



ASIC

Australian Securities & Investments Commission

REPORT 402

ASIC enforcement outcomes: January to June 2014

July 2014

About this report

This report outlines enforcement outcomes achieved by ASIC during the period 1 January 2014 to 30 June 2014 (the relevant period). The report identifies the entities and individuals enforcement action was taken against, and highlights examples of conduct targeted during this period.

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.

Previous reports on ASIC's enforcement outcomes

Report number	Report date
REP 383	January 2014
REP 360	July 2013
REP 336	April 2013
REP 299	September 2012
REP 281	March 2012

Disclaimer

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

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

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Overview

ASIC's role

- 1 ASIC's strategic priorities are to ensure:
 - (a) confident and informed investors and financial consumers;
 - (b) fair and efficient financial markets; and
 - (c) efficient licensing and registration.
- 2 In achieving our strategic priorities and dealing with our challenges, a key aspect of what we do is identifying and dealing with those who break the law. We do this through our 'detect, understand and respond' approach.

Detect

- 3 We detect misconduct or the risk of misconduct by gathering intelligence through:
 - (a) proactive and reactive surveillance;
 - (b) breach reporting; and
 - (c) reports of alleged misconduct from whistleblowers and the public.

Understand

- 4 We understand by analysing the intelligence we receive.

Respond

- 5 In responding to misconduct, or the risk of misconduct, while enforcement action is only one of several regulatory tools available to ASIC, it is of fundamental importance and is a key priority for ASIC. This report focuses on enforcement activity as one of the key regulatory tools we can use to address misconduct. Other regulatory tools include engagement with stakeholders, surveillance, guidance, education and policy advice.

Purpose and scope of this report

- 6 This report considers our enforcement activities, and outcomes achieved, during the period from 1 January 2014 to 30 June 2014 (the relevant period). This report demonstrates both enforcement outcomes achieved and the views that we have on particular types of conduct.
- 7 The report is organised according to our strategic priorities:

- (a) confident and informed investors and financial consumers (Section A);
- (b) fair and efficient financial markets (Section B); and
- (c) efficient registration and licensing (Section C).

8 The examples in this report highlight the actions that we have taken to enforce the law and, in a number of instances, the role played by gatekeepers in promoting sound investment practices, preventing or detecting market failures, and promoting market integrity.

9 ASIC is committed to transparency about its enforcement work. This is the sixth of our six-monthly enforcement reports. Previous reports are available at www.asic.gov.au/reports.

10 We note that the Senate Economics References Committee's recent report to Government on the performance of ASIC contained a number of recommendations regarding our enforcement activity. Some of those recommendations relate to areas in which ASIC has already started implementing changes. This enforcement report is not intended to address those recommendations. We will be responding to those recommendations in other forums.

Significant enforcement outcomes for the relevant period

11 In the first six months of 2014, we achieved a total of 256 enforcement outcomes. This figure includes criminal, civil and administrative actions, as well as outcomes resulting in an enforceable undertaking, a negotiated outcome or the issue of a public warning notice. There were 89 outcomes in the 'market integrity', 'corporate governance' and 'financial services' areas, and 167 in the 'small business compliance and deterrence' area.

12 Four notable enforcement outcomes during the relevant period were:

- (a) We entered into an enforceable undertaking with global bank BNP Paribas (BNP), which requires BNP to ensure that its participation in the setting of Australian interest rate benchmarks upholds the integrity and reliability of those benchmarks. BNP also made contributions of \$1 million to fund independent financial literacy projects in Australia: see Example 41.
- (b) We obtained a penalty against Newcrest Mining Limited (Newcrest) for selectively briefing analysts on market-sensitive information ahead of it being disclosed to the market. Newcrest admitted contraventions of its continuous disclosure obligations and the court accepted ASIC and Newcrest's joint application for the imposition of a civil penalty of \$1.2 million: see Example 37.

- (c) We entered into an enforceable undertaking with a number of parties involved in the hire and sale of water coolers and first-aid kits using ‘rent to own’ agreements to vulnerable consumers in remote areas. As part of the enforceable undertaking, the parties agreed to make a payment of \$250,000 to be split equally between the Pilbara Community Legal Service and the Indigenous Consumer Assistance Network. Those involved have agreed not to engage in credit activities, or apply for a credit licence, for a period of five years: see Example 7.
- (d) Russell Johnson, the former sole director of Sonray Capital Markets Pty Ltd (Sonray), was sentenced to six-and-a-half years jail for his role in the collapse of Sonray, which collapsed owing more than \$46 million. Company officers are expected to act with integrity and in the interests of the company. Where they fail to do so, consequences will be significant: see Example 2.

Life cycle of an enforcement action

- 13 Enforcement is about protecting financial consumers and punishing wrongdoing and through that shaping the behaviour of the people we regulate. It is often a contested process that takes time and resources.
- 14 The time and cost of achieving enforcement outcomes can vary depending on the extent of cooperation we receive, the availability and location of evidence, and the type of outcome pursued. Examples 1 and 2 provide typical examples of enforcement action undertaken by ASIC.

Example 1: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Example 2: False accounting, theft, deception

Former sole director of Sonray Capital Markets Pty Ltd (Sonray), Russell Andrew Johnson, was sentenced to six-and-a-half years imprisonment.

The sentence came as a result of our investigation into Sonray, which collapsed in June 2010 owing more than \$46 million. Subsequently, Mr Johnson was charged with multiple offences, including false accounting, theft and deception, and conspiracy to steal.

Mr Johnson will serve a minimum of three-and-a-half years before he is eligible for parole. Mr Johnson has appealed the severity of his sentence.

Mr Johnson is the second person to be imprisoned following the collapse of Sonray. On 14 October 2011, former CEO, Scott Kenneth Murray, was sentenced to five years imprisonment with a non-parole period of two years and six months for 10 charges brought by ASIC.

