—applications that are withdrawn because during our assessment, based on the feedback and requisitions, the applicant considers they would prefer to withdraw rather than proceed;
  - (c) approvals—applications that are assessed as meeting the requirement to obtain a licence or licence variation, or for professional registration;
  - (d) modifications—applications that result in the granting of a licence that is different from that applied for, or that has additional conditions imposed on it. For example, we might:
    - (i) impose a key person requirement, require a compliance consultant to be appointed, or tailor a special condition to limit the scope of the activity authorised under the licence; or
    - (ii) approve a range of financial services or financial products that the applicant is allowed to offer that is narrower than that applied for; and
  - (e) refusals—applications that are refused because we are not satisfied that the statutory requirements for granting a licence or registration have been met.
- 20 We note that, in addition to the regulatory outcomes associated with refusals or withdrawals, for every application that is approved there may be a

combination of regulatory outcomes. This means that the number of regulatory outcomes for approved licences may be higher than the number of applications approved. For example, we may impose a key person condition, require the appointment of an additional responsible manager, and refuse one of the authorisations sought. In this case, while there is a single approved licence application, we consider that we have achieved three beneficial regulatory outcomes.

- 21 The regulatory outcomes apply equally to applications for a variation to an existing licence.
- 22 There is a narrower range of regulatory outcomes associated with the regime for professional registrations, given the reduced scope for tailoring registrations or the imposition of conditions on registrants compared with licensees.
- 23 This report sets out the regulatory outcomes achieved by ASIC—for the period from 1 July 2016 to 30 June 2017 (relevant period)—in relation to:
- (a) AFS licence applications;
  - (b) credit licence applications;
  - (c) liquidator registration applications;
  - (d) company auditor and approved self-managed superannuation fund (SMSF) auditor registration applications; and
  - (e) applications relating to financial markets, CS facilities, ADTR licences and, until 1 March 2017, the Companies Auditors and Liquidators Disciplinary Board (CALDB)—which has been renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the *Insolvency Law Reform Act 2016* (Insolvency Law Reform Act).
- 24 The purpose of this report is to provide greater transparency and understanding of ASIC’s licensing and professional registration activities. It presents statistics and comments on applications and outcomes for these licensing and registration assessments—notably, when outcomes are different to those applied for.
- 25 The information shows that, as a result of our assessment, we may impose additional conditions on, and/or make adjustments to, the original licence application. In other instances, where we are not satisfied that the applicant is capable of offering the financial or credit services applied for in compliance with the legal obligations, the application may ultimately be refused.
- 26 This report also provides details about how, with the support of other ASIC teams, the Licensing team maintains standards by ensuring that applicants are only licensed to provide financial services and products, or engage in credit activities, that they are competent to provide.

- 27 We will also use this report to highlight particular areas of focus and issues of potential concern. We will continue this dialogue in our discussions with applicants, their service providers and at public licensing-specific forums.

## Summary of outcomes for the relevant period

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

- 28 There was no change to the number of market, CS facility or ADTR licensees during the relevant period. There continue to be 18 market licensees (12 domestic operators and six overseas operators), seven CS facility licensees (five domestic operators and two overseas operators) and two ADTR licensees.

### AFS and credit licensing and professional registration

- 29 In the relevant period, we received 2,104 AFS and credit licensing and professional registration applications across the various application and registration types: 83% of these related to applications for either an AFS licence (i.e. new licences (466) and variations to existing AFS licences (609)) or a credit licence (i.e. new licences (443) and variations to existing credit licences (232)).
- 30 Table 1 shows the number of applications under consideration (i.e. those available for assessment) and the number that were approved during the relevant period. These are broken down by the period in which they were lodged (i.e. either before or during the relevant period).

**Table 1: Licensing and professional registration applications available for assessment (1 July 2016 to 30 June 2017)**

Type of application	Received or initiated before July 2016	Approved July 2016–June 2017*	Received or initiated July 2016–June 2017	Approved July 2016–June 2017**	Finalised (not approved) July 2016–June 2017#	Not finalised at 30 June 2017
New AFS licence	791	618	466	146	280	213
Variation of AFS licence	213	138	609	257	141	286
New credit licence	147	86	443	170	175	159
Variation of credit licence	56	38	232	112	68	70
Registration as liquidator	6	4	44	35	7	4

Type of application	Received or initiated before July 2016	Approved July 2016– June 2017*	Received or initiated July 2016– June 2017	Approved July 2016– June 2017**	Finalised (not approved) July 2016– June 2017#	Not finalised at 30 June 2017
Registration as official liquidator	4	3	27	22	6	0
Registration as company auditor	12	8	147	92	37	22
Registration as approved SMSF auditor	13	7	136	72	63	7
<b>Total applications</b>	<b>1,242</b>	<b>902</b>	<b>2,104</b>	<b>906</b>	<b>777</b>	<b>761</b>

\* This column includes applications that were considered *before* the relevant period but were approved *during* the relevant period.

\*\* This column includes applications that were both considered and approved during the relevant period.

# This column includes applications that were rejected withdrawn or refused during the relevant period. For more details, see Table 5 and Table 6.

31 The combined number of AFS and credit licensing and professional registration applications available for assessment during the relevant period totalled 3,346, of which 1,808 (54%) were approved. The remaining applications were rejected, withdrawn or refused, or are still being assessed: see Table 2.

**Table 2: Percentage approval of licensing and professional registration applications under consideration (1 July 2016 to 30 June 2017)**

Application type	Under consideration*	Approved
AFS licence (new licence and variations)	2,079	1,159 (56%)
Credit licence (new licence and variations)	878	406 (46%)
Registration	389	243 (62%)
Total applications	3,346	1,808 (54%)

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

32 To ensure that entities are only licensed if they are able to offer financial or credit services in compliance with their licensing obligations, we may:

- (a) impose additional licence conditions;
- (b) impose a requirement for additional or alternative responsible managers; and/or
- (c) modify the standard licence authorisations to limit:
  - (i) the financial products that a licensee may offer; or

- (ii) the financial services or credit activities that a licensee may undertake.

33 Of the 1,565 AFS licence and credit licence applications that were approved (including both new licences and licence variations), 1247 (80%) were approved in a form different in scope to the licence authorisations sought by the applicant or the standard conditions. For AFS licence applications, approximately 82% were approved with changes to the form of the licence, while for credit licence applications this proportion was approximately 73%.

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

34 There were 2,079 applications under consideration during the relevant period. Of these, 1,159 were approved, 214 were rejected for lodgement, 201 were withdrawn, six were refused and the remaining 499 were undergoing assessment at the end of the relevant period. Of the 1,159 approved applications, 950 (82%) were approved with alterations to the original application: see Section C for details.

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

35 There were 878 applications under consideration during the relevant period. Of these, 406 were approved, 124 were rejected for lodgement, 119 were withdrawn and the remaining 229 were undergoing assessment at the end of the relevant period. Of the 406 approved applications, 297 (73%) were approved with alterations to the original application: see Section D for details.

### **Registration of liquidators and auditors**

36 During the relevant period, we registered:

- (a) 39 liquidators (an additional application for registration was withdrawn, one registration was cancelled and one application was refused);
- (b) 25 official liquidators (an additional six applications for registration were withdrawn, and eight registrations were cancelled);
- (c) 100 company auditors (an additional 37 applications for registration were withdrawn, the registration of 218 company auditors was cancelled, and three applications were refused); and
- (d) 79 approved SMSF auditors (an additional 62 applications were withdrawn, the registration of 406 SMSF auditors was cancelled, and one application was refused).

37 For more details, see Section E.

## A Key issues and activities

### Key points

This section sets out current areas of focus including:

- recent legislative reforms and ASIC relief in licensing related areas (e.g. crowd-sourced funding, marketplace lending, managed discretionary accounts, charities, limited licensees, liquidator registrations, and ASIC's Enforcement Review Taskforce);
- ASIC's Innovation Hub and fintech businesses;
- licensing related surveillance activities (e.g. OTC derivatives) and ASIC hearing delegate decisions and AAT applications; and
- proposed changes to Licensing's application policy and procedures.

### Licensing issues: Current areas of focus

#### Crowd-sourced funding intermediaries

- 38 The *Corporations Amendment (Crowd-sourced Funding) Act 2017* (CSF Act) provides a legislative framework for crowd-sourced funding.
- 39 The CSF regime reduces the regulatory requirements for public fundraising while maintaining appropriate investor protection measures. Intermediaries providing CSF services (e.g. operating a crowd-funding platform) must hold an AFS licence.
- 40 The legislation was passed on 28 March 2017 and commenced on 29 September 2017.
- 41 ASIC published [Consultation Paper 289](#) *Crowd-sourced funding: Guide for intermediaries* (CP 289) to seek input on guidance to intermediaries seeking to provide CSF services, particularly given that this is a new type of financial service and there are unique gatekeeper obligations for intermediaries operating platforms for CSF offers.
- 42 In addition, we published [Consultation Paper 288](#) *Crowd-sourced funding: Guide for public companies* (CP 288) to seek input on guidance to companies seeking to raise funds through a CSF intermediary.
- 43 Submissions closed on 3 August 2017, and ASIC received 12 submissions in relation to CP 289 and 13 submissions in relation to CP 288.
- 44 We published our response to these consultation papers in [Report 544](#) *Response to submissions on CP 288 and CP 289 on crowd-sourced funding* (REP 544), and issued [Regulatory Guide 262](#) *Crowd-sourced funding: Guide*

for intermediaries (RG 262) and [Regulatory Guide 261](#) *Crowd-sourced funding: Guide for public companies* (RG 261).

45 For further details, see the specific [crowd-sourced funding](#) webpage on our website ([www.asic.gov.au](http://www.asic.gov.au)).

46 On 12 September 2017, ahead of the commencement of the CSF regime, we provided additional guidance to assist those interested in seeking an authorisation to provide CSF services.

Note: See [Media Release \(17-312MR\)](#) *Applications for crowd-funding licences open 29 September 2017* (12 September 2017).

## Marketplace lending

47 Marketplace lending allows investors to invest in loans to consumers and small-to-medium enterprises (SMEs). It has the potential to provide another avenue of funding for businesses and consumers.

48 In June 2017, we released [Report 526](#) *Survey of marketplace lending providers* (REP 526), based on the findings of ASIC's first survey of various participants in the marketplace lending industry and our broader activities relating to marketplace lending. In summary, the survey confirmed that:

- (a) marketplace lending business models are diverse, involving some conflicts of interest that marketplace lending providers must manage;
- (b) in the 2016 financial year, the respondents had written \$156 million in loans to consumers and SMEs with the funding of these loans being sourced from retail and wholesale investors, including trustees of SMSFs;
- (c) most revenue was generated from loan origination, with ongoing fees (such as those linked to loan repayments) making up a much smaller proportion, likely at least partially due to the generally short periods of operation to date; and
- (d) default levels and numbers of complaints received by providers were generally very low at this stage.

## Managed discretionary accounts

49 We made changes to our policy on managed discretionary account (MDA) services on 29 September 2016: see ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968 and revised [Regulatory Guide 179](#) *Managed discretionary accounts* (RG 179). These changes were highlighted in our fourth licensing report: see paragraphs 45–48 of REP 503.

- 50 The key transition dates for entities seeking to rely on our new MDA relief are as follows:
- (a) 1 October 2017—for AFS licensees who provided MDA services before 1 October 2016 under the relief in Class Order [CO 04/194] *Managed Discretionary Accounts*; and
  - (b) 1 October 2018—for AFS licensees who have been relying on our no-action position for changing investments on a regulated platform.
- 51 Since the changes to our MDA relief, we have received 14 applications (comprising 13 new applications and one variation application) to provide MDA services (or miscellaneous financial investment products limited to MDA services).
- 52 In discussion with the industry association Institute of Managed Account Providers (IMAP), we have confirmed that, if existing MDA services involve holding or investing in interests in unregistered schemes, the terms of the new instrument will require that these are no longer covered by the relief for MDA services. We have noted that any such interests could previously be sold or returned to the client, or held outside the scope of the MDA service.
- 53 We are open to considering industry submissions about any exceptions that may be appropriate. The restriction on investing in unregistered schemes only applies to investments for retail clients.
- 54 Industry has raised issues about some aspects of our policy on MDAs and has requested that we clarify these, including:
- (a) the appropriate AFS licence authorisation for an MDA provider (i.e. the person who enters into a contract with a client to provide an MDA);
  - (b) the authorisation required for those providing or seeking to provide personal advice in relation to MDA services; and
  - (c) the organisational competence requirements for MDA providers who will, under the new relief, have to apply for an AFS licence and will no longer be able to rely on ASIC’s no-action letter, dated 5 November 2004, in relation to MDA services on a regulated platform.

#### **MDA provider**

- 55 An MDA provider must hold an AFS licence authorisation to deal in (i.e. deal by issuing a financial product in respect of):
- (a) interests in managed investment schemes limited to MDA services; or
  - (b) miscellaneous financial investment products limited to MDA services.
- 56 We expect that an MDA provider will need an AFS licence authorisation to deal by issuing ‘interests in managed investment schemes limited to MDA services’, unless the applicant can satisfy ASIC that the authorisation to deal

by issuing ‘miscellaneous financial investment products limited to MDA services’ is appropriate. A general authorisation to deal by issuing ‘interests in managed investment schemes’, without specific reference to MDA services, is not sufficient for the MDA provider.

- 57 In addition to the authorisations in paragraph 56, an MDA provider will require an authorisation to deal in all of the financial products that are acquired under an MDA contract. If providing financial product advice, or a custodial or depository service, MDA providers will also require an authorisation to provide financial product advice, or provide a custodial or depository service, respectively.

#### **MDA adviser**

- 58 We confirm that, because we consider an MDA service to be a managed investment scheme (unless it is a miscellaneous financial investment product limited to MDA services), in the context of providing financial product advice to retail clients, we will no longer require applicants to seek an MDA-specific authorisation. Instead, applicants can apply for the general ‘managed investment scheme, including investor directed portfolio service (IDPS)’ or ‘managed investment scheme, excluding IDPS’ authorisations, which in our view would authorise them to provide financial product advice in relation to MDA services.
- 59 In addition, applicants seeking to provide financial product advice to retail clients on MDA services will have to demonstrate organisational competence in relation to providing advice to retail clients on interests in managed investment schemes.

#### **MDAs on a regulated platform**

- 60 MDA providers who have been relying on the no-action position for MDA services on a regulated platform, and who apply for an AFS licence to deal, as set out in paragraphs 55–57, will need to be able to show that they can comply with the organisational competence obligations from the time they are granted a licence, and on an ongoing basis.
- 61 When we assess an application for an AFS licence authorisation, we will take into account the experience gained under the no-action position for regulated platform MDAs to the extent that this experience is equivalent to the MDA services proposed to be undertaken. This experience may be sufficient unless the MDA provider proposes to provide MDA services outside the scope of the no-action position for regulated platforms.

#### **Organisational competence—Unlicensed experience**

- 62 We note that we have also seen cases of licence applicants that only have experience in an unlicensed capacity (e.g. where an applicant has previously

provided an unregulated form of credit or had the benefit of an exemption from all or some of the regulatory requirements).

- 63 Our expectation is that an applicant would need to show that:
- (a) they are competent to operate in a regulated market;
  - (b) they have previously operated lawfully within the bounds of any exemptions or exclusions; and
  - (c) their past conduct does not raise concerns about their character or capacity to comply with relevant legislative requirements.

## Charities

- 64 In September 2016, we announced the repeal of Class Order [CO 02/184] *Charitable investment schemes—fundraising*. We replaced it with [ASIC Corporations \(Charitable Investment Fundraising\) Instrument 2016/813](#) and issued a new version of [Regulatory Guide 87 Charitable investment fundraising and school enrolment deposits](#) (RG 87).

Note: See [Media Release \(16-329MR\)](#) *ASIC updates regulatory framework for charitable investment fundraisers* (28 September 2016).

- 65 Our revised policy and regulatory framework removes regulatory barriers to the issue of financial products for charitable investment fundraising, while strengthening protections for public investors.
- 66 These changes follow our review of the operation of exemptions available to charities from certain managed investment, debenture, fundraising and licensing provisions of the *Corporations Act 2001* (Corporations Act). The changes are aimed at ensuring the policy is consistent with our objectives of promoting confident and informed investors and fair and efficient markets.
- 67 The key licensing change is that, from 1 January 2018, charitable investment fundraisers wishing to issue investments to retail investors who are not associated with the charity will no longer be exempted from the requirement to hold an AFS licence. Further, additional restrictions apply that are designed to avoid the investments being used for transactional facilities.
- 68 To date, we have received six AFS licence applications from charities that have been relying on this relief, two of which were received during the relevant period.

## AFS licensees offering retail OTC derivatives

- 69 Generally, we have observed a recent increase in the extent of unlicensed conduct by retail OTC derivative providers, including a number of AFS licensees that are offering products outside of their licence authorisations. Entities that are unsure of the authorisations required to offer specific financial products should seek independent legal advice.