Mr Murray fully cooperated with ASIC and the Commonwealth Director of Public Prosecutions (CDPP) in our investigations. He was charged with a number of offences within a very short period of time of ASIC commencing investigations (22 February 2011) and appeared for a sentencing hearing within one year of the commencement of investigations. Mr Murray's offending involved multiple trading accounts, the movement of funds across

a number of bank accounts and misleading an auditor with regards to a solvency report. The investigations into Mr Johnson and Mr Murray involved a detailed analysis of the trading accounts and the movement of funds.

In contrast, Mr Johnson did not fully cooperate with ASIC or the CDDP. A full brief of evidence was prepared in order for ASIC to recommend the laying of charges; the CDDP assessed that brief of evidence. Those recommendations were successful and Mr Johnson was charged in September 2011. There was then a contested committal proceeding, which was held to determine whether there was sufficient evidence for Mr Johnson to stand trial. On 9 August 2012 it was determined that there was sufficient evidence.

A number of court appearances in the Supreme Court (Victoria) followed before Mr Johnson pleaded guilty to the offences on 2 October 2013 and was sentenced on 17 April 2014.

Mr Johnson commenced his sentence three months after Mr Murray was released from his own, after serving two-and-a-half years imprisonment.

In sentencing Mr Johnson, Justice Macaulay said that the conduct engaged in was a serious example of the crimes charged, and that they had been committed with 'a sophisticated degree of orchestration and planning'.

- 15 Example 3 demonstrates that we will, where appropriate, take decisive steps to act quickly and effectively to protect investor money where we uncover or suspect wrongdoing.

Example 3: Injunctive orders

On 6 March 2014 we were alerted to a complaint concerning the newly listed entity Sino Australia Oil and Gas Limited (SAO). The complaint raised concerns that \$7.5 million raised during the company's initial public offering (IPO) was at immediate risk of being transferred to an unverified offshore bank account for purposes that were not properly disclosed in the prospectus documents provided to investors. It was alleged that steps were being taken within the company to remove the non-executive directors who refused to authorise the transfer.

On 13 March 2014 we commenced a formal investigation, for the purposes of the *Australian Securities and Investments Commission Act 2001* (ASIC Act), into suspected contraventions of the *Corporations Act 2001* (Corporations Act) in relation to the management and affairs of SAO. On the same day we made an urgent application to the Federal Court, under s1323 of the Corporations Act, seeking an ex parte injunction to restrain SAO, along with three named directors and HSBC Bank Australia Limited (HSBC), from transferring any of the funds in the company's HSBC bank accounts. The hearing took place outside the court's normal sitting times. That evening the court made ex parte orders freezing approximately \$7.5 million held in SAO's two HSBC bank accounts.

The freezing orders have been extended on five further occasions since the first hearing on 13 March 2014 (18 March 2014, 8 April 2014, 23 May 2014, 29 May 2014 and 30 May 2014). At each court date we have reported to

the court on the developments in our investigation since the last hearing. On 29 March 2014 SAO contested the injunction and was unsuccessful in having the freezing orders lifted, although the court allowed for a small amount of funds to be used, by the company, so that the company could pay its Australian creditors.

Since the initial investigation was commenced on 13 March 2014, the investigation has expanded significantly to encompass a wide range of potential breaches of the Corporations Act, including breaches of directors' duties, prospectus disclosure provisions, continuous disclosure provisions, misleading and deceptive conduct provisions, and market manipulation provisions. This investigation led to the Australian Federal Police (AFP) executing a search warrant on 21 May 2014 on a premises in New South Wales.

Our investigation is continuing.

International activity

- 16 The impact of globalisation and changes in the structure of corporations, financial services providers and industry participants means that evidence is often located offshore, often in more than one jurisdiction. In many cases we cannot obtain required evidence without the assistance of overseas regulators.
- 17 Where required, we work closely with international financial regulators and other law enforcement agencies on all of our activities. Over the past few years, we have increased our requests to our international counterparts, particularly enforcement requests. This rise has been aided by the number of, and use of, memoranda of understanding (MOUs) that we have with overseas agencies. We currently have 37 bilateral MOUs with overseas agencies and we are one of 103 signatories to the International Organization of Securities Commissions (IOSCO) multilateral MOU.
- 18 We will continue cultivating productive working relationships with overseas agencies to ensure that both ASIC and our overseas counterparts achieve the best possible enforcement outcomes: see Example 34.

Credit providers

- 19 ASIC became the national regulator of consumer credit in July 2010 under the *National Consumer Credit Protection Act 2009* (National Credit Act). Among other reforms, the National Credit Act introduced:
- (a) a licensing regime that imposes minimum standards of conduct for credit industry participants; and

- (b) responsible lending obligations, which mandate that credit licensees must make inquiries into a consumer's requirements and objectives, and must make inquiries into and verify their financial situation.
- 20 We adopted a facilitative approach regarding the implementation of the credit reforms through guidance to industry, allowing gatekeepers sufficient time to familiarise themselves with their new obligations. However, in circumstances of large consumer detriment or unwillingness to comply with the law, we undertook surveillance and enforcement action.
- 21 We consider that industry has now had sufficient time to familiarise itself with its obligations under the consumer credit legislation and where we observe, or are made aware of, breaches of the law, we are more likely to take enforcement action to address our concerns.
- 22 In the relevant period we have achieved a large number of outcomes relating to consumer credit, including:
- (a) two criminal convictions (see Examples 5 and 6);
 - (b) five infringement notices paid, totalling \$71,400;
 - (c) six individuals permanently banned from engaging in credit activities;
 - (d) four individuals banned from, or giving an undertaking to refrain from, providing credit for between three and seven years; and
 - (e) seven Australian credit licences cancelled.

Example 4: False and misleading representations in credit

The Federal Court made declarations and ordered consumer credit provider GE Capital Finance Australia (GE Capital), which trades as GE Money, to pay a penalty of \$1.5 million for making false or misleading representations to more than 700,000 of its credit card customers.

The court found that at various times between 5 January and 27 May 2012, GE Capital told certain credit card customers that to activate their credit card, or to apply for or obtain an increased credit limit, the customer also had to consent to receiving invitations to apply for credit limit increases.

These representations were false or misleading because GE Capital did not require such consent for credit cards to be activated or for credit limits to be applied for or increased. GE Capital engaged in the conduct shortly before the Government's prohibition on unsolicited invitations to increase credit card limits came into effect.

The court found that: '[T]he contraventions were serious and the reach of GE Capital's conduct was extensive and substantial [and that it] was a systematic and deliberate attempt to mislead cardholders into giving their consent to receive invitations for future credit increases so as to avoid losses of up to \$6 million which were projected to be suffered by GE Capital as a result of the tightening regulatory environment.'

In imposing a penalty of \$1.5 million, the court said: 'What was involved was an attempt to obtain consents in an unlawful manner, and the adoption of a cynical approach by seeking to make the cardholders' choices less straightforward.'

The court also made orders requiring GE Capital to pay ASIC \$50,000 for our costs and to advise cardholders what the decision means for them by sending emails or letters to approximately 210,000 affected cardholders and by publishing a notice on its website.

During the court proceedings, GE Capital admitted to breaking the law.

In determining its penalties, the court took into account GE Capital's level of cooperation with our investigation as mitigating the seriousness of the contravention.

Current and future areas of focus

- 23 We are currently focusing on a number of enforcement areas. While these are particular areas of focus, we will continue to take enforcement action, in any area that we administer, to ensure that confidence in the Australian financial system remains strong.

Treatment of confidential information

- 24 We recently released Report 393 *Handling of confidential information: Briefings and unannounced corporate transactions* (REP 393), which reviewed the way in which listed entities and their advisers handle confidential, market-sensitive information. The report highlighted the importance of listed entities and their advisers implementing strong systems and controls for handling confidential, market-sensitive information.
- 25 Where systems and controls do not prevent the release of confidential, market-sensitive information, we will continue to take action for insider trading and breaches of continuous disclosure obligations to ensure that our markets are fair and efficient: see Examples 33 and 38.

Auditor and liquidator standards

- 26 Auditors and liquidators are important gatekeepers for the financial system. Ensuring that they uphold their professional and statutory obligations is integral for long-lasting stability in Australian financial markets. In the last 12 months, we have taken action against these gatekeepers when they have failed to uphold the standards required of them: see Report 389 *ASIC regulation of registered liquidators: January to December 2013* (REP 389) and Examples 26 to 30. We will continue to hold auditors and liquidators to account.

Advertising of financial products

- 27 We have previously indicated that we have a focus on the advertising of financial products. This focus will continue into the future as we take enforcement action on advertisements that are misleading or deceptive, or likely to be misleading or deceptive: see Examples 8 and 16.
- 28 Advertising is often a consumer's first contact with a financial product or financial services business, and plays a significant role in the consumer's perceptions and expectations. It is imperative that such advertisements are accurate and do not mislead consumers. This will be the case especially where new or complex products are marketed to retail investors.

Benchmarks

- 29 Overseas regulatory action for wrongful conduct relating to the London interbank offered rate (LIBOR) has led to concerns about the integrity of financial market benchmarks globally. In Australia, the focus has been on submissions to the Australian bank bill swap rate (BBSW). The BBSW is the primary benchmark used in Australian financial markets. It is administered by the Australian Financial Markets Association (AFMA).
- 30 We have been undertaking inquiries into the BBSW rate set since mid-2012. The conduct that has been of interest involved derivative traders within a bank seeking to influence that bank's submitter on the rate to be submitted to AFMA, based on whether a higher or lower submission would benefit the derivative traders' derivatives positions. We will take action where we find evidence of potential misconduct in this space: see Example 41.
- 31 We are closely monitoring international developments on benchmarks, including the work of the Benchmarks Task Force established by IOSCO. We are participating in this task force.

Enforcement report data

- 32 Appendix 1 provides statistics about our enforcement outcomes and an explanation of the methodology used: see Table 1 and Table 2.
- 33 We have also included aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports: see Table 3. Comparisons between individual enforcement reports have some limitations. This is because no two enforcement actions are the same. For example, there may be differences in the complexity or seriousness of the allegations. However, over a two-year period, it is possible to identify the types of conduct or sectors that are the focus of our enforcement activity in the longer term.
- 34 Appendix 2 provides a schedule of media releases that corresponds to the enforcement outcomes in this report.

A Confident and informed investors and financial consumers

Key points

The Australian financial system is built on trust, and enforcement activity is very important in maintaining that. This section highlights enforcement outcomes achieved in matters undertaken to ensure confident and informed investors and financial consumers.

In the relevant period, we achieved three criminal outcomes relating to financial services misconduct and two criminal outcomes relating to credit misconduct. There were 11 people banned from the financial services industry, five of them permanently. There were 13 infringement notices paid, totalling \$132,600.

Credit providers and credit assistance providers

Loan fraud

- 35 Credit assistance providers, such as mortgage and finance brokers, play a major role in ensuring that consumers have access to finance by acting as a conduit between borrowers and lenders. It is therefore vital that brokers do not abuse the trust placed in them by both consumers and lenders.
- 36 We have taken action against dishonest or fraudulent conduct more commonly in relation to credit assistance providers rather than lenders. However, we will take action in these cases regardless of who breaches the law. In addition to ensuring consumer confidence, we believe that this creates a more level playing field for those who are doing the right thing.