- 70 We note the Government's decision to implement client money reforms that prevent AFS licensees from withdrawing client money provided by retail derivative clients, and using it for the wide range of purposes currently permitted under the Corporations Act—including as the AFS licensee's own working capital. The reforms also give ASIC the power to impose record-keeping, reconciliation and reporting requirements on AFS licensees that hold derivative retail client money.
- 71 We consulted on new reporting rules in [Consultation Paper 291 Reporting rules: Derivative retail client money](#) (CP 291).
- 72 The new restrictions, as well as the new record-keeping, reconciliation and reporting requirements, will commence in April 2018. AFS licence applicants will need to demonstrate their ability to comply with these obligations as part of their application process: see [Media Release \(17-338MR\) ASIC's client money reporting rules finalised](#) (10 October 2017), the new [ASIC Client Money Reporting Rules 2017](#), [Information Sheet 226 Complying with the ASIC Client Money Reporting Rules 2017](#) (INFO 226) and [Report 546 Response to submissions on CP 291 reporting rules: Derivative retail client money](#) (REP 546).

### Binary options

- 73 In March 2017, we conducted a review of various mobile app stores, focusing on apps associated with trading binary options.
- 74 A binary option is a financial product that is a derivative under the Corporations Act. Any entity that deals in, or provides advice about, binary options to Australian investors must hold an AFS licence, or be authorised by an AFS licensee.
- 75 The review highlighted over 330 binary option trading apps that were offered to Australians by entities and individuals who appeared to be unlicensed. Of these, 63% were offered by binary option issuers and facilitated trading, 25% were from various signal providers, and the rest were controlled by introducing brokers or were apps designed to influence people to trade in binary options: see [Media Release \(17-257MR\) ASIC targets unlicensed binary option mobile apps](#) (1 August 2017).
- 76 As a result, we contacted Apple and Google about the apps that were the subject of this surveillance. We were encouraged by the speed with which both entities removed the relevant apps identified by ASIC from their respective app stores. We also:
- (a) noted that Apple recently changed its review guidelines to state that apps that facilitate binary options trading will not be permitted in its app store; and

- (b) reminded investors that binary option providers are in control of the pricing for their product and, on reviewing some of the comments that appeared with the apps, it seemed that some investors made money in the demo mode but lost money once they moved to a live trading system.

### Credit licensees

- 77 We have seen some applications for cancellation of a credit licence where the credit licensee is selling its product book to another entity.
- 78 For some credit products, this can raise issues about whether the credit licensee continues to be a party to the contract that has obligations to the consumer. This may mean that the licensee is continuing to engage in credit activities despite the sale.
- 79 Credit providers and lessors who are intending to exit their business by selling their outstanding contracts to another entity may need to give some thought to their particular circumstances and obtain their own legal advice about whether the sale has been effected in a way that means they are no longer engaging in any credit activities for which they need a licence.
- 80 Many credit products can be sold where the credit licensee effectively ceases to engage in credit activities through a legal assignment of all of their rights under the contract (as noted in [Regulatory Guide 203](#) *Do I need a credit licence?* (RG 203)).
- 81 However, there are some products where the licensee may not be able to effectively cease engaging in credit activities—for example, this may be an issue for credit card contracts, loan products with redraw features and consumer leases. For these kinds of contracts, there may be ongoing contractual obligations owed by the credit provider or lessor named in the contract (e.g. to honour drawdowns on a line of credit or withdrawal requests; or to allow the lessee continued use and access to rented goods, and comply with any maintenance or other obligations).
- 82 While the contracting party can legally assign its rights under the contract (e.g. the right to repayment), and the assignment provisions in the National Credit Code (in the schedule to the *National Consumer Credit Protection Act 2009* (National Credit Act)) effectively transfer the licensee's statutory obligations to the new credit provider or lessor, the ongoing contractual obligations are not able to be legally assigned.
- 83 The credit licensee should consider whether it has ongoing obligations under the terms of the contracts it has entered into and, if so, what it needs to do in order to end these obligations or transfer them to another person in a legally effective way.

84 For example, the licensee could consider whether it would need to novate the contracts to transfer the contractual obligations, or vary the contracts to end any future contractual obligations. If a contract is being novated, a new contract will be created so the new parties will need to consider whether they will be able to comply with the responsible lending obligations.

85 ASIC has previously given some relief from the responsible lending requirements to facilitate the novation of credit card contracts.

## Facilitating innovation

### ASIC's Innovation Hub

86 We remain committed to encouraging innovation that has the potential to benefit consumers. We are equally committed to ensuring that the regulation of new financial and credit products and services is appropriate, effective and promotes investor and consumer trust and confidence.

87 We introduced the Innovation Hub in April 2015 to assist financial technology (fintech) start-up businesses developing innovative financial products and services to navigate our regulatory system.

88 ASIC's Innovation Hub has worked with over 200 entities. As at August 2017, we had provided informal assistance to 164 entities, met with 49 regulatory technology (regtech) entities, and granted 35 AFS and credit licences: see [ASIC's Innovation Hub](#) on our website [www.asic.gov.au](http://www.asic.gov.au).

### ASIC sandbox licensing exemption

89 In December 2016, ASIC released [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#), which contains information about Australia's 'regulatory sandbox' framework.

90 This framework comprises the following three broad options for testing a new fintech product or service without a licence:

- (a) *existing flexibility* in the regulatory framework, or exemptions already provided by the law or ASIC, which mean that a licence is not required;
- (b) *ASIC's fintech licensing exemption*, which allows eligible fintech businesses to test certain specified services for 12 months without holding an AFS licence or credit licence; and
- (c) *a tailored, individual licensing exemption*, granted by ASIC on a case-by-case basis, to facilitate product or service testing.

91 ASIC's regulatory sandbox is unique because it is the only sandbox internationally to allow an automatic fintech licensing exemption for specific services over a specific time period.

- 92 Within ASIC’s remit, the licensing exemption aims to balance the benefits of concept validation testing against the risk of consumer harm from poor conduct by unlicensed businesses that have no track record of providing financial services to consumers.
- 93 One participant in ASIC’s regulatory sandbox has recently applied for, and been granted, an AFS licence, and twelve entities have shown some interest in ASIC’s sandbox exemption.
- 94 Besides the fintech licensing exemption, many fintech businesses rely on exemptions provided by ASIC under our relief powers. Areas where we have provided relief from the requirement to hold a licence include services in relation to ‘low-value’, non-cash payment products, the provision of generic financial calculators, and some services in relation to mortgage offset accounts. More importantly, we have granted 35 AFS or credit licences to fintech entities.

### International regulatory cooperation

- 95 We understand that innovation in financial services is not confined by national borders and that some business ideas will want to test their concepts in foreign markets. We have signed cooperation agreements with overseas regulators to assist innovative fintech businesses to make ventures into international markets.
- 96 These agreements, as listed in Table 3, will help break down barriers to entry by enabling ASIC to refer fintech start-up businesses to international regulators to efficiently establish initial discussions and receive informal assistance on the regulatory environment they may face.

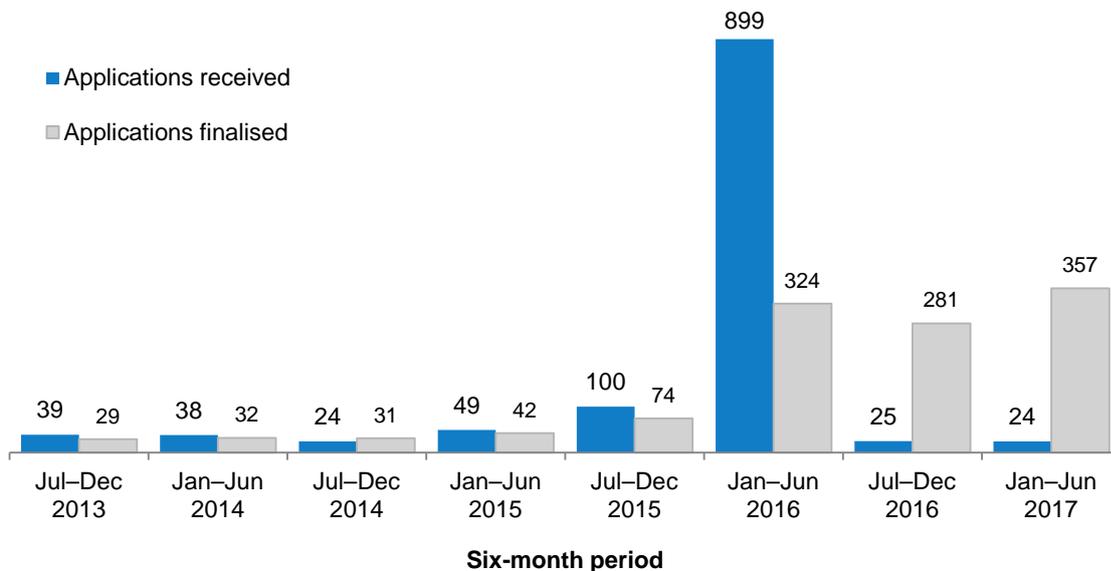
**Table 3: Fintech cooperation agreements between ASIC and overseas regulators**

Country	Regulator	Type of agreement
UAE	Abu Dhabi Global Market (ADGM) Financial Services Regulatory Authority (FSRA)	<a href="#">ASIC–Abu Dhabi FSRA referral and information-sharing agreement</a>
Canada	Ontario Securities Commission (OSC)	<a href="#">ASIC–OSC referral and information-sharing agreement</a>
United Kingdom	UK Financial Conduct Authority (FCA)	<a href="#">ASIC–FCA referral and information-sharing agreement</a>
Singapore	Monetary Authority of Singapore (MAS)	<a href="#">ASIC–MAS referral and information-sharing agreement</a>
Hong Kong	Hong Kong Securities and Futures Commission (HKSF)	<a href="#">ASIC–HKSF referral and information-sharing agreement</a>
Malaysia	Malaysia Securities Commission (SC)	<a href="#">ASIC–SC referral and information-sharing agreement</a>
Indonesia	Otoritas Jasa Keuangan (OJK)	<a href="#">ASIC–OJK information-sharing agreement</a>
Kenya	Capital Markets Authority of Kenya (CMA)	<a href="#">ASIC–CMA information-sharing agreement</a>
Japan	Japan Financial Services Agency (JFSA)	<a href="#">ASIC–JFSA exchange of letters framework</a>

### Limited AFS licensing

- 97 The former exemption under the Corporations Regulations 2001 permitted ‘recognised accountants’ to provide a recommendation, in relation to an SMSF, to acquire or dispose of a superannuation product without holding an AFS licence: regs 7.1.29(5)(c)(ii) and 7.1.29A.
- 98 As part of the FOFA reforms under the *Corporations Amendment (Future of Financial Advice) Act 2012*, this exemption ceased to apply from 1 July 2016. To continue providing such services (with certain limited exceptions), financial advisers are required to either hold a ‘limited AFS licence’ or become an authorised representative of someone who holds the appropriate AFS licence authorisations.
- 99 By the end of the relevant period (i.e. 30 June 2017)—which was one year after the end of the transition period for the AFS licensing exemption for accountants—we had received 1,210 (limited) AFS licence applications. Of these:
- (a) 799 applications were approved;
  - (b) 150 applications were withdrawn;
  - (c) 225 applications were not accepted for lodgement;
  - (d) one application was refused; and
  - (e) 36 applications were pending.

**Figure 1: Number of limited AFS licence applications received or finalised (1 July 2013 to 30 June 2017)**



Note: See Table 7 in the appendix for the complete data used in this figure (accessible version).

- 100 As advised in [Media Release \(17-239MR\)](#) *ASIC checks on limited AFS licence experience* (18 July 2017), ASIC visited 20 limited AFS licensees during 2016–17 to assess how they were operating under their new licences, and to discuss and promote compliance with their AFS licensee obligations.
- 101 Although most of the AFS licensees were still establishing their businesses under the new regime, many indicated that the provision of financial advice was not a large part of their business. Only half of the licensees had provided advice at the time of our visit.
- 102 Areas of concern that we identified during the visits included:
- (a) uncertainty about ongoing compliance obligations—the licensees were uncertain about the resources required to monitor compliance and what steps were required to comply with their general licensee obligations;
  - (b) confusion about what information needed to be uploaded to the financial advisers register—nearly half of the licensees had not updated the register with their adviser information; and
  - (c) where licensees had not yet provided advice about SMSFs, uncertainty about what documents needed to be provided to clients, the content of those documents, and when they had to be provided to clients—this included the requirements for giving a Statement of Advice, which is a key document.
- 103 In light of the findings from these visits, we have provided additional education resources for limited AFS licensees, particularly about their ongoing compliance obligations and client engagement. We are also discussing these issues with the Joint Accounting Bodies at our industry liaison meetings.

Note: See [Media Release \(17-399MR\)](#) *ASIC delivers on commitment to help limited AFS licensees understand their obligations* (22 November 2017) and the [limited AFS licensees information sheets](#).

## Licensing: Policy and procedures

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

- 104 We are continuing our work to revise our *AFS Licensing Kit* (Regulatory Guides 1, 2 and 3), with the aim of making the assessment of AFS licence applications more efficient and reducing the time it takes between lodgement and finalisation of the application.
- 105 The scope and purpose of this work include:
- (a) ensuring that all the required relevant information (including relevant non-core proofs) is submitted with the application (rather than being left to requisition);

- (b) implementing a revised risk assessment process, focusing on the areas that we consider increase the risk of the applicant not complying. These higher-risk areas will require greater scrutiny, leading to longer processing times—however, we expect to complete applications with a lower assessed risk more quickly;
- (c) requiring applicants to make submissions in support of their application that enable the Licensing team to form the view that there is no reason to believe that the applicant is likely to contravene the obligations that will apply if an AFS licence is granted; and
- (d) examining the most appropriate process to implement these efficiencies, including both before and during the development of ASIC’s new technology portal.

### Policy proposals

106 As mentioned in earlier reports, we are progressing with our review of regulatory guides relating to AFS licensing to ensure that we are providing adequate guidance on what information and documentation we require when assessing licence applications.

107 As part of this review, we are also considering whether any of the assumptions or principles we apply to our assessment need to be updated or enhanced (e.g. representations about the business activities and authorisations being sought; the need for a key person requirement; the role of a responsible manager and a responsible officer, including in relation to competence and capacity, and good fame and character; and the adequacy of arrangements for outsourced functions).

### Liquidators’ committee

108 The Insolvency Law Reform Act was passed on 22 February 2016, and the Government registered the related Insolvency Practice Rules (Corporations) 2016 in December 2016. These reforms resulted in new registration (and discipline of registered liquidators) amendments to Pts 1 and 2 of Sch 2 to the Corporations Act (Insolvency Practice Schedule).

109 ASIC issued guidance on becoming a registered liquidator in March 2017 in [Regulatory Guide 258](#) *Registered liquidators: Registration, disciplinary actions and insurance requirements* (RG 258).

110 Persons seeking registration as a liquidator must apply using the approved Form 903B. If accepted, the application will be referred to a committee. The committee will only decide that a person should be registered as a liquidator if they are satisfied that the person meets the criteria for registration.

Note: See our webpage [Registered liquidators—Applying for and managing your liquidator registration](#) on [www.asic.gov.au](http://www.asic.gov.au).

111 We will register a person as a liquidator if the committee decides that the person should be registered, and the person produces evidence in writing to ASIC that the person has taken out adequate and appropriate professional indemnity and fidelity insurance against the liabilities the person may incur working as a registered liquidator.

112 We register a person as a liquidator by entering the person's details on the Register of Liquidators. After registering the person as a liquidator, we will give the person a certificate of registration. The registration is subject to the current conditions imposed on the registered liquidator and has effect for three years: see s1286 of the Corporations Act and reg 9.1.01(k) of the Corporations Regulations 2001.

113 Since the new regime commenced on 1 March 2017, we have received 10 applications (three during the relevant period). Of these, two were initially rejected for lodgement, and seven have since been submitted to the liquidators' committee for assessment.

### **Financial advisers register**

114 The financial advisers register commenced in March 2015. It is a register of individuals who, since 31 March 2015, have been authorised to provide personal advice to retail clients on relevant financial products (i.e. all financial products other than basic banking products, general insurance products or consumer credit insurance, or a combination of any of these products).

115 The key information on the register includes:

- (a) the adviser's name, registration number, status and experience;
- (b) the name of each AFS licensee who authorises the adviser;
- (c) if an adviser is authorised by an authorised representative, their details;
- (d) any special restrictions on the scope of the authorisation;
- (e) the recent advising history of the adviser;
- (f) what product areas the adviser can provide advice on;
- (g) any bans, disqualifications or enforceable undertakings entered into by the adviser; and
- (h) the adviser's qualifications, training courses and memberships of any professional bodies.

Note: The *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017* inserts additional information to be included on the financial advisers register from 1 January 2019.

116 During 2017, we have been conducting a surveillance to identify AFS licensees who have not complied with their obligations in relation to the financial advisers register.

117 We have written to AFS licensees asking them to provide the information required about their financial advisers' qualifications and training courses where this was missing from the register. We will shortly be contacting all limited AFS licensees who have not appointed any financial advisers to the register to ask them to explain why they have not done so.