Example 5:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Unconscionable conduct in credit

- 37 We will take action particularly where we see the use of unconscionable practices and the targeting of consumers in remote areas. It is vital that these consumers are afforded their full legal and equitable rights by those who wish to do business with them.

Example 7: Unlicensed credit activity and unconscionable dealing

We accepted an enforceable undertaking from Home Essentials Australia Pty Ltd, I Love My Water Pty Ltd, Triple Bay Group Pty Ltd and Triple Bay Pty Ltd, and the companies' principals, Daniel Tarabay, Teddy Tarabay and Ronald Carabay, after an investigation found they engaged in unlicensed credit activities.

The companies and principals have also agreed to make a payment of \$250,000 to be split equally between the Pilbara Community Legal Service and the Indigenous Consumer Assistance Network. The money will be used to continue the work of educating and advising consumers on financial products and dealings with financial services providers.

Our investigation found the four businesses were involved in the hire and sale of water coolers and first-aid kits using 'rent to own' agreements. They were marketed to consumers by door-to-door sales representatives, in many cases to vulnerable consumers, including those living in remote areas such as the Pilbara region in Western Australia. Consumers around Australia entered into around 16,000 'rent to own' agreements.

We also found the prices paid by consumers for the goods exceeded their fair market value, meaning the agreements they entered into were credit contracts. This activity required the companies to be licensed under the National Credit Act.

Under the enforceable undertaking, the companies and principals have agreed to take the following steps for the benefit of the affected customers:

- stop collecting payments owed by customers under existing 'rent to own' agreements;
- allow customers to keep the goods they were renting with no further payments required;
- not exercise any rights they have under 'rent to own' agreements, except to honour any contractual or statutory warranties to which customers are entitled; and
- provide refunds to customers who have made payments under a 'rent to own' agreement but have not received their rental goods, which are expected to total approximately \$100,000.

The companies and principals have also agreed:

- not to engage in credit activities or apply for a credit licence for a period of five years;
- to place public notice advertisements in various newspapers around Australia, and on the websites www.homeessentialsaustralia.com.au and www.ilovemywater.com.au, informing the public of the enforceable undertaking; and
- to engage an independent consultant to oversee and report to ASIC on their compliance with the enforceable undertaking.

Advertising

- 38 Ensuring credit advertising is not misleading is a significant part of our increased focus on financial services advertising more broadly, as the credit sector has a particularly active profile in advertising.
- 39 We take a proactive role in monitoring advertisements to identify potentially false or misleading representations. We will monitor both traditional and non-traditional media to ensure lenders and credit assistance providers are complying with the law in their marketing to consumers. Regulatory Guide 234 *Advertising financial products and advice services (including credit): Good practice guidance* (RG 234) contains good practice guidance on advertising financial products, including a number of specific real-life examples.
- 40 Since the release of RG 234, we have put the industry on notice that we intend to take a stronger approach where we identify misleading advertising. Allowing industry to simply correct advertising after the fact does not always provide a sufficient incentive to ensure its accuracy in the first place. We will take action where we identify advertisements that are likely to mislead consumers.

Example 8: Misleading advertisements

Paid International Ltd (Paid International), formerly known as First Stop Money Ltd, paid \$30,600 in penalties after we issued three infringement notices alleging misleading representations in its online advertisements.

The small amount lender, which operates nationally online, stated that it offered 'instant decisions' and loan approvals 'within minutes' for small amount loans on websites operated by Paid International at firststopmoney.com.au, loanspronto.com.au and paydayplus.com.au.

We were concerned the advertisements were false or misleading because the lender's assessment of a loan application was not 'instant' or completed 'within minutes'. In some instances, loan applications took up to 72 hours to be assessed.

Example 9: False or misleading representations

Finance broker Jeremy (WA) Pty Ltd (Jeremy (WA)) paid \$20,400 in penalties in compliance with two infringement notices issued by ASIC alleging false or misleading representations. Each infringement notice imposed a penalty of \$10,200.

The marketing representations, which in effect offered 'guaranteed car finance' to consumers, were published on websites operated by Jeremy (WA) at guaranteedcarfinance.com.au and yes-loans.com.au and using the Google Adwords service, which linked to the company's website at getapproved.com.au.

We were concerned the representations were false or misleading under the national consumer law because an unconditional guarantee that finance can be provided is inconsistent with responsible lending laws.

Unlicensed credit representatives

- 41 Ensuring that businesses comply with the credit licensing regime is the first line of defence for ASIC in protecting the interests of consumers of credit. As the credit legislation has now been in place for over four years, those who engage in credit activities have no excuse for not complying with the licensing requirements. We will act on unlicensed credit activity.

Example 10:

[REDACTED]

[REDACTED]

[REDACTED]



Payday lending

- 42 Due to concerns about the use of payday loans (which includes loans for small amounts taken over short periods of time), the *Consumer Credit Legislation Amendment (Enhancements) Act 2012* introduced provisions specifically designed to protect vulnerable consumers.
- 43 Consumers taking out small amount loans are often relying on the money to pay for an unexpected expense and cannot afford to be short-changed. We will continue to hold payday lenders accountable and ensure financially vulnerable consumers are not paying more than the law allows for these types of loans. While the individual amounts involved in these matters may be small in dollar terms, they can be significant to consumers themselves, and if applied to many consumers can provide an incentive for less scrupulous operators to flout the law.

Example 11: Fees

Cash Stop Financial Services Pty Ltd (Cash Stop), a payday lender with branches throughout Australia, refunded \$14,000 to more than 650 consumers following an ASIC investigation.

Our investigation found that Cash Stop retained part of the loan funds it should have paid directly to consumers by charging a subscription fee for a membership rewards program. Cash Stop breached new payday lending laws by charging such a fee.

Between 1 July 2013 and 7 August 2013, Cash Stop entered into 697 payday loans where it withheld \$20 from each consumer's loan funds to pay for the membership rewards program. This amounted to the payday lender retaining approximately \$14,000 from consumers' loans.

We accepted an enforceable undertaking, which requires Cash Stop to:

- refund the membership fee to each of the affected consumers;

- send a letter to each consumer who paid the membership fee explaining the reasons why the membership fee is being refunded; and
- honour the terms of the membership for the full period for which the consumer paid, notwithstanding that the membership fee has been refunded to the consumer.

Financial advisers

- 44 It is estimated that there are around 54,000 advisers operating in Australia on behalf of over 3,000 Australian financial services (AFS) licensees that are authorised to provide personal financial product advice. Financial advisers all have a general obligation to ensure that they provide financial products and services efficiently, honestly and fairly.
- 45 We are focused on protecting the public, deterring misconduct and maintaining consumer confidence in the financial services industry. Where appropriate, we will take enforcement action to ensure financial advisers meet their obligations.

Dishonest or misleading and deceptive conduct

- 46 Dishonest conduct by financial advisers undermines confidence and trust in the financial services industry. Those who engage in dishonest or misleading and deceptive conduct will be removed from the industry.

Example 12: Dishonest conduct

A former financial adviser for WealthSure Pty Ltd (WealthSure), Brian William Veitch, was sentenced to six years and two months imprisonment with a four-year non-parole period after pleading guilty to 22 charges brought by ASIC.

Mr Veitch was sentenced in the District Court (NSW) after pleading guilty to 22 counts of using a false instrument.

Mr Veitch was an authorised representative of WealthSure from 14 December 2005 to 23 February 2010. During this time, Mr Veitch admitted to:

- 21 counts of using false withdrawal requests to cause the fraudulent transfer of funds totalling approximately \$500,000 from seven clients' accounts without their knowledge or authority for his own purposes; and
- one count of providing a client with a false portfolio statement causing the client to believe that \$300,000 was still in their account when, in fact, it was not.

Example 13: Dishonest conduct

We permanently banned Nigel Keith Flowers from providing financial services and engaging in credit activities. Mr Flowers was banned from providing financial services after we found he had engaged in dishonest conduct and was not of good fame and character.

Mr Flowers was the director of Flowers Financial Group Pty Ltd (in liquidation) and Flowers Financial Management Pty Ltd (in liquidation), which specialised in providing financial advice to the medical profession.

Mr Flowers engaged in a scheme to raise money to fund a proposed IPO by Avior Australia Ltd (Avior). The scheme raised approximately \$1.48 million.

Mr Flowers raised funds from long-term clients of Flowers Financial Management. He established a trust account, '1Source Wholesale Investments Pty Ltd ITF Avior Pre-IPO Trust' (trust account) to which he was the sole signatory, to collect his clients' funds.

We found that between February 2011 and March 2012, Mr Flowers improperly disbursed at least \$720,331 from the trust account. Of these disbursements, at least \$696,138 was paid to entities related to Mr Flowers.

Following cancellation of the IPO, Avior returned \$30,000 to the trust account with the intention that it be returned to investors. We found that Mr Flowers improperly disbursed over \$29,000 of this \$30,000 from the trust account, with at least \$27,000 of these disbursements paid to entities related to Mr Flowers.

In addition to the banning from financial services, we found that Mr Flowers is not a fit and proper person to engage in credit activities.

Our investigation is continuing.

Monitoring and supervision

47

AFS licensees must have adequate systems in place to ensure they are fully across the actions of their representatives so that financial services are provided efficiently, honestly and fairly. We monitor licensees' supervision arrangements and will act where they are not sufficient and jeopardise investors and financial consumers being confident and informed.

Example 14: Monitoring and supervision

We accepted an enforceable undertaking from LCL Capital Pty Ltd (LCL Capital) after an investigation found deficiencies in the way it monitored and supervised its authorised financial adviser representatives.

Our investigation into the Queensland-based financial services firm came after a review of the advice provided by one of its authorised representatives, Timothy Bryce, who previously worked for Sherwin Financial Planners Pty Ltd.

Our concerns related to alleged failures to:

- ensure that financial services were provided efficiently, honestly and fairly;
- take reasonable steps to ensure that authorised representatives complied with financial services laws;
- demonstrate adequate resources were available to provide financial services and carry out supervisory arrangements; and
- ensure that authorised representatives were adequately trained and competent to provide financial services.

Under the enforceable undertaking, LCL Capital submitted to a regime of supervision, review and audit of its authorised representatives by an ASIC-approved, independent senior financial planning expert, for a period of at least 15 months.

Example 15: Risk management systems

We accepted an enforceable undertaking from Manish Babulal Jani, a former director of AIE Fiduciary Services Pty Ltd (AIE), which prevents him from managing a corporation for five years.

Our investigation found that between 18 April 2013 and 8 November 2013, Mr Jani failed to uphold a number of general obligations expected of him as the director of an AFS licensee, in supervising AIE.

Mr Jani, among other things, failed to ensure AIE:

- met its statutory obligations;
- maintained proper books of account;
- was solvent when company debts were incurred;
- carried out its obligations as an AFS licensee; and
- established and maintained adequate risk management systems.

In addition to this, following an application by AIE, we cancelled its AFS licence. The application was made after we raised a number of concerns about the management of AIE and its compliance with its licence obligations—in particular, the monitoring and supervision of certain authorised representatives.

Insurance brokers

48 Insurance brokers hold a position of trust with their clients who rely on them to act with honesty and integrity to ensure that they are appropriately insured. Because of this position of trust, we will hold insurance brokers accountable when they fail to meet their obligations.

Advertising in the insurance sector

- 49 Purchasing insurance is an important decision and consumers should be able to confidently rely on representations made to them by brokers in advertising. Where the representations are misleading, we will take enforcement action.