118 We note that all individuals who are authorised to provide personal advice to retail clients on relevant financial products must be listed on the financial advisers register. This obligation applies even if the individual holds an AFS licence or is registered as an authorised representative, or is appointed as a responsible manager.

### **AFS licensee financial statements and audit reports**

119 We updated our website on 29 September 2017 to indicate that from 1 October 2017, we would require AFS licensees to lodge their financial statements and audit reports online: see [AFS licensees—lodging annual accounts and audit reports using forms FS70 and FS71](#) on our website ([www.asic.gov.au](http://www.asic.gov.au)).

120 This means that, from that date, AFS licensees will need to submit the following forms to ASIC through the [AFS licensees portal](#):

- (a) Form FS70 *AFS licensee profit and loss statement and balance sheet*; and
- (b) Form FS71 *Auditor's report for AFS licensee*.

121 Submitting financial statements and audit reports via the online portal offers more flexibility, certainty, reliability and timeliness than paper lodgements by post. As over 90% of all lodgements to ASIC registers are completed online, by using our online portal customers can interact with us outside of business hours, updating the registers in real time when it is convenient for them.

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

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

123 As set out in our service charter, we aim to decide whether to grant or vary an AFS licence or credit licence within 60 days (target: 70%) and within 120 days (target: 90%).

124 For AFS licences in 2016–17, we:

- (a) granted 21% of licences within 60 days;

- (b) decided 51% of licence variations within 60 days;
- (c) granted 38% of licences within 120 days; and
- (d) decided 73% of licence variations in 120 days.

125 For credit licences in 2016–17, we

- (a) granted 77% of licences within 60 days;
- (b) decided 82% of licence variations in 60 days;
- (c) granted 91% of licences within 120 days; and
- (d) decided 90% of licence variations in 120 days.

126 Traditionally, licence applications beyond the 60-day target have generally been complex, requiring considerable additional work, although a greater regulatory focus on problematic applications has affected this.

127 Performance against this measure has also been affected by ASIC's resourcing, and the increase in limited AFS licence applications as a result of the expiry in June 2016 of the transition period for the AFS licensing exemption for accountants. These limited AFS licence applications will continue to affect these measures in 2017–18.

### ASIC Enforcement Review Taskforce

128 Over a number of years, we have made submissions, including to the Financial System Inquiry (FSI), seeking to strengthen our licensing powers.

129 The FSI recommended that ASIC be provided with stronger regulatory tools. In response, the Government stated that it would develop legislative amendments to strengthen ASIC's enforcement tools in relation to the financial services and credit licensing regimes.

130 This led to the Government setting up the ASIC Enforcement Review Taskforce, and including in its terms of reference the consideration of:

[t]he adequacy of ASIC's powers in respect of licensing of financial services and credit providers, including the threshold for granting or refusing to grant a licence ...

131 The taskforce has issued a number of position and consultation papers: see [ASIC Enforcement Review](#). The most relevant to this report is the position and consultation paper on licensing powers: [Strengthening ASIC licensing powers](#).

132 The taskforce has developed the following preliminary positions on a set of reforms aimed at enhancing the current AFS and credit licensing regimes and achieving greater uniformity between the two regimes:

- (a) *Position 1*: ASIC to be able to refuse a licence application (or, for existing licensees, take licensing action) if it is not satisfied that controllers are fit and proper.

- (b) *Position 2:* Introduce a statutory obligation to notify a change of control within 10 business days of control passing, and impose penalties for failure to notify.
- (c) *Position 3:* Align the assessment requirements for AFS licence applications with the enhanced credit licence requirements.
- (d) *Position 4:* ASIC to be empowered to cancel or suspend a licence if the licensee fails to commence business within six months.
- (e) *Position 5:* Align consequences for making false or misleading statements in documents provided to ASIC in the AFS and credit licensing contexts.
- (f) *Position 6:* Making a materially false or misleading statement in a licence application to be a specific basis for refusing to grant the licence.
- (g) *Position 7:* Introduce an express obligation requiring licence applicants to confirm that there have been no material changes to information given in the application before the licence is granted.

133 ASIC generally supported the taskforce's positions with the following exceptions:

- (a) We acknowledge the taskforce's position that a change in control of a corporate licensee does not require pre-approval from ASIC, but suggest that the advantages of ASIC pre-approval merit further consideration.
- (b) We consider the obligation to notify of a change in control, as well as the information required by ASIC to determine whether the new controller is fit and proper, should be an obligation that rests with both the controller and the licensee, rather than the licensee alone, as it is the controller who has the knowledge in the first instance.

134 We now await the taskforce's final report to Government.

## Licensing: ASIC hearing delegates and Administrative Appeals Tribunal (AAT) applications

### ASIC hearing delegates

135 During the relevant period, four applications were referred to ASIC hearing delegates, with a recommendation that each of the applications be refused.

136 Issues raised in these applications included:

- (a) our concerns about good fame and character, or whether the applicant was fit and proper; and

- (b) our concerns about the past conduct of directors and/or responsible managers, coupled with poor documentation and responses to our requests for additional information, which triggered one or more elements of s913B(1) to prevent ASIC from granting a licence—this meant that we were not satisfied that all of the preconditions in s913B(1) had been met and, as such, were unable to grant the licence.

137 Three of the four referred applications were applications for an AFS licence (with one of these being a limited AFS licence application), and the fourth application was for registration as an SMSF auditor.

138 The outcomes of these referrals to the hearing delegate were:

- (a) in two cases, the delegate agreed with the Licensing team's recommendation, and refused the application;
- (b) in one case, the delegate declined to issue a notice of hearing, and referred the matter back to the Licensing team for assessment; an AFS licence was subsequently issued; and
- (c) in one case, the applicant withdrew its application before the matter proceeded to a hearing.

## AAT applications and decisions

### Global Financial Markets Pty Ltd

139 In August 2013, Global Financial Markets Pty Ltd (GFM) applied to ASIC for an AFS licence.

140 GFM's sole director, Mark Power, had previously held two AFS licences in the names of Mark Raymund Power and Mark Power Financial Pty Ltd (MPF). These licences were cancelled on 14 November 2011 on the grounds that ASIC was not satisfied that MPF and Mr Power had complied with their obligations under s912A of the Corporations Act.

141 The ASIC hearing delegate refused the AFS licence application as they determined that GFM had not demonstrated it could comply with the organisational competence obligations in s912A(1).

142 The hearing delegate was not satisfied that:

- (a) Mr Power had the recent practical experience considered necessary to demonstrate competence to provide all of the proposed financial services, and recent private study was not an adequate substitute;
- (b) even if Mr Power were able to demonstrate he had acquired the necessary skills and knowledge since November 2011, that Mr Power satisfied the experience requirement in Option 5 of [Regulatory Guide 105](#) *Licensing: Organisational competence* (RG 105);

- (c) Mr Power had acquired the appropriate skills and knowledge to undertake the compliance monitoring necessary for the business of GFM since the cancellation of the past AFS licences; and
- (d) Mr Power understood the essential obligations imposed on an AFS licensee and, as such, could not be relied on to discharge those duties, given his previous AFS licence history.

143 GFM applied to the AAT seeking a review of ASIC's decision to refuse to grant GFM an AFS licence. Mr Power also lodged an appeal to the AAT against ASIC's decision to cancel the AFS licences held by Mark Raymond Power and MPF. The three appeals were heard concurrently by the AAT in October 2016. On 31 August 2017, the AAT affirmed the three ASIC decisions under review.

Note: See *Global Financial Markets Pty Ltd and Australian Securities and Investments Commission* [2017] AATA 1397.

144 In summary, the AAT was not satisfied that GFM would comply with its general obligations under s912A because the precondition in s913B(1)(b) had not been satisfied and, in such circumstances, a licence must not be granted.

145 The AAT considered that:

- (a) Mr Power and MPF had failed, on multiple occasions, to comply with their obligations under s912A and, accordingly, the ground for cancellation in s915C(1)(a) was established. Further, the ground for cancellation in s915C(1)(aa) was established in that there were reasonable grounds to believe that Mr Power and MPF would be likely to contravene their obligations under s912A;
- (b) the AAT's findings in relation to the cancellation decisions could not be overlooked when considering whether GFM would be likely to contravene those laws in the future;
- (c) Mr Power's conduct at the AAT hearing indicated an ongoing failure to understand or accept the seriousness of his contraventions; and
- (d) private study and private trading activity were not sufficient to satisfy that Mr Power had the appropriate knowledge and skills to be a responsible manager, and Mr Power failed to demonstrate the level of knowledge and skill required by RG 105.71(c).

#### **AFS licence application**

146 In April 2014, ASIC received an application for a limited AFS licence, under s913A of the Corporations Act, from an applicant seeking to provide advice about superannuation and SMSFs.

147 As a result of information that subsequently came to our attention, which we regarded as material to our decision about whether to grant or refuse to grant an AFS licence, we withdrew our offer of a limited AFS licence.

148 We were concerned that the applicant had contravened s12DB(1)(i) of the ASIC Act as a result of making false or misleading representations on its website about the SMSF administration and accounting services it provided, including a ‘free SMSF set-up’.

149 We issued an infringement notice, which the applicant refused to comply with. We commenced proceedings in 2015 in the Federal Court of Australia, alleging that the applicant was liable for unconscionable conduct and conduct contravening the consumer protection provisions of the ASIC Act.

150 The applicant then admitted liability for all the contraventions alleged in the proceedings, and the court made orders against the applicant—including that the applicant should establish a compliance, education and training program (CET program).

151 As a result of the Federal Court decision, we advised the applicant that ASIC was minded to refuse the application. The matter was heard by the ASIC hearing delegate in May 2016.

152 ASIC’s hearing delegate was not satisfied that the responsible manager and the applicant had demonstrated that the applicant understood, and could comply with, the obligations in s912A because:

- (a) it had been necessary for ASIC to take legal proceedings;
- (b) it was noted that the CET program was established as the result of the court order and not at the applicant’s own initiative; and
- (c) the compliance manual, presented by the applicant to demonstrate its ability to comply, did not accurately reflect the financial services that the applicant was seeking to provide under a limited licence—which raised concerns about the applicant’s understanding of the AFS regulatory regime.

153 The hearing delegate was not satisfied that there was no reason to believe that the applicant would be likely to contravene its obligations under the Corporations Act if they were granted an AFS licence, and accordingly refused the AFS licence application on 17 June 2016.

154 The applicant lodged an appeal to the AAT in February 2017. The AAT’s decision is currently reserved.

#### **Credit licence application**

155 An application was lodged with ASIC for a credit licence, under s36 of the National Credit Act, to provide consumer leases.

- 156 On 29 November 2016, ASIC's hearing delegate refused the application because the delegate was not satisfied that there was no reason to believe that the applicant would be likely to contravene its obligations in s41(1)(a), (f), (g) and (l)(i) of the National Credit Act if a credit licence was granted.
- 157 The delegate accepted that, while the applicant had made some changes to its business practices, these were insufficient on a number of grounds, including:
- (a) a lack of understanding of the processes and supervisory arrangements required in relation to conducting inquiries about the consumer's circumstances as a licensed credit provider;
  - (b) reliance on self-assessment by loan applicants;
  - (c) while verification procedures had been changed, these changes had been in place for less than the two years required to satisfy the practical experience requirement; and
  - (d) inadequate record-keeping and verification practices.
- 158 The delegate was also not satisfied that the nominated responsible manager's experience, as an unlicensed business, amounted to relevant experience because the experience did not demonstrate organisational competence (see paragraphs 62–63) and compliance with the obligations in the National Credit Act.
- 159 The delegate determined that, given the responsible manager's lack of relevant experience, they could not be satisfied that there was no reason to believe that the applicant would be likely to contravene the obligations if it was granted a credit licence. Accordingly, the requirement under s37(1)(b) had not been met.
- 160 The applicant appealed to the AAT in December 2016. The matter has yet to be heard.

### **SMSF auditor registration application**

- 161 In September 2016, we received an application for registration as an approved SMSF auditor under s128A of the *Superannuation Industry (Supervision) Act 1993* (SIS Act).
- 162 On March 2017, an ASIC delegate made a decision under s128B(3) of the SIS Act to refuse the application. After an internal ASIC review, requested under s344, a delegate concluded that the application should be refused and the initial decision confirmed.
- 163 The first delegate determined that the applicant had incorrectly answered questions in their application, and had failed to disclose their role as a director of externally administered companies.

- 164 The delegate considered the response to ASIC's further queries, and concluded that the applicant had not provided full disclosure, had made a series of misleading statements to ASIC during their application, and had acted with a serious lack of care, judgement and professionalism.
- 165 [Regulatory Guide 243](#) *Registration of self-managed superannuation fund auditors* (RG 243) sets out that a person may be regarded as not a fit and proper person if they have been misleading or untruthful in dealing with a regulatory body. Accordingly, the hearing delegate was not satisfied that the applicant was a fit and proper person to be an approved SMSF auditor.
- 166 The applicant has sought an AAT review of ASIC's decision and, at the date of this report, the matter is yet to be heard.

## B Background

### Key points

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

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

### Regulated population: Licensing and registration

167 We have provided key statistics (as at 1 July 2017) on the selected areas shown in Table 4.

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

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

\* ASIC's predecessor (the Australian Securities Commission) assumed responsibility for liquidator and company auditor registration under the *Corporations Act 1989*.

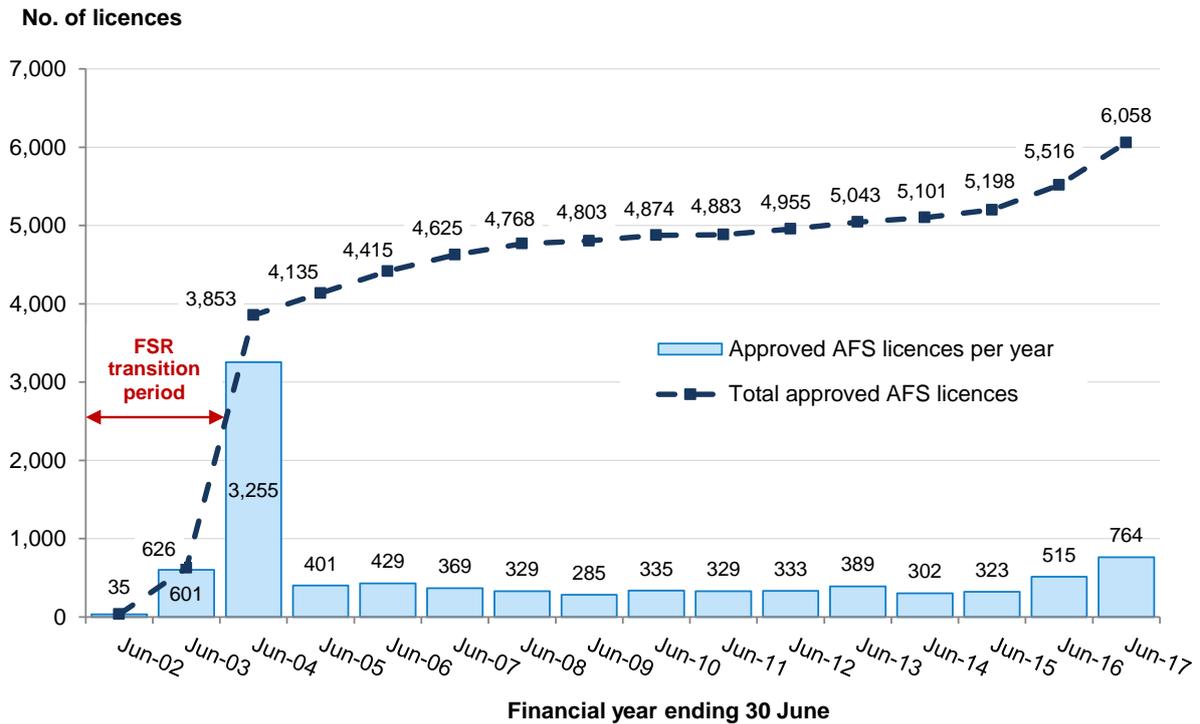
168 The graphs below show the regulated population for AFS licensees, credit licensees, liquidators and auditors.

#### AFS licensees

169 The number of AFS licensees increased significantly during the relevant period as a result of a large number of limited licence applications being lodged in the lead-up to the end of the transitional period on 30 June 2016, and the finalisation of these assessments that flowed through into the relevant period.

170 Overall, excluding the limited licence applications in the past two financial years, the average annual rate of increase in the number of AFS licensees remains around 2.4%, from the end of the AFS licensing transition period in March 2004. With limited licensees included, the average annual rate of increase rises to 3.5%: see Figure 2.

**Figure 2: AFS licences approved per financial year and total number of approved AFS licences**

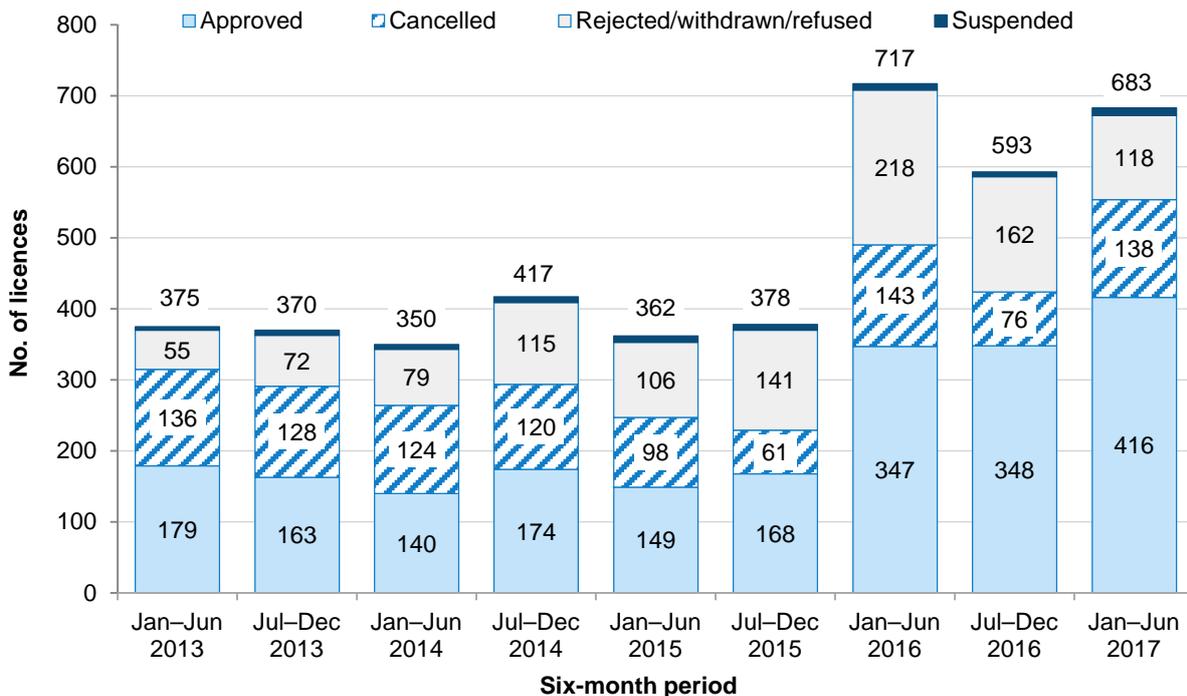


Note 1: FSR means 'financial services reform'.

Note 2: See Table 8 in the appendix for the complete data used in this figure (accessible version).

171 Excluding the limited licence approvals, AFS licence approvals have remained fairly stable since around 2007.

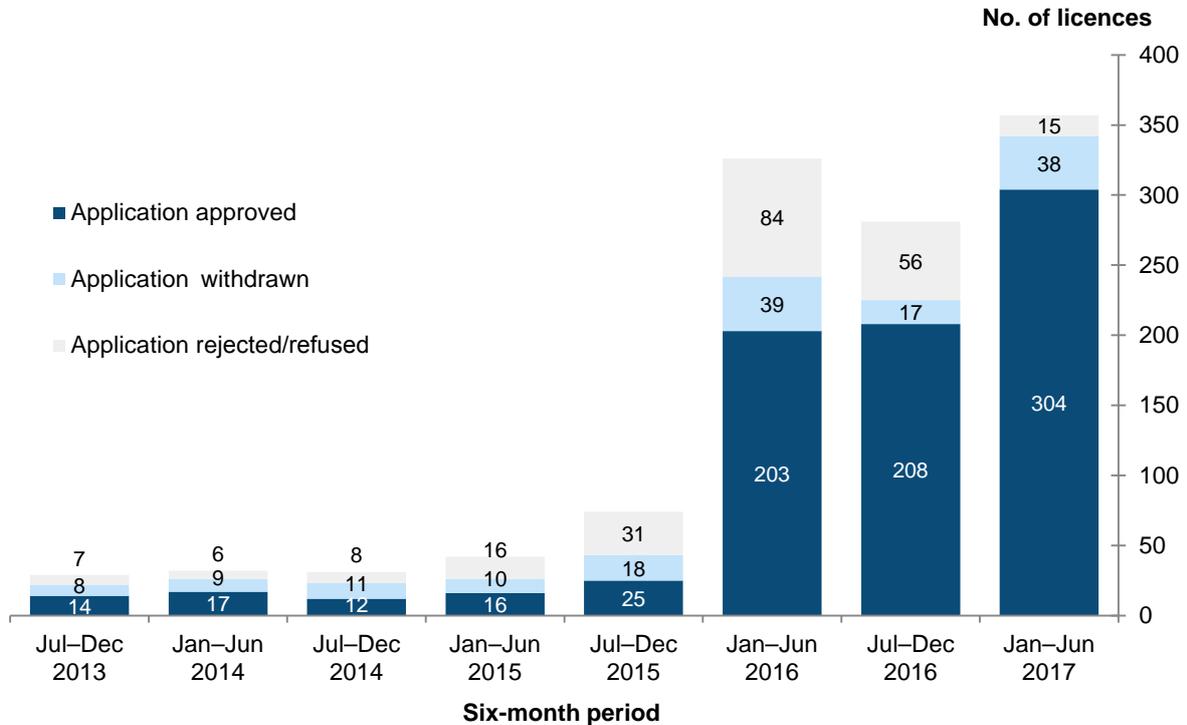
**Figure 3: AFS licence applications by status per half year (1 January 2013 to 30 June 2017)**



Note: See Table 9 in the appendix for the complete data used in this figure (accessible version).

172 The vast majority of limited AFS licence applications were received in the last six months of the three-year transition. Figure 4 shows that most of the decisions on these applications (i.e. approvals, withdrawals and rejections) were made in 2016–17 and in the second half of 2015–16.

**Figure 4: Finalised limited AFS licence applications by status (1 July 2013 to 30 June 2017)**

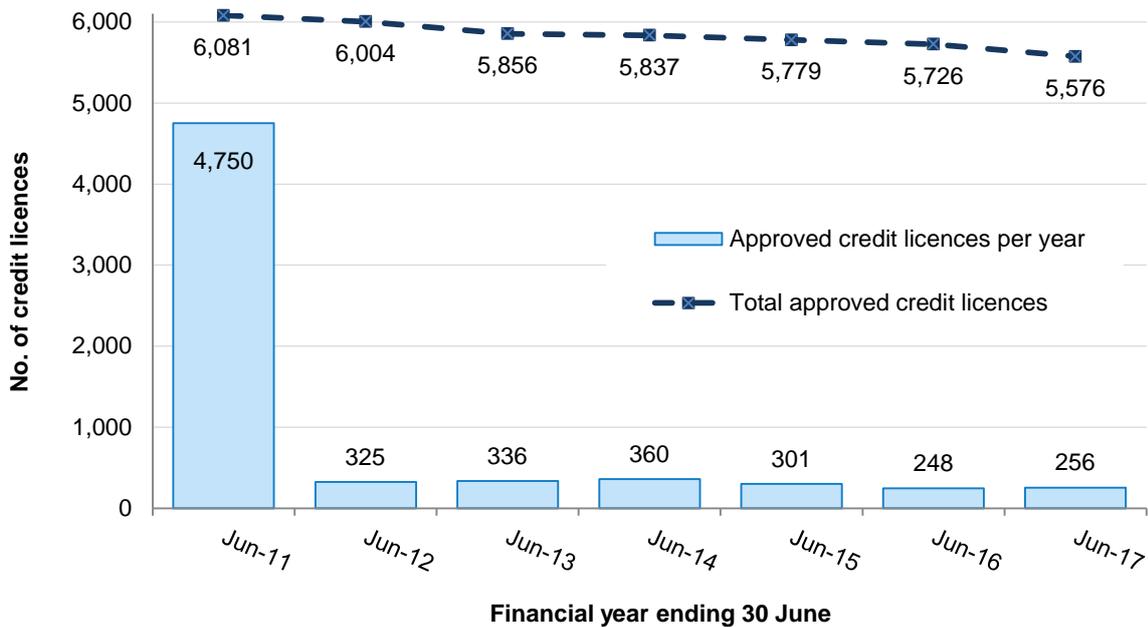


Note: See Table 10 in the appendix for the complete data used in this figure (accessible version).

### Credit licensees

173 The number of credit licences held continued to gradually fall in the relevant period (at an average annual rate of 1.4%), suggesting that consolidation in the industry is still occurring: see Figure 5.

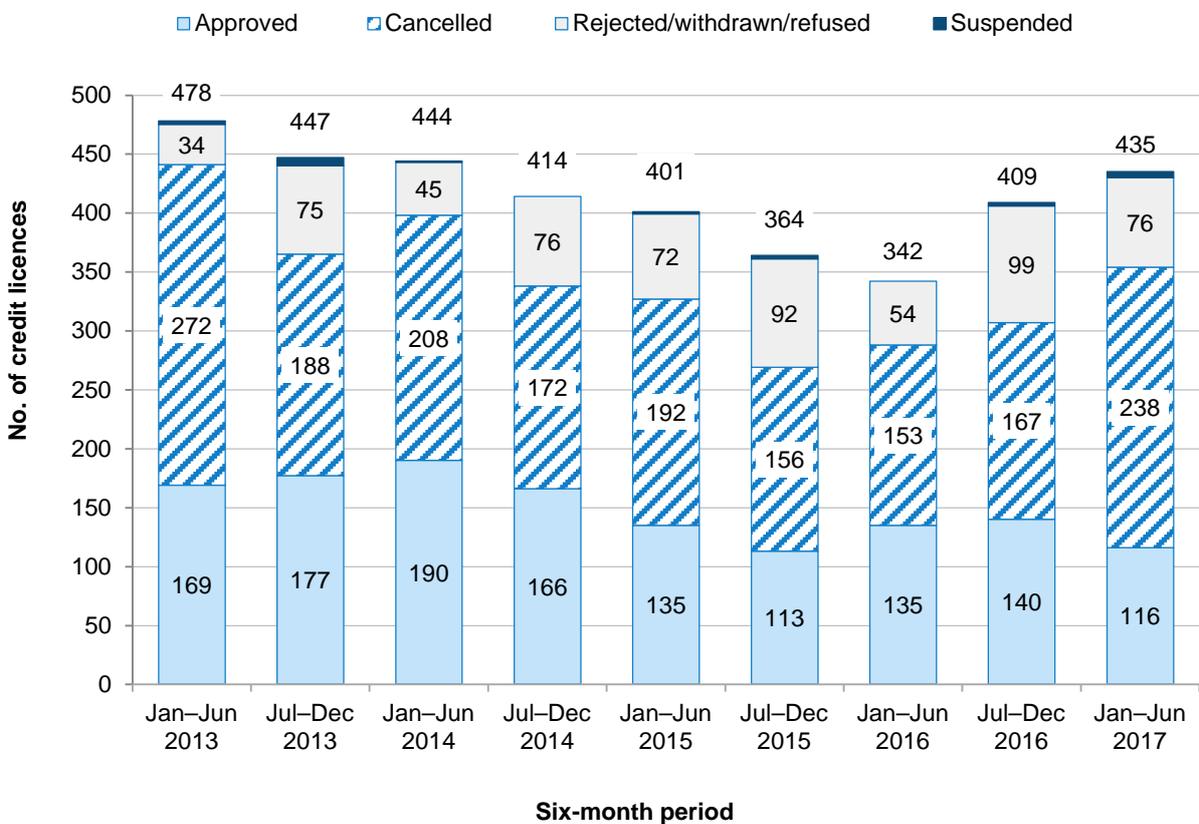
**Figure 5: Credit licences approved per financial year and total number of approved credit licences**



Note: See Table 11 in the appendix for the complete data used in this figure (accessible version).

174 Figure 6 shows the general trend of the status of credit licence applications for each half year over the past three years.

**Figure 6: Credit licence applications by status per half year (1 January 2013 to 30 June 2017)**

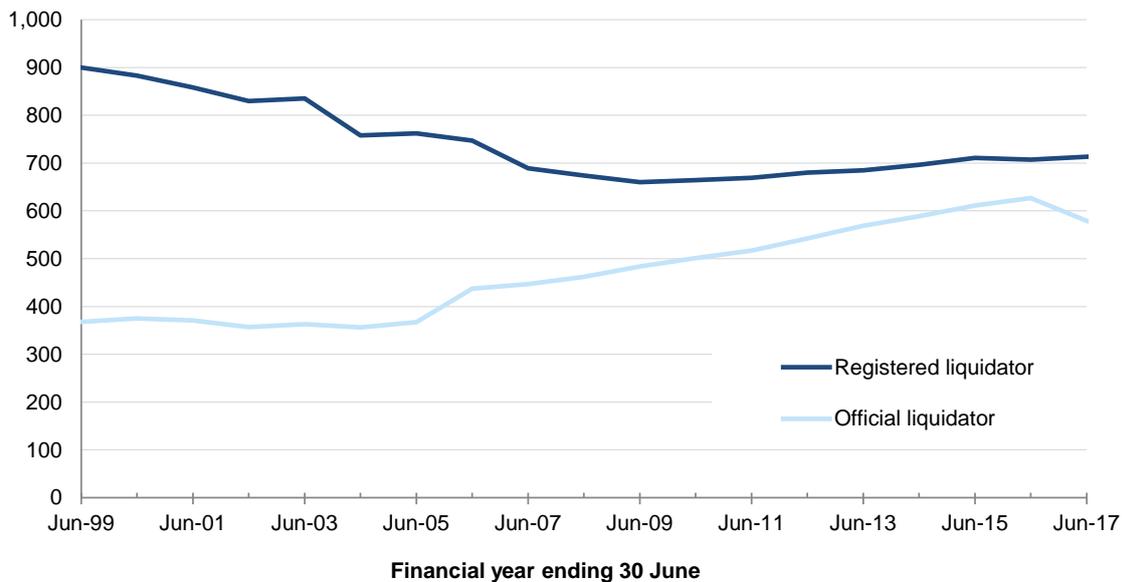


Note: See Table 12 in the appendix for the complete data used in this figure (accessible version).

## Liquidators

- 175 The number of registered liquidators fell between 1999 and 2009, but seems to have been slowly picking up again since then.
- 176 After a period of reasonable stability, the number of official liquidators started to increase following a change in legislation in 2005, and has since been growing at a faster rate than the number of registered liquidators, until a decline in 2016–17: see Figure 7.
- 177 As part of the Insolvency Law Reform Act, the registration requirements for liquidators and official liquidators in s1282(2) and 1283 of the Corporations Act were repealed and ceased to apply from 1 March 2017. A new registration regime was introduced in Sch 2 to the Corporations Act.
- 178 Under these reforms, ASIC must now refer applications for registration as a liquidator to an external committee: see Section E for further details.

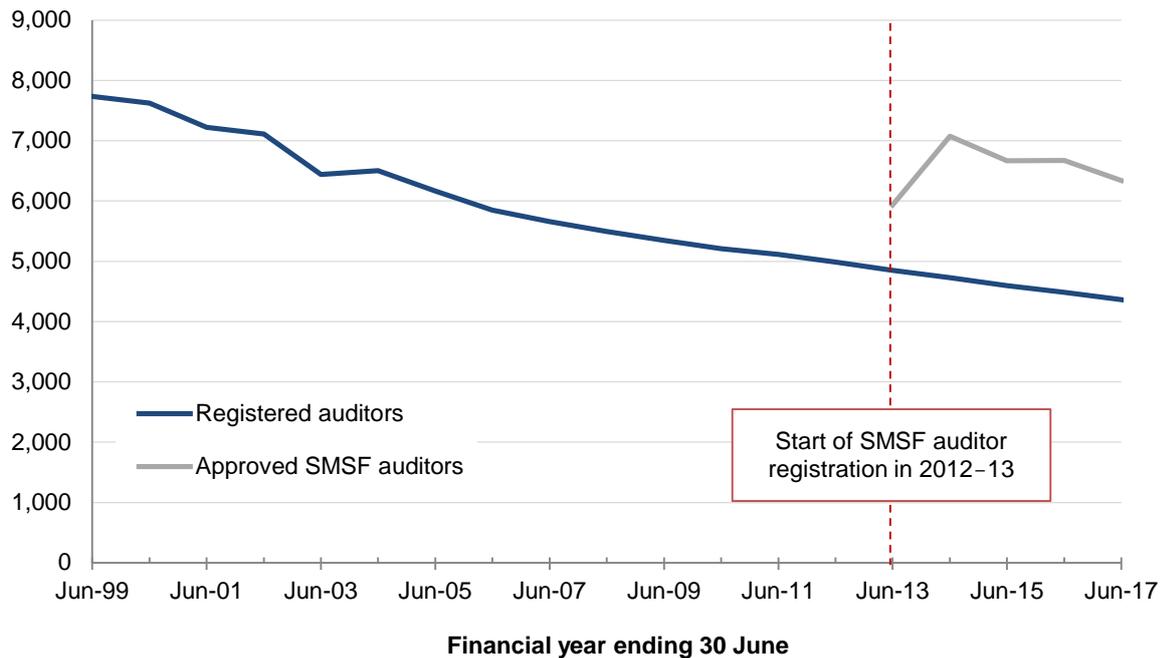
**Figure 7: Number of registered and official liquidators to 30 June 2017**



Note: See Table 13 in the appendix for the complete data used in this figure (accessible version).