Example 16:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dishonest conduct

- 50 It is important that insurance brokers are honest in their dealings with both clients and insurance providers. Failure to be honest can have a detrimental impact on a client if an event giving rise to a loss has occurred while they were uninsured.

Example 17: Dishonest conduct

We cancelled the AFS licence of Parramatta-based insurance broker, WD Gelle Insurance & Finance Brokers Pty Ltd (WD Gelle).

WD Gelle's AFS licence was cancelled after we found that it had failed to comply with its licence obligations to provide its services honestly and efficiently.

In particular, we found that WD Gelle received client funds and failed to forward them, in full, to insurers. In addition, we found there were shortfalls between the amounts received from customers and the amounts that should have been held in trust by WD Gelle on behalf of those customers.

Mr Spark was a director and officer of CS Heritage Securities Limited (in liquidation) (CS Heritage) from 20 June 2008 until he filed for bankruptcy on 29 November 2012. Mr Spark had also acted as the solicitor for CS Heritage since its incorporation until 30 January 2012 and as an authorised representative from 2 May 2008 and project manager of all of CS Heritage's projects until he was removed on 21 February 2012.

In deciding to ban Mr Spark permanently, we found:

- he had made statements to a client that were false and misleading to induce the acquisition of a financial product when Mr Spark knew, or ought to have known, the statements were false or misleading. These false statements related to CS Heritage being the trustee for the Santander Trust (Trust), as well as providing incorrect details about the trust itself; and
- he had engaged in misleading or deceptive conduct by concocting the existence of the trust, and using a name that closely resembled the name of a trust for which CS Heritage was the trustee, being the Santander Trust.

We also found reason to believe that Mr Spark was not of good fame or character.

Disclosure documents and advertisements

54

Responsible entities and other AFS licensees have an obligation to ensure that the information provided to investors is accurate and allows them to make informed financial decisions. Where information that is given to investors is not accurate, we will take enforcement action. Such action may include:

- (a) negotiated outcomes, such as the agreement with Industry Super Australia in respect of their 'Compare the pair' campaign (see Media Release (14-138MR) *Industry Super Australia agrees to change comparative advertising* (24 June 2014)); and
- (b) infringement notices (see Examples 20 and 21).

Example 20: Product Disclosure Statements

Australian Mutual Holdings Limited (AMH) paid \$20,400 in penalties after we issued two infringement notices for misleading statements in Product Disclosure Statements (PDSs) for two investor funds it manages as the responsible entity.

AMH is the responsible entity for the Trident Global Growth Fund, which launched in 2010, and the Trident Income Plus Fund, which launched in 2013. We were concerned that, until October 2013, the PDSs contained misleading statements by claiming the majority of the funds' assets were held by the funds' custodian. In fact, the majority of the assets were held in an AMH trading account with the funds' prime broker.

Example 21: Misleading advertisements

Wealth Within Limited (Wealth Within) paid \$20,400 in penalties after we issued two infringement notices for misleading online advertisements.

The advertisements related to the investment returns of Wealth Within's individually managed account service, known as the Direct Equity Managed Account Service.

We were concerned that one advertisement, which ran online from 30 June 2011 to 5 March 2013, overstated the true returns for the portfolios advertised.

In a second advertisement, which ran from 5 March 2013 to 17 October 2013, we were concerned the advertisement misled investors into believing they would achieve returns on their individually managed account the same as, or similar to, the returns advertised. We found that, due to the nature of the service, each investor's account would differ from the performance advertised.

B Fair and efficient financial markets

Key points

Directors, company officers, auditors, liquidators and market participants play a key role in ensuring that Australia's financial markets are fair and efficient. We will take enforcement action against these gatekeepers to ensure that Australia's financial markets are fair and efficient.

In the relevant period we achieved six criminal outcomes and three civil outcomes in this space. In addition, seven market integrity rule infringement notices and two continuous disclosure infringement notices were paid, totalling \$466,000. An additional \$1.2 million penalty was imposed by the Federal Court for a breach of continuous disclosure obligations: see Example 37.

Directors and officers

- 55 Company directors are important gatekeepers in the financial system because they control the affairs of the companies they direct. Directors hold a position of responsibility and trust in any organisation and they must adhere to their obligations. We will take enforcement action against those who do not meet their obligations to ensure they are removed from the industry.

Directors' duties

- 56 It is the fundamental responsibility of company directors to act honestly and in the best interests of the company they govern. The investing public is entitled to expect that company directors are acting in their interests. We will act to ensure that breaches of directors' duties are pursued in the courts.

Example 22: Failure to act in the best interests of the company

Ronald David Williams and Gary David Maile, former directors of Selection One Finance Pty Ltd (Selection One), were sentenced after pleading guilty to breaches of directors' duties.

Mr Williams and Mr Maile pleaded guilty to one count each of failing to exercise their powers and discharge their duties as company directors in good faith in the best interests of the company, and that their failure was intentionally dishonest.

Both Mr Williams and Mr Maile were sentenced to four years and three months imprisonment with a non-parole period of 16 months.

Mr Williams and Mr Maile operated a business through Selection One, which borrowed funds from investors for approximately 12 months at an interest rate of 3% per month or 36% per annum.

Mr Williams and Mr Maile represented to investors that the funds would be on-lent to third parties as short-term loans at 6% per month, thus allowing the high returns to investors. The proportion of money actually on-lent to borrowers was very small compared to the amount of investor funds received. Selection One's poor financial performance meant it was only able to survive by raising new investors' funds to pay the high rate of interest promised to its existing investors.

Selection One's poor performance was not disclosed to new or existing investors and Mr Williams and Mr Maile did not take any steps to alter or abandon the company's high-risk business model, continuing to encourage investors to invest in Selection One.

On 3 March 2009, Selection One was placed in voluntary administration with outstanding debts of approximately \$20.92 million owed to 88 investors.

Misuse of company money

57 Directors and officers who misuse company funds are not acting in the best interests of the companies they serve. Directors, officers and employees who misuse company funds will face enforcement action.

Example 23: Theft of company money, accounting fraud and deception

Dr Robert Gianello, a former employee of Phosphagenics Ltd (Phosphagenics), pleaded guilty to his role in the alleged theft of more than \$4.6 million from the company, following an ASIC investigation.

Dr Gianello pleaded guilty to three charges of obtaining money by deception from Phosphagenics and its subsidiary, Vital Health Sciences Pty Ltd (VHS). The three charges cover the period from November 2004 to August 2012, and involve approximately \$4.64 million.

During the period from November 2004 to June 2008, Dr Gianello was employed by Monash University and worked on research and development on behalf of VHS. He was also a partner in a business that submitted allegedly false invoices to VHS.

In July 2008, Dr Gianello joined Phosphagenics as an employee and, until August 2012, agreed to the submission of the allegedly false invoices by a company associated with Dr Woei-Jia Jiang.

Dr Jiang was the director of two companies, which submitted allegedly false invoices to Phosphagenics and VHS.

Dr Jiang pleaded guilty to three charges of obtaining money by deception. The three charges against Dr Jiang cover the period from June 2008 to June 2013, and involve approximately \$4.39 million.

Both Dr Gianello and Dr Jiang are scheduled to be sentenced in the second half of 2014.



Director disqualifications

- 58 We may disqualify directors who have been involved in managing two or more failed companies. In the relevant period, we disqualified 24 directors from managing corporations for this reason.

Example 25: Director disqualifications

We banned chef Justin Russell North and his wife Georgina North from managing corporations following their involvement in the failure of three companies.

Mr and Mrs North were banned for two years and 18 months, respectively.

Liquidators were appointed to Becasse Pty Limited on 20 June 2012 and to Etch Restaurant Pty Limited and North Food Catering Pty Limited on 20 July 2012.

We found Mr and Mrs North failed to exercise their powers and discharge their directors' duties with the requisite degree of care and diligence.

This failure, we found, resulted in large deficiencies owed to creditors, totalling a combined sum of over \$7 million for the three companies.

Auditors

- 59 Auditors are required by the Australian auditing standards to independently evaluate financial reports. The quality of the independent audit process

supports confidence in the quality of financial reports. The quality of audits is important to companies and directors because it allows directors to be confident in financial reports, promoting fairness and efficiency in markets. It also aids in ensuring that investors are confident and informed. The quality of audits is also important to a wider group of stakeholders, such as creditors. We will take action against auditors when they fail to meet their obligations.

Example 26: Suspension of auditor registration

We suspended the registration of Wayne John Wessels, the former auditor of whitegoods distributor Kleenmaid, following a successful application to the disciplinary body, the Companies Auditors and Liquidators Disciplinary Board (CALDB).

The suspension started on 29 November 2013 and is for three years.

The CALDB found that Mr Wessels failed to carry out and perform adequately and properly his duties as lead auditor of Kleenmaid's financial report for the year ended 30 June 2008.

The CALDB also specifically found that, among other things, Mr Wessels should have brought a higher degree of professional scepticism to his consideration of Kleenmaid management's assumption of the company's going concern, and that there were deficiencies in the standard of his evidence and documentation of audit work done.

Example 27: Failure to adequately perform duties

We accepted an enforceable undertaking from Warren John Sinnott as part of an ongoing investigation into the collapse of Banksia Financial Group (Banksia Group). Under the enforceable undertaking, Mr Sinnott is prevented from practising as a registered auditor until 11 June 2019.

Mr Sinnott was the lead auditor responsible for the audits of companies in the Banksia Group, which included Securities Holdco Limited, and its subsidiaries, Banksia Securities Limited (Banksia) and Cherry Fund Limited, for the financial years 2009–12 (the audits).

As a result of our investigation, we formed the view that Mr Sinnott failed to carry out or perform adequately and properly the duties of an auditor. In particular, we found that Mr Sinnott did not conduct the audits in accordance with the Australian auditing standards, as required of him under the Corporations Act.

For each audit we formed the view that Mr Sinnott failed, among other things, to:

- perform sufficient audit procedures for loan receivables and obtain sufficient appropriate audit evidence to reduce the risk of material misstatement of loan receivables to an acceptably low level;
- display an appropriate level of professional scepticism when auditing the valuation of, and provision for, impairment of loans receivable, and

adequately document his conclusion about the reasonableness of the provision for impairment;

- remain alert through the audits that the risk of the potential impairment of loan receivables may cast doubt over Banksia Group's ability to continue as a going concern;
- take responsibility for the overall quality of the audit and provide an appropriate level of supervision and review; and
- appropriately conclude that he had obtained reasonable assurance to form an appropriate opinion on the financial report.

Insolvency practitioners

60 Registered liquidators must act in the creditors' interests and seek to maximise the return to them. It is critical that they ensure creditors have confidence in their administration. We are committed to improving liquidator independence and competence and ensuring creditors' interests prevail. We work constructively with insolvency practitioners to resolve issues and ensure compliance with obligations. However, we will not hesitate to take action against practitioners who fail to act in the best interests of creditors, or whose conduct falls short of required professional standards.

61 Following recent applications by ASIC, the CALDB suspended the registration of two insolvency practitioners who were not properly performing their duties as liquidators: see Examples 28 and 29. The two CALDB decisions mean that in the past 12 months the CALDB has made six adverse findings against liquidators. These are significant outcomes for investors and creditors who rely on insolvency practitioners to complete administrations competently, independently and in a timely and effective manner.