## Auditors

- 179 The number of registered company auditors continued its decline in the relevant period, reflecting (among other things) a large number of cancellations at the auditor's request and ASIC-initiated cancellations.
- 180 The number of approved SMSF auditors is continuing to fall in the period after an initial (growth) spike in mid-2014: see Figure 8.

**Figure 8: Number of registered company auditors and approved SMSF auditors to 30 June 2017**

Note 1: See Table 14 in the appendix for the complete data used in this figure (accessible version).

Note 2: From 1 July 2013, SMSF auditors must be registered with ASIC.

## How licensing and professional registration applications are determined

- 181 The Licensing team fulfils an important gatekeeping role for ASIC. The assessment of applications is not an automatic process; each application is subject to a detailed and rigorous assessment.
- 182 We aim to keep applicants informed about the progress of their applications during our assessment. We will often consult other ASIC stakeholder and enforcement teams, or we may seek information externally (e.g. from other local or international regulators).
- 183 A detailed explanation about how AFS and credit licensing and professional registration applications are determined—including rejection, approval, withdrawal and refusal—is set out in our first report: see paragraphs 53–64 of REP 433.

## C AFS licences

### Key points

During the relevant period, we considered 2,079 AFS licence applications (comprising 1,075 received during the relevant period and 1,004 received before the relevant period), and finalised 76% (1,580) of these.

Of the 1,580 AFS licence applications finalised, we granted 764 new licences and 395 licence variations. Of the 1,159 AFS licence applications we approved (including variations), we imposed:

- a key person condition on 875 licences;
- an additional responsible manager requirement on 39 licences (nine new licences and 30 variations); and
- modified authorisations on 238 licences.

We declined to accept 14 responsible managers nominated by the AFS licensee (eight new licences and six licence variations), as we were concerned that they did not have the knowledge and skills to meet the organisational competence obligations.

A total of 201 AFS licence applications were withdrawn before we made a formal determination.

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

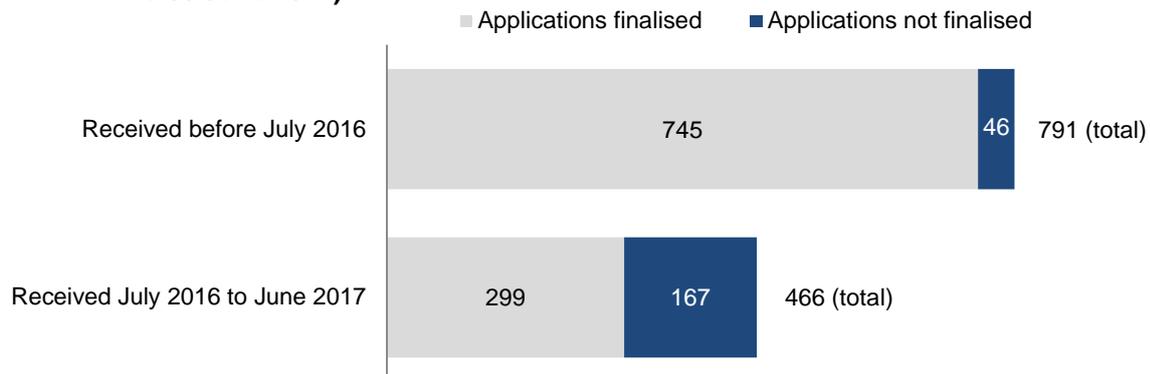
Fourteen AFS licences were suspended and 214 AFS licences were cancelled.

### Applications and regulatory outcomes

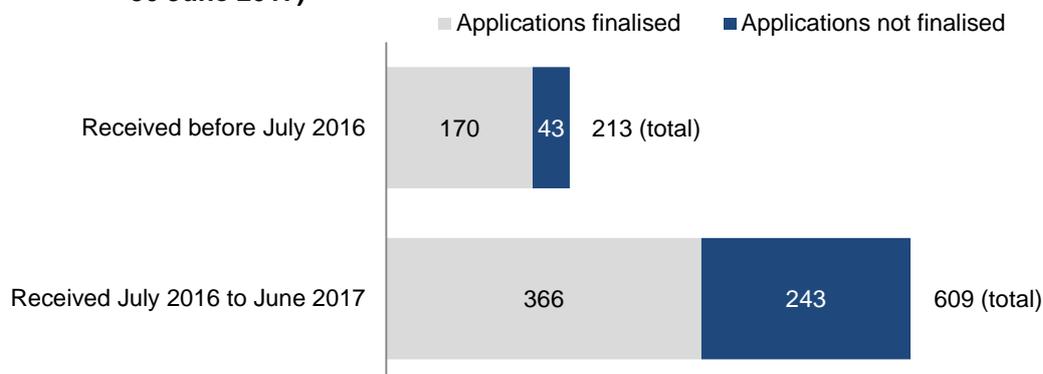
- 184 An application for an AFS licence may be rejected for lodgement, approved, withdrawn or refused. An application that is approved may also have additional regulatory outcomes.
- 185 For further background information about what we mean by regulatory outcomes, see paragraphs 66–68 of REP 433.

### Applications finalised

- 186 Figure 9 and Figure 10 summarise the number of new AFS licence and AFS licence variation applications that we finalised during the relevant period in comparison with those lodged.

**Figure 9: Number of lodged and finalised new AFS licence applications (1 July 2016 to 30 June 2017)**


Note: See Table 15 in the appendix for the complete data used in this figure (accessible version).

**Figure 10: Number of lodged and finalised AFS licence variation applications (1 July 2016 to 30 June 2017)**


Note: See Table 16 in the appendix for the complete data used in this figure (accessible version).

187

Table 5 provides a breakdown of how the AFS applications we finalised during the relevant period were decided.

**Table 5: How finalised AFS licence applications were decided (1 July 2016 to 30 June 2017)**

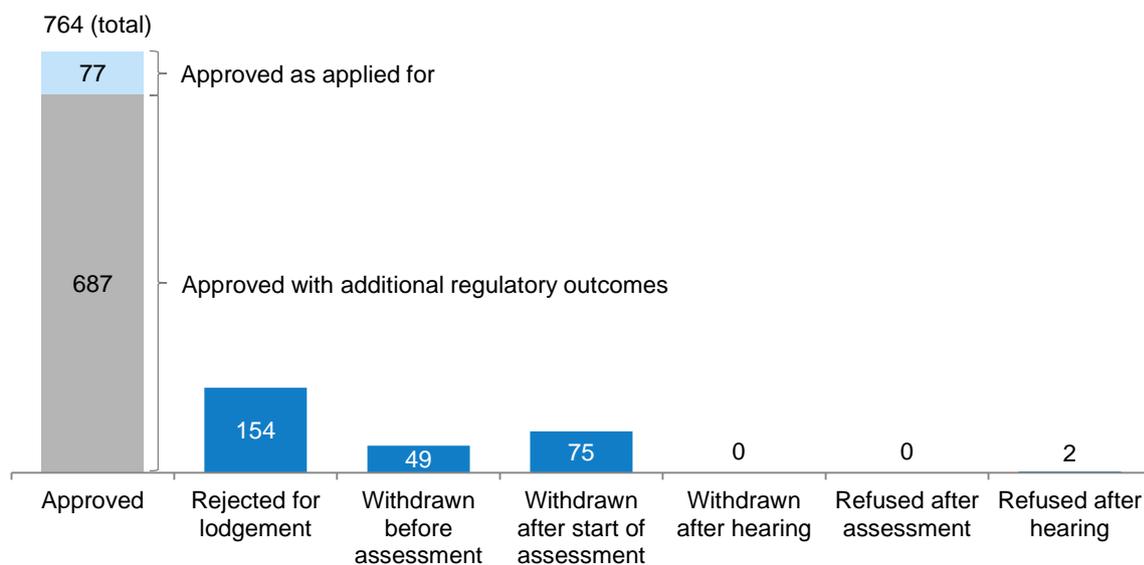
Status of applications finalised 1 July 2016 to 30 June 2017	New licence applications received before July 2016	New licence applications received July 2016–June 2017	Licence variation applications received before July 2016	Licence variation applications received July 2016–June 2017
Approved (with and without additional regulatory outcomes)	618	146	138	257
Rejected for lodgement (pre-lodgement)	49	105	7	53
Withdrawn before start of assessment (pre-lodgement)	11	38	5	42
Withdrawn after start of assessment (post-lodgement)	65	10	17	13
Withdrawn after hearing	0	0	0	0

Status of applications finalised 1 July 2016 to 30 June 2017	New licence applications received before July 2016	New licence applications received July 2016–June 2017	Licence variation applications received before July 2016	Licence variation applications received July 2016–June 2017
Refused after assessment	0	0	3	0
Refused after hearing*	2	0	0	1
<b>Total applications finalised</b>	<b>745</b>	<b>299</b>	<b>170</b>	<b>366</b>

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

188 During the relevant period, we approved 209 (18%) AFS licence applications (new licence and variations) in the form applied for (i.e. without requiring any additional regulatory outcomes) from a total of 1,159 AFS licence applications.

**Figure 11: Number of finalised new AFS licence applications by status (1 July 2016 to 30 June 2017)**

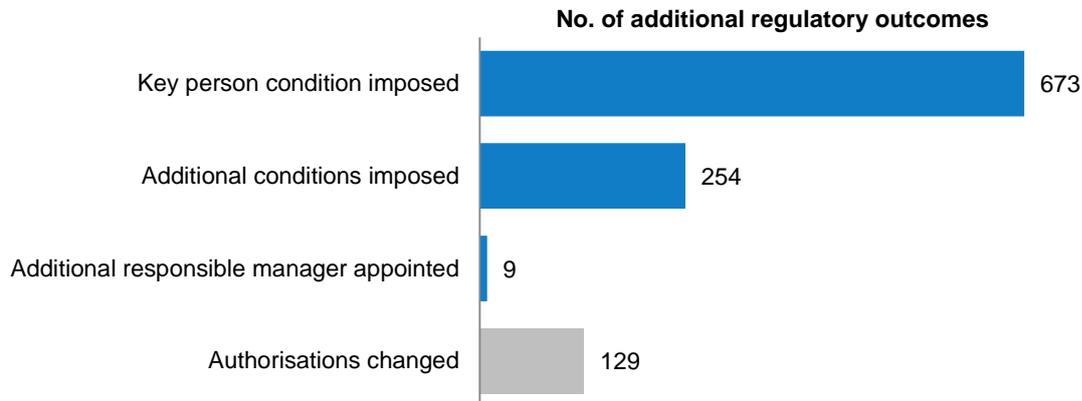


Note: See Table 17 in the appendix for the complete data used in this figure (accessible version).

189 Figure 12 shows the new AFS licence applications we approved with additional regulatory outcomes during the relevant period, broken down by the type of regulatory outcome achieved. This reflects the exercise of our delegated power over the relevant period to grant an AFS licence only if s913B of the Corporations Act is satisfied: see paragraphs 151–153.

190 Figure 12 also shows the changes we made to AFS licence authorisations on 129 occasions by modifying, tailoring, reducing or refusing the authorisations sought.

**Figure 12: Number and type of additional regulatory outcomes in approved new AFS licence applications (1 July 2016 to 30 June 2017)**

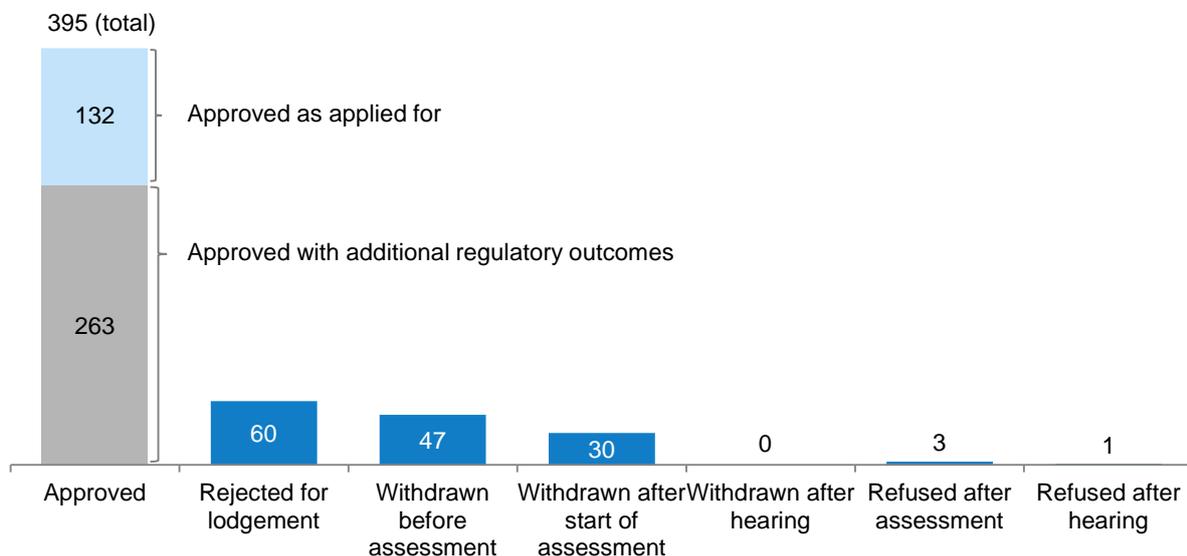


Note 1: See Table 18 in the appendix for the complete data used in this figure (accessible version).

Note 2: There may be more than one additional regulatory outcome for each approved licence application. For example, we could impose a key person condition after requiring an additional responsible manager to be appointed.

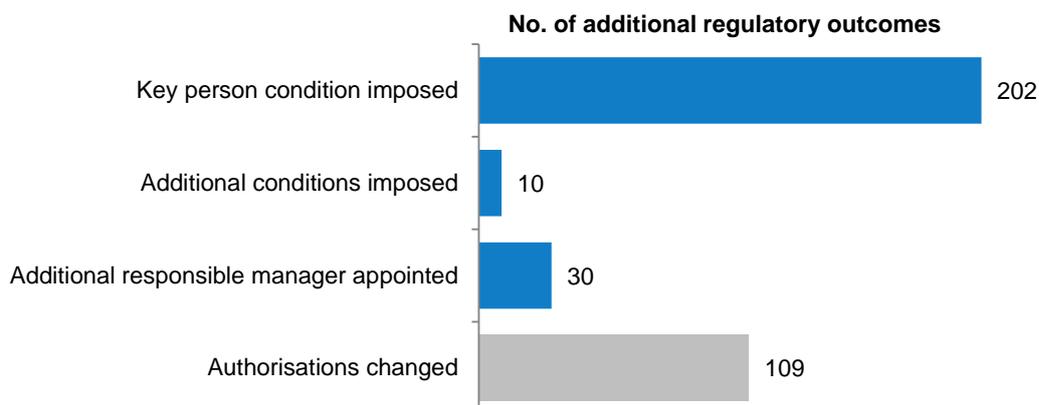
191 Figure 13 shows the AFS licence variation applications we finalised in the relevant period. This graph also shows the number of approved AFS licence variation applications where we approved the variation(s) the applicant applied for, either with or without imposing additional regulatory outcomes.

**Figure 13: Number of finalised AFS licence variation applications by status (1 July 2016 to 30 June 2017)**



Note: See Table 19 in the appendix for the complete data used in this figure (accessible version).

192 Figure 14 shows the AFS licence variation applications we approved with additional regulatory outcomes, broken down by type of regulatory outcome.

**Figure 14: Number and type of additional regulatory outcomes in approved AFS licence variation applications (1 July 2016 to 30 June 2017)**

Note 1: See Table 20 in the appendix for the complete data used in this figure (accessible version).

Note 2: There may be more than one additional regulatory outcome for each approved licence variation application. For example, we may reject a responsible manager and impose additional conditions.

Note 3: 'Responsible manager rejected' indicates ASIC's decision not to accept the nominated responsible manager as having the necessary knowledge and/or skills to satisfy us that the applicant meets the necessary organisational competence requirements, as set out in RG 105.

## Applications approved with additional regulatory outcomes

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

### Licence authorisations

- 194 During the relevant period, we modified the authorisations sought in 238 cases (with 129 of these relating to new AFS licences and 109 relating to AFS licence variations). Of these:
- we approved 185 licences with authorisations that were different to those sought by the applicant or refused to grant the authorisation sought; and
  - we approved 53 authorisations that were specific to that applicant (we refer to this as a 'tailored' authorisation).

### Additional conditions imposed on AFS licences

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

### Key person condition

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

- (a) 673 of the approved new AFS licences (88% of approved applications); and
- (b) 202 of the approved AFS licence variations (51% of approved applications).

#### **Other conditions**

197 During the relevant period, we imposed additional conditions on:

- (a) 254 of the approved new AFS licences; and
- (b) 10 of the approved AFS licence variations.

#### **Responsible managers**

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

199 We will require the appointment of an additional responsible manager when our assessment of an application concludes that the nominated responsible managers are not able to demonstrate to our satisfaction that they have sufficient competence or capacity, given their other roles and engagements, for the authorisation(s) sought.

200 During the relevant period, we required the appointment of an additional responsible manager for:

- (a) nine new AFS licences; and
- (b) 30 AFS licence variations.

201 We also did not accept responsible managers nominated by applicants for the purposes of satisfying us about the applicant's organisational competence in 14 AFS licence applications (eight new applications and six variation applications).

### **Applications rejected or withdrawn**

202 We rejected for lodgement 214 AFS licence applications during the relevant period (154 in relation to new applications and 60 variation applications).

203 During the relevant period, 201 AFS licence applications were withdrawn, comprising:

- (a) 124 new AFS licence applications (49 of these related to applications accepted for lodgement but withdrawn before assessment, and 75 were withdrawn after assessment); and

- (b) 77 AFS licence variation applications (47 of these related to applications accepted for lodgement but withdrawn before assessment, and 30 were withdrawn after assessment).

## Applications refused

- 204 The Licensing team's objective is to ensure that investors and financial consumers can reasonably expect that persons licensed and registered by ASIC have adequately demonstrated that they meet, and will continue to meet, the appropriate minimum statutory requirements in the provision of their financial services and financial products. This has to be balanced against the objective of enhancing market efficiency by facilitating competition and reducing unnecessary regulatory red tape for businesses. We need to ensure that applicants who do not meet the statutory requirements are not licensed, given they have the potential to inflict significant financial and personal detriment on investors and financial consumers.
- 205 ASIC must only grant an AFS licence application if:
- (a) we have no reason to believe that the applicant will be likely to contravene the obligations that will apply under s912A of the Corporations Act if the licence is granted (see s913B(1)(b)); and/or
  - (b) we have no reason to believe that the applicant's responsible officers are not of good fame and character (see s913B(3)(a)(i)).
- 206 The threshold for ASIC's statutory obligation to grant and refuse an AFS licence under s913B of the Corporations Act was clarified (and aligned with s37(1)(b) of the National Credit Act) in the *Corporations Amendment (Future of Financial Advice) Act 2012*, with the effect that we are now more appropriately able to take account of the likelihood or probability of a future contravention.
- Note: See also *One RE v ASIC* 2012 AATA 294, as discussed at paragraph 99 of REP 433.
- 207 We refused six AFS licence applications during the relevant period (two of which related to a new AFS licence application and four that related to AFS licence variations).

## AFS licences suspended or cancelled

- 208 We can suspend or cancel an AFS licence for a number of reasons, including where the licensee:
- (a) enters into external administration;

- (b) becomes deregistered;
- (c) has not complied with the conditions on its licence;
- (d) ceases to carry on a financial services business; or
- (e) applies to ASIC for a suspension or cancellation.

209 During the relevant period, we suspended 14 AFS licences due to the licensee's circumstances (e.g. where the licensee entered into external administration), or as initiated by ASIC (non-enforcement related). Such suspensions may originate from complaints by the public, or from surveillance activities initiated by ASIC or other persons (e.g. a breach notification provided by the auditor or where the licensee fails to comply with the conditions on its licence).

210 Where a cancellation or suspension occurs, we may still specify that statutory obligations remain in place. Such obligations may include the continuation of professional indemnity insurance, continuation of membership with an external dispute resolution scheme and continuation of the obligation to lodge accounts.

211 During the relevant period, we cancelled 214 AFS licences. Of these:

- (a) 185 were cancelled at the request of the licensee. The main reason licensees gave for requesting a cancellation is that they had ceased to conduct a financial services business as a result of retirement or the sale of their client list/business; and
- (b) 29 were cancelled following action initiated by ASIC (non-enforcement related). The main reason for ASIC initiating the cancellation of an AFS licence was because the licensee entered into external administration or was deregistered by ASIC.

## D Credit licences

### Key points

During the relevant period, we considered 878 credit licence applications (comprising 675 received during the relevant period and 203 received before the relevant period), and finalised 74% (649) of these in the period.

Of the 649 credit licence applications finalised, we granted 256 new licences and 150 licence variations. Of the 406 credit licence applications (including variations) that we approved during the relevant period, we:

- imposed a key person condition on 281 licences;
- imposed additional conditions on 63 licences;
- required the appointment of an additional responsible manager for three licences (one new licence and two variations);
- modified authorisations sought on nine licences; and
- declined to accept one responsible manager nominated by the new credit licensee, as we were concerned they did not have the knowledge and skills to meet the organisational competence obligations.

A total of 119 credit licence applications were withdrawn before we were required to make a formal determination.

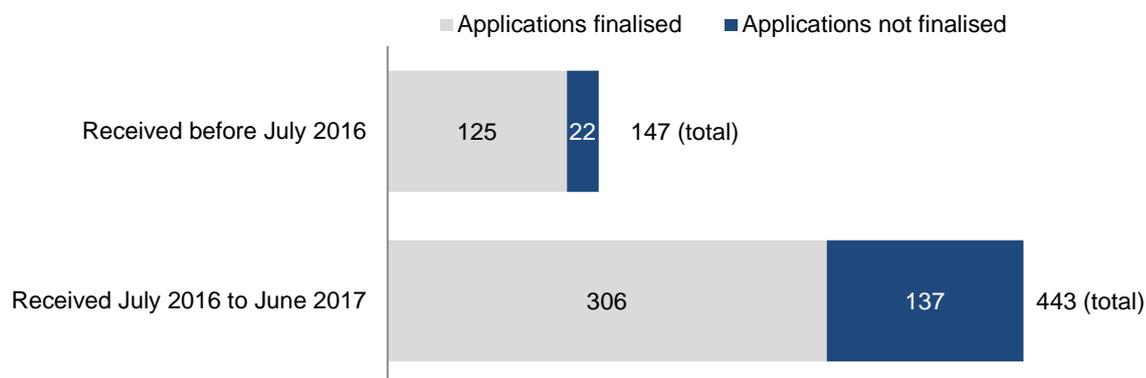
Seven credit licences were suspended and 404 credit licences were cancelled.

### Applications and regulatory outcomes

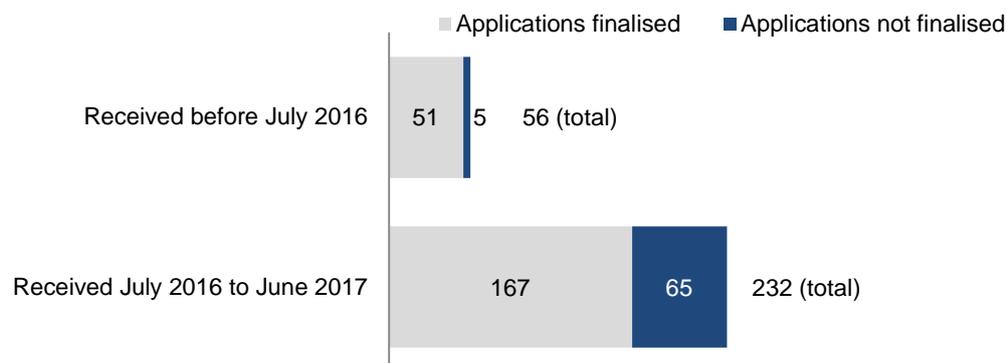
- 212 An application for a credit licence may be rejected for lodgement, approved, withdrawn or refused. An application that is approved may also have additional regulatory outcomes. For further background information about what we mean by regulatory outcomes, see paragraphs 108–110 of REP 433.

### Applications finalised

- 213 Figure 15 and Figure 16 summarise the number of new credit licence and credit licence variation applications that were finalised during the relevant period in comparison with those lodged.

**Figure 15: Number of lodged and finalised new credit licence applications (1 July 2016 to 30 June 2017)**

Note: See Table 21 in the appendix for the complete data used in this figure (accessible version).

**Figure 16: Number of lodged and finalised credit licence variation applications (1 July 2016 to 30 June 2017)**

Note: See Table 22 in the appendix for the complete data used in this figure (accessible version).

214 Table 6 provides a breakdown of how the credit licence applications we finalised during the relevant period were decided. A total of 243 applications were either rejected for lodgement or withdrawn by the applicant during the relevant period.

**Table 6: How finalised credit licence applications were decided—1 July 2016 to 30 June 2017**

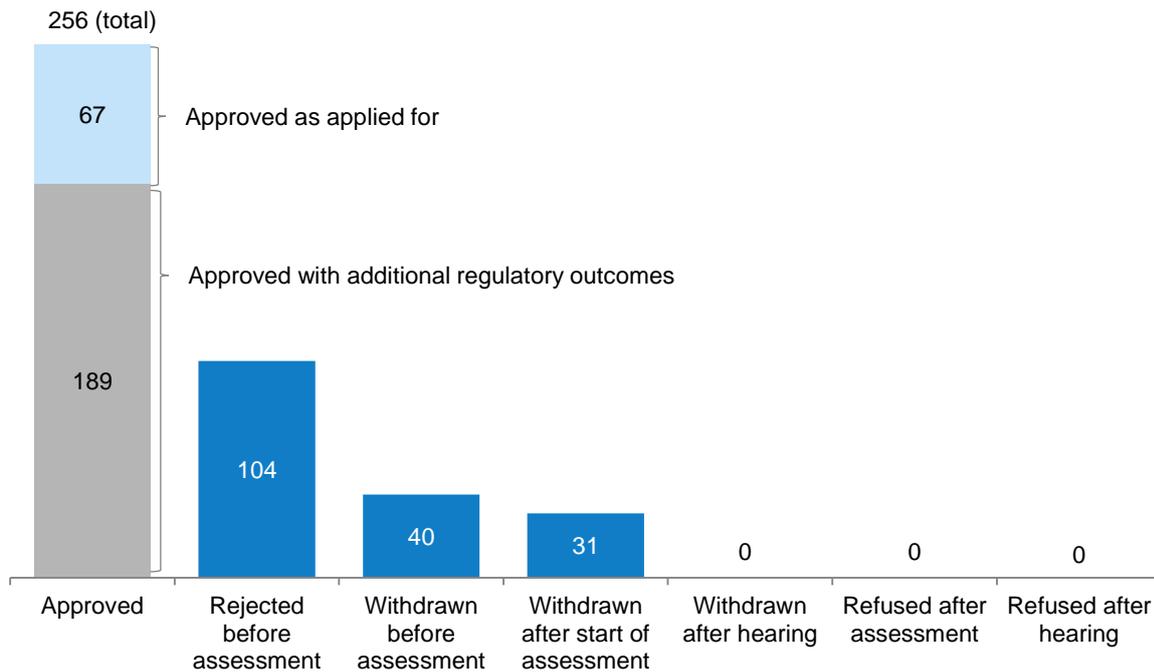
Status of applications finalised 1 July 2016 to 30 June 2017	New licence applications received before July 2016	New licence applications received July 2016–June 2017	Licence variation applications received before July 2016	Licence variation applications received July 2016–June 2017
Approved (with and without additional regulatory outcomes)	86	170	38	112
Rejected for lodgement (pre-lodgement)	9	95	0	20
Withdrawn before start of assessment (pre-lodgement)	13	27	5	19

Status of applications finalised 1 July 2016 to 30 June 2017	New licence applications received before July 2016	New licence applications received July 2016–June 2017	Licence variation applications received before July 2016	Licence variation applications received July 2016–June 2017
Withdrawn after start of assessment (post-lodgement)	17	14	8	16
Withdrawn after hearing	0	0	0	0
Refused after assessment	0	0	0	0
Refused after hearing*	0	0	0	0
<b>Total applications finalised</b>	<b>125</b>	<b>306</b>	<b>51</b>	<b>167</b>

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

215 Figure 17 shows the status of new credit licence applications we finalised in the relevant period. This graph also shows the number of applications we approved in the form requested by the applicant.

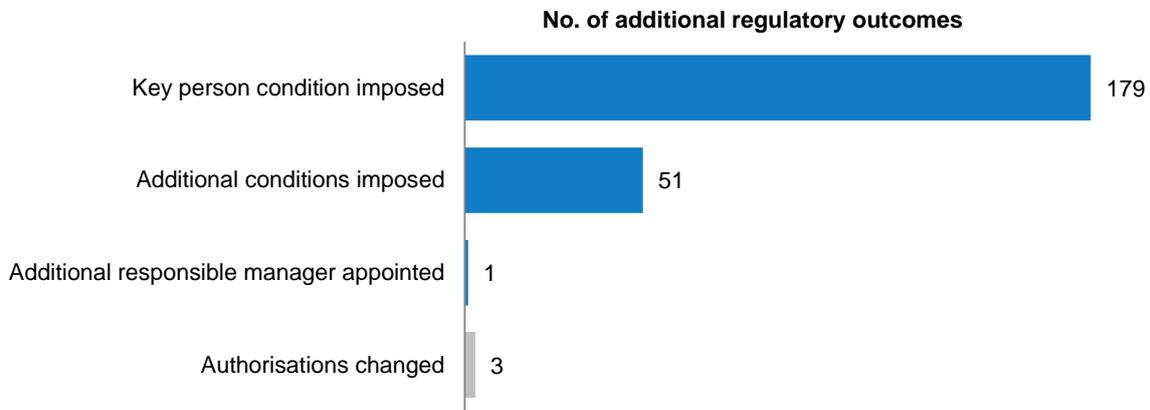
**Figure 17: Number of finalised new credit licence applications by status (1 July 2016 to 30 June 2017)**



Note: See Table 23 in the appendix for the complete data used in this figure (accessible version).

216 Figure 18 shows the new credit licence applications we approved with additional regulatory outcomes during the relevant period, broken down by the types of regulatory outcome achieved.

**Figure 18: Number and type of additional regulatory outcomes in approved new credit licence applications (1 July 2016 to 30 June 2017)**

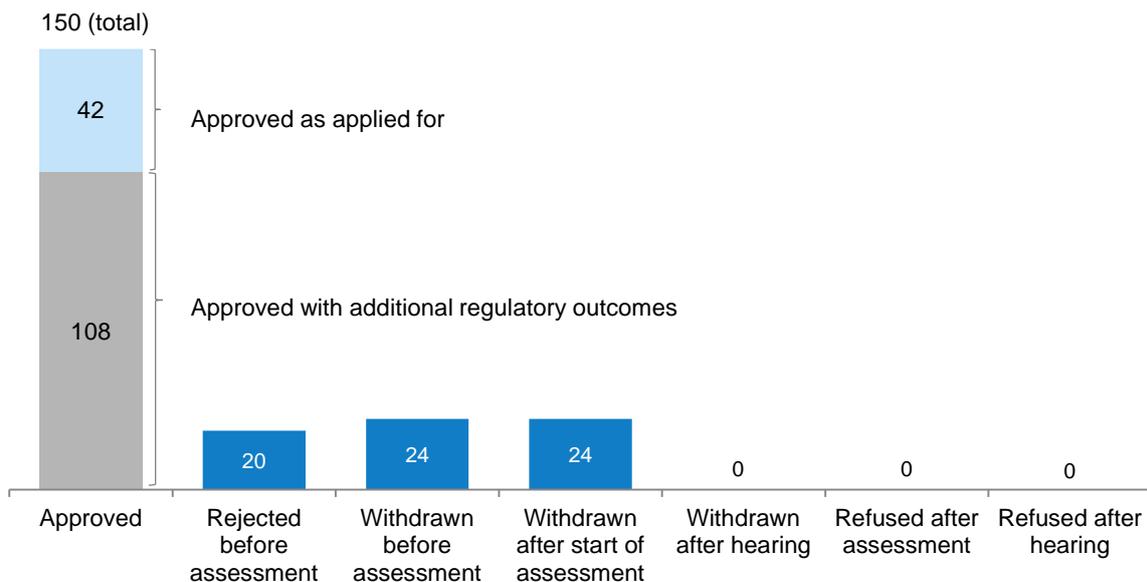


Note: See Table 24 in the appendix for the complete data used in this figure (accessible version).

Note 2: There may be more than one additional regulatory outcome for each approved licence application. For example, we could impose a key person condition after requiring an additional responsible manager to be appointed.

217 Figure 19 shows the status of credit licence variation applications we finalised in the relevant period, with a breakdown of those we approved with additional regulatory outcomes and those we approved in the form requested by the applicant.

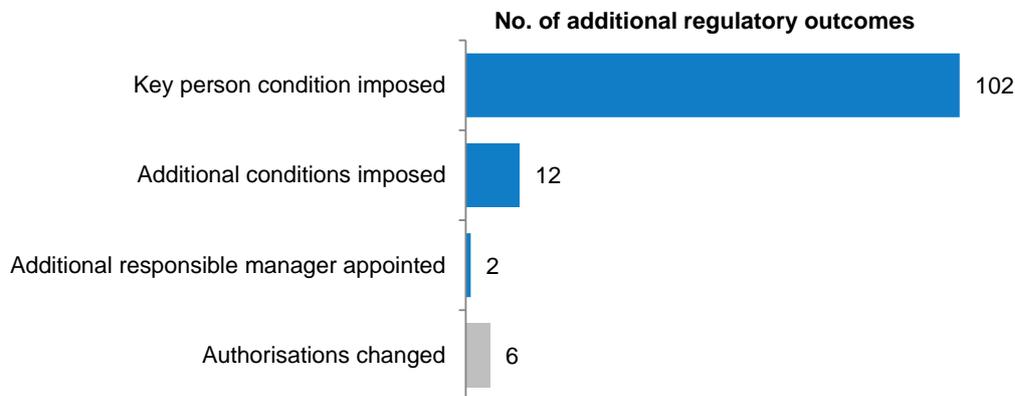
**Figure 19: Number of finalised credit licence variation applications by status (1 July 2016 to 30 June 2017)**



Note: See Table 25 in the appendix for the complete data used in this figure (accessible version).

218 Figure 20 shows the credit licence variation applications we approved with additional regulatory outcomes, with a breakdown of the regulatory outcomes achieved.

**Figure 20: Number and type of additional regulatory outcomes in approved credit licence variation applications (1 July 2016 to 30 June 2017)**



Note 1: See Table 26 in the appendix for the complete data used in this figure (accessible version).

Note 2: There may be more than one additional regulatory outcome for each approved licence variation application. For example, we may refuse a key person change and impose additional conditions.

## Applications approved with additional regulatory outcomes

### Additional conditions imposed on credit licences

219 Under s45 of the National Credit Act, we may impose conditions, or additional conditions, on a credit licence and may vary or revoke existing conditions. In 27% of credit licence applications, we granted the licence or variation in the form applied for by the applicant.

### Key person condition

220 Similarly to AFS licence applications, the most common credit licence condition we impose is a key person condition. If a credit licensee is heavily dependent on the competence of one or more responsible managers (e.g. where the licensee has a sole responsible manager), we will generally impose a 'key person condition', and require that these persons are named on the credit licence as a key person.

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

- (a) 179 of the approved new credit licences (70% of approved applications); and
- (b) 102 of the approved credit licence variations (68% of approved applications).

**Other conditions**

- 222 We may impose other conditions on a credit licence where we consider that an applicant may need further monitoring or should be specifically required to undertake some additional process.
- 223 During the relevant period, we imposed additional conditions on 63 credit licences—including 51 of the approved new credit licences, and 12 of the approved credit licence variations.
- 224 An example of an additional condition is a condition for a compliance expert, requiring the expert to undertake an initial and a subsequent compliance review after issue of the licence variation. The compliance expert condition was imposed in four instances.

**Responsible managers**

- 225 We will require the appointment of an additional responsible manager or managers when our assessment of an application concludes that the nominated responsible managers do not demonstrate sufficient competence for the authorisations sought.
- 226 During the relevant period, we required the appointment of an additional responsible manager for:
- (a) one approved new credit licence; and
  - (b) two approved credit licence variations.
- 227 ASIC does not recognise unlicensed experience as relevant experience. However, experience gained in the provision of mortgage management services is regarded as relevant experience for the provision of consumer credit, provided that there are no issues with that conduct (e.g. complaints or a failure to meet the requisite standards in relation to those activities).

**Applications rejected or withdrawn**

- 228 Applicants may withdraw their licence applications. The most common reason for withdrawals is linked to the quality of the application—that is, where we communicate to the applicant, and the applicant agrees, that the final outcome is likely to be a refusal if the matter proceeds to a hearing.
- 229 An application can also be taken to have been withdrawn if an applicant fails to provide ASIC with additional information if requested to by ASIC under s37(4) of the National Credit Act.
- 230 The application might lack relevant information or might be linked to individuals who do not meet the competence requirements to perform their

duties. Ultimately, however, it is the applicant's decision whether or not to proceed with the application.

- 231 Reasons for credit licence withdrawals are similar to those for an AFS licence, with withdrawals occurring before and after lodgement.
- 232 We rejected for lodgement 124 credit licence applications during the relevant period (104 new licence applications and 20 licence variation applications)
- 233 During the relevant period, 119 credit licence applications were withdrawn, comprising:
- (a) 71 new licence applications (40 of these were accepted for lodgement but withdrawn before assessment, and 31 were withdrawn after assessment); and
  - (b) 48 licence variation applications (24 of these were accepted for lodgement but withdrawn before assessment, and 24 were withdrawn after assessment).
- 234 In a significant number of cases, rejections and withdrawals were the result of applicants nominating responsible managers who were unable to demonstrate relevant experience.

## Applications refused

- 235 Under s37 of the National Credit Act, we must refuse a credit licence application if we have reason to believe that the applicant is likely to contravene the obligations that will apply under s47 of the Act if the licence is granted. This statutory requirement is the same as that discussed in relation to applications for AFS licences: see paragraph 151.
- 236 We may also refuse a credit licence application if we have reason to believe that a person who is a director, secretary or senior manager of the applicant is not a fit and proper person to engage in credit activities.
- 237 During the relevant period, we did not refuse any applications either for a new credit licence or to vary an existing credit licence.
- 238 We believe that we would have refused some of the credit licence applications if applicants had not voluntarily withdrawn their applications before the need for a formal determination by ASIC.

## Credit licences suspended and cancelled

- 239 As with AFS licences, we can suspend or cancel a credit licence for a number of reasons, including where the licensee:

- (a) enters into external administration;
- (b) becomes deregistered;
- (c) has not complied with the conditions on its licence;
- (d) does not engage in, or ceases to engage in, credit activities; or
- (e) applies to ASIC for a suspension or cancellation.

240 Where a cancellation or suspension occurs, we may still specify that statutory obligations remain in place. Such obligations may include the continuation of professional indemnity insurance and continuation of membership with an external dispute resolution scheme.

241 During the relevant period, there were 404 credit licence cancellations. Of these, 97 were initiated by ASIC (non-enforcement) and 309 were initiated by the credit licensee (with two credit licences being cancelled twice within the same reporting period).

242 The main reasons for the credit licence cancellations were:

- (a) the licensee was insolvent; and
- (b) the licensee had ceased engaging in credit activities.

243 There were seven ASIC-initiated suspensions during the relevant period. Reasons for the suspensions included insolvency and not having a responsible manager with the required competence.

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

### Key points

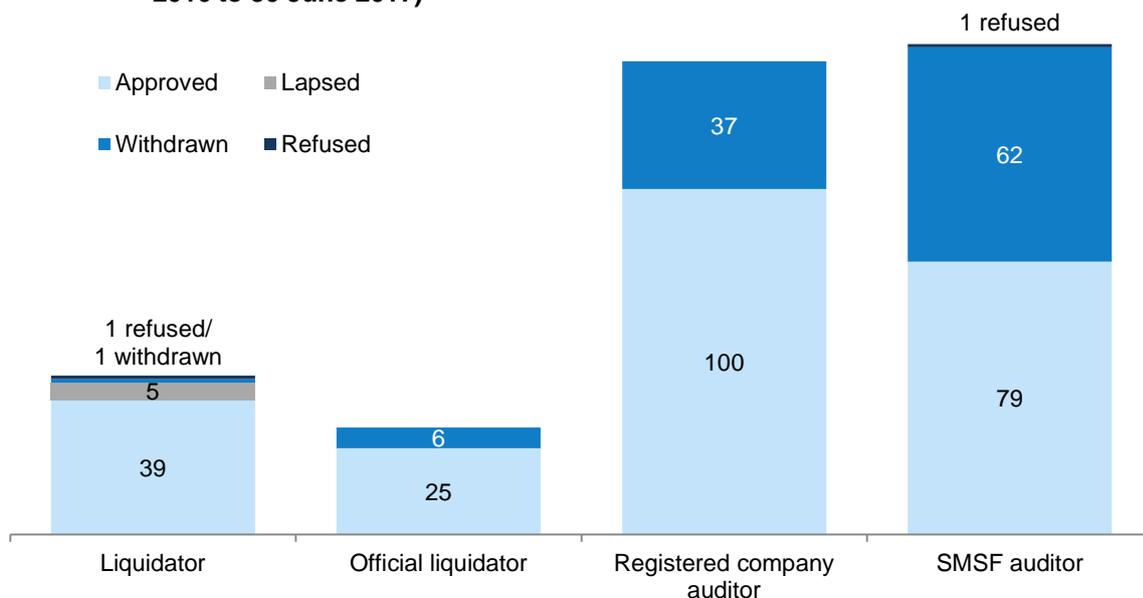
In the relevant period, we:

- approved 39 applications for registration as a liquidator, approved 25 applications for registration as an official liquidator and cancelled the registration of eight official liquidators (under the old regime—before 1 March 2017);
- registered 100 company auditors, received withdrawal requests from 37 applicants, and cancelled the registration of 218 company auditors and two authorised audit companies; and
- registered 79 approved SMSF auditors, received withdrawal requests from 62 applicants and cancelled the registration of 406 SMSF auditors.

### Outcomes of registration applications

244 Figure 21 summarises the outcomes of applications for registration as a liquidator, official liquidator, registered company auditor or approved SMSF auditor.

**Figure 21: Number of finalised liquidator and auditor registration applications by status (1 July 2016 to 30 June 2017)**



Note: See Table 27 in the appendix for the complete data used in this figure (accessible version).

## Liquidators—before 1 March 2017

### Registration

245 During the relevant period (up until 1 March 2017), under s1282(2) of the Corporations Act, we must grant an application for registration as a liquidator if certain requirements are satisfied. For further background information on the registration process, see paragraph 136 of REP 433.

246 During the above period, we approved 39 applications for registration as a liquidator and 25 applications for registration as an official liquidator.

### Withdrawals

247 During the above period, one application for registration as a liquidator and six applications for registration as an official liquidator were withdrawn.

### Refusals

248 During the above period, we refused one application for registration as a liquidator.

### Suspensions and cancellations

249 During the above period, ASIC did not have the power to suspend a liquidator. We could apply to CALDB to suspend a liquidator's registration: s1292(2) of the Corporations Act.

250 We only had the power to cancel the registration of a liquidator if the liquidator:

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

251 Cancellations for any other reasons were dealt with by CALDB.

252 During the above period, seven registered liquidators voluntarily cancelled their registration, one of whom was also an official liquidator.

Note: An official liquidator must also be a registered liquidator. It is possible that an individual ceases to be an official liquidator and continues to operate as a registered liquidator. However, one cannot cease to be a registered liquidator and continue to operate as an official liquidator.

## Liquidators—after 1 March 2017

- 253 As discussed at paragraph 108, the Insolvency Law Reform Act introduced a new registration regime.
- 254 Under s20-5 of Sch 2 to the Corporations Act (Sch 2), an individual may apply to ASIC for registration as a liquidator. They may apply to be registered as:
- (a) an external administrator of companies, receiver, and receiver and manager; or
  - (b) only as a receiver, and receiver and manager.
- 255 ASIC's new role is to refer the registration application to a committee, who will assess the application. The committee comprises:
- (a) ASIC;
  - (b) a registered liquidator chosen by the prescribed body, Australian Restructuring Insolvency and Turnaround Association (ARITA); and
  - (c) a person appointed by the Minister.
- 256 The committee must interview the applicant and may require the applicant to sit for an examination. The committee must consider the factors set out in s20-20(4) and rule 20-1 of the Insolvency Practice Rules (Corporations) 2016 in determining the application: see the requirements set out in RG 258.
- 257 We must register the applicant if the committee decides that the applicant should be registered and the applicant provides written evidence of adequate and appropriate professional indemnity and fidelity insurance.
- 258 Under the repealed s1282(8), a liquidator's registration remained in force until the registration was cancelled or the person died. Under the reforms, a liquidator's registration has effect for a three-year period, after which the liquidator must apply to ASIC to renew their registration.
- 259 To renew their registration, registered liquidators must comply with new continuing professional education requirements, and undertake at least 40 hours of continuing professional education during each year that they are registered (10 hours of which must be capable of being objectively verified by a competent source).
- 260 We must renew a liquidator's registration if the application has been properly made, the applicant has provided written evidence of their adequate and appropriate professional indemnity and fidelity insurance, and the applicant has complied with the continuing professional education requirements that applied during their current period of registration.
- 261 Under the transitional provisions, if a person was registered as a liquidator immediately before 1 March 2017, their registration will expire on the first

anniversary of their original registration that occurs on or after 1 March 2017.

262 If the registered liquidator does not apply to renew their registration before the expiry day, the registered liquidator will continue to be registered, subject to a condition that they must not accept any further appointments as external administrator of a company. This ‘transitional registration’ ends automatically on the day immediately after the end of all of the registered liquidator’s existing external administrations.

263 During the relevant period, since the new regime commenced on 1 March 2017, ASIC received one application for registration as a liquidator, but no decisions were made during the relevant period. Accordingly, ASIC did not register any liquidators either in the capacity of an external administrator of companies, receiver, and receiver and manager; or in the capacity of a receiver, and receiver and manager.

### **Suspensions and cancellations**

264 Under the new regime, we have the power to either suspend or cancel a liquidator’s registration on the following grounds:

- (a) the person is disqualified from managing corporations under Pt 2D.6 of the Corporations Act, or under a law of an external territory or foreign country;
- (b) the person ceases to have either adequate and appropriate professional indemnity insurance, or adequate and appropriate fidelity insurance, against the liabilities that the person may incur working as a liquidator;
- (c) the person’s registration as a trustee under the *Bankruptcy Act 1966* has been cancelled, other than in compliance with a written request by the person to cancel the registration;
- (d) the court has made an order under s90-15 that the person repay remuneration, and the person has failed to repay the remuneration;
- (e) the person has been convicted of an offence involving fraud or dishonesty; or
- (f) the person lodges a request with ASIC in the approved form to have the registration cancelled.

265 From 1 March 2017, ASIC also has the power to issue a ‘show cause’ notice to a registered liquidator, asking the liquidator to give ASIC a written explanation as to why the liquidator should continue to be registered. This notice may be given by ASIC if we believe that certain circumstances exist, including that the liquidator:

- (a) no longer has the qualifications, experience, knowledge and abilities required to operate as a liquidator;

- (b) has breached a current condition of their registration; or
- (c) has contravened a provision of the Corporations Act.

266 If we do not receive either a written or satisfactory response within 20 business days after the notice is given, the matter may be referred to the committee. The committee may decide to:

- (a) cancel or suspend the person's registration as a liquidator;
- (b) require ASIC to direct the liquidator not to accept further appointments;
- (c) publicly admonish or reprimand the liquidator;
- (d) impose a condition on the liquidator's registration; or
- (e) impose a condition on all other registered liquidators that they must not allow the liquidator in question to carry out the functions, duties or powers of a registered liquidator on their behalf (whether as an employee, agent, consultant or otherwise.)

267 A decision about the suspension or cancellation of the registration of a liquidator is reviewable by the AAT.

268 ASIC must maintain a register of liquidators. As part of the reforms, s1286(3)—which required ASIC to remove liquidators from the register at the time of the cancellation of their registration—was repealed and ceased to apply from 1 March 2017. We may now retain details on the Register of Liquidators who have cancelled their registration, including details of any disciplinary action taken by a committee, and any suspension or cancellations of their registration.

269 When liquidators who were registered before 1 March 2017 do not apply to renew their registration by the relevant anniversary date, their registration becomes subject to a condition that they accept no new appointments. As soon as their existing appointments are finalised, their 'transitional registration' ends automatically: s1553 and 1555.

270 Since 1 March 2017, five registered liquidators ceased to be registered under the 'transitional registration' provisions, and ASIC accepted the voluntary cancellation of one registered liquidator as part of an enforceable undertaking with the person concerned.

Note: See Media Release (17-211MR) *ASIC accepts Victorian liquidator's cancellation* (28 June 2017).

## Company auditors

### Registration

- 271 Under s1280 of the Corporations Act, we must grant an application for registration as a company auditor if certain requirements are met. For further background information, see paragraph 150 of REP 433.
- 272 During the relevant period, we registered 100 company auditors.

### Withdrawals

- 273 Thirty-seven applications for registration were withdrawn during the relevant period.

### Refusals

- 274 Three applications for registration were refused during the period.

### Suspensions and cancellations

- 275 There were 218 company auditors and two authorised audit companies that ceased their registration during the relevant period. A common reason for this was the retirement of the registered individual.

## Approved SMSF auditors

### Registrations

- 276 Under s128B of the SIS Act, we must grant an application for registration as an approved SMSF auditor if the applicant (who must be an Australian resident) meets certain requirements regarding qualifications and practical experience, and has passed the competency examination required in the SIS Act.
- 277 For further background information, see paragraphs 159–161 of REP 433.
- 278 During the relevant period, we registered 79 applicants as approved SMSF auditors.

### Withdrawals

- 279 Sixty-two applications for registration as an approved SMSF auditor were withdrawn during the relevant period.

## Refusals

- 280 We refused one application for registration as an approved SMSF auditor during the relevant period.

## Suspensions and cancellations

- 281 We may suspend or cancel the registration of an approved SMSF auditor for various reasons, including because the auditor has:

- (a) not complied with the conditions of their registration;
- (b) not conducted an audit for five years;
- (c) applied to ASIC for a suspension or cancellation; or
- (d) ceased to be an Australian resident.

- 282 During the relevant period, we cancelled 406 SMSF auditor registrations. Of these:

- (a) 162 were cancelled at the request of the SMSF auditor. Reasons are not recorded—however, these generally related to the auditor's retirement or change of career;
- (b) four were cancelled following action initiated by ASIC—in this case, one was not an Australian resident and three were not fit and proper persons;
- (c) two were cancelled for failing to comply with the conditions of their registration; and
- (d) 238 were cancelled for failing to lodge an annual statement.

## Appendix: Accessible versions of figures

This appendix provides accessible table data for the figures presented in this report.

**Table 7: Number of limited AFS licence applications received or finalised (1 July 2013 to 30 June 2017)**

Six-month period	Applications received	Applications finalised
July to December 2013	39	29
January to June 2014	38	32
July to December 2014	24	31
January to June 2015	49	42
July to December 2015	100	74
January to June 2016	899	324
July to December 2016	25	281
January to June 2017	24	357

Note: This is the data contained in Figure 1.

**Table 8: AFS licences approved per financial year and total number of approved AFS licences**

Financial year ending 30 June	Approved AFS licences per year	Total approved AFS licences
June 2002	35	35
June 2003	601	626
June 2004	3,255	3,853
June 2005	401	4,135
June 2006	429	4,415
June 2007	369	4,625
June 2008	329	4,768
June 2009	285	4,803
June 2010	335	4,874
June 2011	329	4,883
June 2012	333	4,955
June 2013	389	5,043
June 2014	302	5,101

Financial year ending 30 June	Approved AFS licences per year	Total approved AFS licences
June 2015	323	5,198
June 2016	515	5,516
June 2017	764	6,058

Note 1: The data for the period ending 30 June 2004 reflects the end of the AFS licensing transition period on 10 March 2004.

Note 2: This is the data contained in Figure 2.

**Table 9: Number of AFS licence applications by status per half year (1 January 2013 to 30 June 2017)**

Six-month period	Approved	Cancelled	Rejected/with-drawn/refused	Suspended	Totals
January to June 2013	179	136	55	5	375
July to December 2013	163	128	72	7	370
January to June 2014	140	124	79	7	350
July to December 2014	174	120	115	8	417
January to June 2015	149	98	106	9	362
July to December 2015	168	61	141	11	381
January to June 2016	347	143	218	9	721
July to December 2016	348	76	162	7	593
January to June 2017	416	138	118	11	683

Note: This is the data contained in Figure 3.

**Table 10: Number of finalised limited AFS licence applications by status (1 July 2013 to 30 June 2017)**

Six-month period	Applications approved	Applications withdrawn	Applications rejected
July to December 2013	14	8	7
January to June 2014	17	9	6
July to December 2014	12	11	8
January to June 2015	16	10	16
July to December 2015	25	18	31
January to June 2016	203	39	84
July to December 2016	208	17	56
January to June 2017	304	38	15

Note: This is the data contained in Figure 4.

**Table 11: Credit licences approved per financial year and total number of approved credit licences**

Financial year ending 30 June	Approved credit licences per year	Total approved credit licences
June 2011	4,750	6,081
June 2012	325	6,004
June 2013	336	5,856
June 2014	360	5,837
June 2015	301	5,779
June 2016	248	5,726
June 2017	256	5,576

Note: This is the data contained in Figure 5.

**Table 12: Number of credit licence applications by status per half year (1 January 2013 to 30 June 2017)**

Six-month period	Approved	Cancelled	Rejected/with-drawn/refused	Suspended	Totals
January to June 2013	169	272	34	3	478
July to December 2013	170	188	75	7	440
January to June 2014	190	208	45	1	444
July to December 2014	166	172	76	0	414
January to June 2015	135	192	72	2	401
July to December 2015	113	156	92	3	364
January to June 2016	135	153	54	0	342
July to December 2016	140	167	99	3	409
January to June 2017	116	238	76	5	435

Note: This is the data contained in Figure 6.

**Table 13: Number of registered and official liquidators to 30 June 2017**

Financial year ending 30 June	Registered liquidators	Official liquidators
June 1999	900	368
June 2000	883	375
June 2001	858	371
June 2002	830	357
June 2003	835	363

Financial year ending 30 June	Registered liquidators	Official liquidators
June 2004	758	356
June 2005	762	367
June 2006	747	437
June 2007	689	447
June 2008	674	462
June 2009	660	484
June 2010	664	501
June 2011	669	517
June 2012	680	542
June 2013	685	569
June 2014	696	589
June 2015	711	611
June 2016	707	627
June 2017	713	579

Note: This is the data contained in Figure 7.

**Table 14: Number of registered company auditors and approved SMSF auditors to 30 June 2017**

Financial year ending 30 June	Registered auditors	Approved SMSF auditors
June 1999	7,736	
June 2000	7,623	
June 2001	7,221	
June 2002	7,109	
June 2003	6,440	
June 2004	6,506	
June 2005	6,163	
June 2006	5,848	
June 2007	5,658	
June 2008	5,495	
June 2009	5,345	
June 2010	5,207	
June 2011	5,114	

Financial year ending 30 June	Registered auditors	Approved SMSF auditors
June 2012	4,985	
June 2013	4,852	5,935
June 2014	4,729	7,073
June 2015	4,596	6,669
June 2016	4,483	6,671
June 2017	4,365	6,639

Note 1: From 1 July 2013, SMSF auditors must be registered with ASIC

Note 2: This is the data contained in Figure 8.

**Table 15: Number of lodged and finalised new AFS licence applications (1 July 2016 to 30 June 2017)**

	Received July 2016 to June 2017	Received before July 2016
Applications finalised	299	745
Applications not finalised	167	46
Total applications lodged	466	791

Note: This is the data contained in Figure 9.

**Table 16: Number of lodged and finalised AFS licence variation applications (1 July 2016 to 30 June 2017)**

	Received July 2016 to June 2017	Received before July 2016
Applications finalised	366	170
Applications not finalised	243	43
Total applications lodged	609	213

Note: This is the data contained in Figure 10.

**Table 17: Number of finalised new AFS licence applications by status (1 July 2016 to 30 June 2017)**

Status of applications	Number of finalised applications
Approved (687 with, and 77 without, additional regulatory outcomes)	764
Rejected for lodgement (pre-lodgement)	154
Withdrawn before start of assessment (pre-lodgement)	49
Withdrawn after start of assessment (post-lodgement)	75
Withdrawn after hearing	0
Refused after assessment	0
Refused after hearing	2
Total applications finalised	1,044

Note: This is the data contained in Figure 11.

**Table 18: Number and type of additional regulatory outcomes in approved new AFS licence applications (1 July 2016 to 30 June 2017)**

Type of additional regulatory outcome	Number of additional regulatory outcomes
Additional conditions imposed	254
Additional responsible manager appointed	9
Authorisations changed	129
Key person condition imposed	673
Responsible manager rejected	8

Note: This is the data contained in Figure 12.

**Table 19: Number of finalised AFS licence variation applications by status (1 July 2016 to 30 June 2017)**

Status of applications	Number of finalised applications
Approved (263 with and 132 without additional regulatory outcomes)	395
Rejected for lodgement (pre-lodgement)	60
Withdrawn before start of assessment (pre-lodgement)	47
Withdrawn after start of assessment (post-lodgement)	30
Withdrawn after hearing	0
Refused after assessment	3
Refused after hearing	1
Total applications finalised	537

Note: This is the data contained in Figure 13.

**Table 20: Number and type of additional regulatory outcomes in approved AFS licence variation applications (1 July 2016 to 30 June 2017)**

Type of additional regulatory outcome	Number of additional regulatory outcomes
Key person condition imposed	202
Additional conditions imposed	10
Additional responsible manager appointed	30
Responsible manager rejected	6
Authorisations changed	109

Note: This is the data contained in Figure 14.

**Table 21: Number of lodged and finalised new credit licence applications (1 July 2016 to 30 June 2017)**

	Received July 2016 to June 2017	Received before July 2016
Applications finalised	306	125
Applications not finalised	137	22
Applications lodged	443	147

Note: This is the data contained in Figure 15.

**Table 22: Number of lodged and finalised credit licence variation applications (1 July 2016 to 30 June 2017)**

	Received July 2016 to June 2017	Received before July 2016
Applications finalised	167	51
Applications not finalised	66	5
Applications lodged	233	56

Note: This is the data contained in Figure 16.

**Table 23: Number of finalised new credit licence applications by status (1 July 2016 to 30 June 2017)**

Status of applications	Number of finalised applications
Approved (189 with and 67 without additional regulatory outcomes)	256
Rejected for lodgement (pre-lodgement)	104
Withdrawn before start of assessment (pre-lodgement)	40
Withdrawn after start of assessment (post-lodgement)	31
Withdrawn after hearing	0
Refused after assessment	0
Refused after hearing	0
Total applications finalised	431

Note: This is the data contained in Figure 17.

**Table 24: Number and type of additional regulatory outcomes in approved new credit licence applications (1 July 2016 to 30 June 2017)**

Type of additional regulatory outcome	Number of additional regulatory outcomes
Key person condition imposed	179
Additional conditions imposed	51
Additional responsible manager appointed	1
Responsible manager rejected	1
Authorisations changed	3

Note: This is the data contained in Figure 18.

**Table 25: Number of finalised credit licence variation applications by status (1 July 2016 to 30 June 2017)**

Status of applications	Number of finalised applications
Approved (108 with and 42 without additional regulatory outcomes)	150
Rejected for lodgement (Pre-lodgement)	20
Withdrawn before start of assessment (pre-lodgement)	24
Withdrawn after start of assessment (post-lodgement)	24
Withdrawn after hearing	0
Refused after assessment	0
Refused after hearing	0
Total applications finalised	218

Note: This is the data contained in Figure 19.

**Table 26: Number and type of additional regulatory outcomes in approved credit licence variation applications (1 July 2016 to 30 June 2017)**

Type of additional regulatory outcome	Number of additional regulatory outcomes
Key person condition imposed	102
Additional conditions imposed	12
Additional responsible manager appointed	2
Authorisations changed	6

Note: This is the data contained in Figure 20.

**Table 27: Number of finalised liquidator and auditor registration applications by status (1 July 2016 to 30 June 2017)**

Status of applications	Liquidator	Official liquidator	Registered company auditor	SMSF auditor
Approved	39	25	100	79
Withdrawn	1	6	37	62
Refused	1	0	0	1
Lapsed	1	0	0	0

Note: This is the data contained in Figure 21.

## Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
ADTR licence	Australian derivative trade repository licence
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act  Note: This is a definition contained in s761A.
approved SMSF auditor	Has the meaning given in s10(1) of the SIS Act after 31 January 2013
ASIC	Australian Securities and Investments Commission
Australian derivative trade repository licence	An Australian derivative trade repository licence under s905C of the Corporations Act that authorises a person to operate a trade repository
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee  Note: This is a definition contained in s761A.
CALDB	Companies Auditors and Liquidators Disciplinary Board, renamed the Companies Auditors Disciplinary Board (CADB) following legislative amendments contained in the <i>Insolvency Law Reform Act 2016</i> that took effect on 1 March 2017
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 260 (for example)	An ASIC consultation paper (in this example numbered 260)
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act
crowd-funding service	Has the meaning given in s766F of the Corporations Act
CSF	Crowd-sourced funding

Term	Meaning in this document
CSF Act	<i>Corporations Amendment (Crowd-sourced Funding) Act 2017</i>
CSF intermediary	An AFS licensee whose licence expressly authorises the licensee to provide a crowd-funding service Note: See s738C of the Corporations Act.
CS facilities	Clearing and settlement facilities as defined by s768A of the Corporations Act
CSF offer	An offer of fully paid ordinary shares, as specified in reg 6D.3A.01 of the Corporations Regulations 2001, that is made under the CSF regime in Pt 6D.3A of the Corporations Act Note: See s738B of the Corporations Act.
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
fintech	Financial technology
<i>Insolvency Law Reform Act 2016</i>	Insolvency Law Reform Act
limited AFS licence	An AFS licence that only includes authorisations to provide one or more of the following limited financial services: <ul style="list-style-type: none"> <li>• financial product advice on SMSFs;</li> <li>• financial product advice on a client's existing superannuation holdings, in certain circumstances;</li> <li>• class of product advice on: <ul style="list-style-type: none"> <li>– superannuation products;</li> <li>– securities;</li> <li>– simple managed investment schemes (as defined in reg 1.0.02 of the Corporations Regulations 2001);</li> <li>– general and life risk insurance products; and</li> <li>– basic deposit products; and</li> </ul> </li> <li>• arranging to deal in an interest in an SMSF</li> </ul>
liquidator	A person registered by ASIC under s1282 of the Corporations Act
managed investment scheme	Has the meaning set out in s9 of the Corporations Act
MDA (managed discretionary account) service	Has the meaning set out in ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968
marketplace lending	The facilitation of loans outside the traditional banking system by connecting borrowers with lenders or investors to expose lenders to the risks and benefits of particular loans via an online platform

<b>Term</b>	<b>Meaning in this document</b>
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
official liquidator	A person registered by ASIC under s1283 of the Corporations Act
OTC derivatives	over-the-counter derivatives
registered scheme	A registered managed investment scheme
relevant period	1 July 2016 to 30 June 2017
REP 433 (for example)	An ASIC report (in this example numbered 433)
RG 105 (for example)	An ASIC regulatory guide (in this example numbered 105)
Sch 2	Schedule 2 to the Corporations Act, entitled 'Insolvency Practice Schedule (Corporations)'
SIS Act	<i>Superannuation Industry (Supervision) Act 1993</i>
SMSF	Self-managed superannuation fund
trade repository	A derivative trade repository—a facility to which information about derivative transactions, or about positions relating to derivative transactions, can be reported

## Related information

### Headnotes

Administrative Appeals Tribunal, ADTR licence, AFS licence, AFS licensee, application, approved SMSF auditor, ASIC hearing delegates, authorisation, cancellation, charities, company auditor, credit licence, credit licensee, enforcement review taskforce, financial advisers register, financial market, licence variation, limited AFS licence, liquidator, managed discretionary account, managed investment scheme, marketplace lending, MDA, official liquidator, OTC derivatives, refusal, registration, rejected for lodgement, responsible manager, SMSF auditor, suspension, withdrawal

### Class orders and instruments

Class Order [CO 04/194] *Managed Discretionary Accounts*

Class Order [CO 02/184] *Charitable investment schemes—fundraising*

ASIC Corporations (Charitable Investment Fundraising) Instrument 2016/813

ASIC Corporations (Managed Discretionary Account Services) Instrument 2016/968

### Regulatory guides

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

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

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

RG 87 *Charitable schemes and school enrolment deposits*

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

RG 104 *Licensing: Meeting the general obligations*

RG 105 *Licensing: Organisational competence*

RG 179 *Managed discretionary accounts*

RG 180 *Auditor registration*

RG 186 *External administration: Liquidator registration*

RG 203 *Do I need a credit licence?*

RG 204 *Applying for and varying a credit licence*

RG 205 *Credit licensing: General conduct obligations*

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

RG 243 *SMSF auditor registration*

RG 257 *Testing fintech products and services without holding an AFS or credit licence*

RG 258 *Registered liquidators: Registration, disciplinary actions and insurance requirements*

RG 261 *Crowd-sourced funding: Guide for public companies*

RG 262 *Crowd-sourced funding: Guide for intermediaries*

## **Legislation**

### **Corporations Act**

Part 7.6: Licensing of financial services providers

Part 9.2: Registration of auditors and liquidators

Schedule 2: Insolvency practice schedule

### **Corporations Regulations**

Part 7.1: Preliminary

### **National Credit Act**

Chapter 2: Licensing of persons who engage in credit activities

### **SIS Act**

Part 16, Div 1A, Subdiv A: Registration of approved SMSF auditors

Part 30: Miscellaneous

## **Reports**

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

REP 448 *Overview of licensing and professional registration applications: January to June 2015*

REP 503 *Overview of licensing and professional registration applications: January to June 2016*

REP 526 *Survey of marketplace lending providers*

REP 544 *Response to submissions on CP 288 and CP 289 on crowd-sourced funding*

REP 546 *Response to submissions on CP 291 reporting rules: Derivative retail client money*

### **Consultation papers**

CP 288 *Crowd-sourced funding: Guide for public companies*

CP 289 *Crowd-sourced funding: Guide for intermediaries*

CP 291 *Reporting rules: Derivative retail client money*

### **Cases**

*Global Financial Markets Pty Ltd and Australian Securities and Investments Commission 2017 AATA 1397*

*One RE v ASIC 2012 AATA 294*

### **Media and other releases**

16-329MR *ASIC updates regulatory framework for charitable investment fundraisers* (28 September 2016)

17-211MR *ASIC accepts Victorian liquidator's cancellation* (28 June 2017)

17-239MR *ASIC checks on limited AFS licence experience* (18 July 2017)

17-312MR *Applications for crowd-funding licences open 29 September 2017* (12 September 2017)

### **ASIC forms**

Form FS70 *AFS licensee profit and loss statement and balance sheet*

Form FS71 *Auditor's report for AFS licensee*