Performance of duties

62 Liquidators must competently meet both their statutory duties and professional standards. This includes ensuring that there are adequate practice systems and resources in place to manage their basic reporting obligations.

Example 28: Failure to properly perform duties

The CALDB ordered the cancellation of the registration of Pino Fiorentino as a liquidator following an application by ASIC.

Our application to the CALDB resulted from an investigation into Mr Fiorentino's conduct as a joint liquidator of ERB International Pty Ltd (in liquidation) (ERB).

The CALDB found that Mr Fiorentino did not adequately and properly perform his duties as a joint liquidator by:

- dishonestly using his position as the liquidator of ERB;
- failing to act in good faith in the best interest of the company and its creditors;
- lacking competence; and
- failing to comply with legal requirements.

The CALDB found, among other things, that Mr Fiorentino signed a deed of settlement—on behalf of creditors—with ERB and its directors, without adequately and properly assessing necessary information. Also, the CALDB found that Mr Fiorentino procured invalid proxies and voted them in support of a resolution to approve his fees. Significantly, it found that Mr Fiorentino actively sought to undermine a claim by the NSW Office of State Revenue, a major creditor, to pursue another entity to recover its debt.

We lodged our application with the CALDB in June 2013. Mr Fiorentino sought, and was granted, two adjournments of CALDB's hearing of the case. On 4 February 2014, and after the CALDB refused to grant Mr Fiorentino a further adjournment, Mr Fiorentino filed an unsuccessful application in the Administrative Appeals Tribunal (AAT) to restrain the CALDB from handing down its decision on the grounds that the Board's refusal to grant him the adjournment had been a denial of natural justice and procedural fairness.

Mr Fiorentino then made application on similar grounds to the Federal Court. On 19 June 2014, the Federal Court dismissed Mr Fiorentino's application. On 26 June 2014, Mr Fiorentino filed an application with the AAT for review of the CALDB's decision to order cancellation of his registration as a liquidator, as well as an unsuccessful application to prevent the CALDB's decision taking effect. The application for review is expected to be heard later this year.

On 7 July 2014, Mr Fiorentino made a further unsuccessful application to the Federal Court, again claiming that the CALDB had denied him natural justice and procedural fairness.

Information lodged with ASIC

- 63 Creditors, the public and ASIC rely on the information that liquidators lodge with ASIC. As such, liquidators must ensure the timeliness and accuracy of all information lodged with ASIC. They must also ensure that documents that should be lodged are lodged.

Example 29:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

Example 30: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

False and misleading information

64 Where people or companies disclose false or misleading information to the public, it can have a negative impact on those investors who rely on the information, and can also have a broader public cost. Like other market abuses, misleading statements can diminish confidence in market efficiency, and cause market failures if prevalent. Because of this, we will take strong enforcement action where false and misleading information is provided.

Example 31: False and misleading information

David Alan Zohar, a former director of Aluminex Resources Limited (Aluminex), was sentenced to 14 months imprisonment after pleading guilty to three counts of providing false and misleading information to ASX.

Mr Zohar is to serve a minimum of five months before being released on a \$5,000 recognisance requiring him to be of good behaviour for 12 months.

Mr Zohar admitted to providing the information in connection with Aluminex's September 2008 float.

Following Aluminex's suspension from ASX in October 2008, we made the company pay back the money to subscribers of the shares under its prospectus.

**Insider trading**

- 65 Insider trading occurs where a person who is aware of confidential, price-sensitive information that would be expected to affect the value of particular securities trades, or procures another person to trade, in those securities, or discloses that information to another person likely to trade in those securities. It is an activity that cheats investors and creates an unfair market.
- 66 We have a strong enforcement record for insider trading. In the past 12 months we have achieved eight insider trading outcomes, including seven convictions and one guilty plea.

Example 33:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Example 34: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Operation Leith

- 67 Operation Leith is a joint operation that was launched by ASIC and the AFP after suspicious trading in foreign exchange derivatives was identified. The AFP and ASIC worked together closely on this serious and complex investigation, utilising the resources and expertise of both agencies to bring about arrests.
- 68 Investigations like this send a clear message to anyone who is thinking of engaging in this type of criminal activity—we have the ability to monitor wrongdoing and take action.

Example 35: Two men arrested for insider trading

Two men were arrested by the AFP for offences relating to insider trading, money laundering, corruption and abuse of public office.

Authorities discovered evidence that a 26-year-old man, an employee of the National Australia Bank (NAB), was receiving sensitive information from a 24-year old man, an employee of the Australian Bureau of Statistics (ABS).

It will be alleged in court that the 26-year-old man was obtaining this market-sensitive information before its official release by the ABS, and then using it to enter into foreign exchange derivative products and personally profit from favourable movements in the prices of those derivatives.

This trading activity, occurring between August 2013 and May 2014, has resulted in profits of approximately \$7 million. This has been restrained by the AFP-led Criminal Assets Confiscation Taskforce under Commonwealth proceeds of crime legislation.

The AFP and ASIC executed eight search warrants in Melbourne and Canberra, arresting the 26-year-old man and the 24-year-old man.

The 26-year-old man was charged with a range of offences relating to the use of inside information from the ABS to unlawfully profit through the trading of foreign exchange derivatives and corrupting a public official.

The 24-year-old man was charged with offences relating to insider trading, receiving a corrupt benefit, release of sensitive information, and abuse of public office.

Items seized during the search warrants included \$9,000 in cash.

Both the NAB and the ABS provided their full cooperation and assistance to police throughout the investigation.

Trading in David Jones

69 Directors should exercise caution when trading in the shares of the company of which they are director, to ensure that not only do they comply with the insider trading laws but also avoid the perception that they may have benefited from their position as a director. We will continue to act to enforce the insider trading laws where there is sufficient evidence to do so.

Example 36: David Jones

On 28 October 2013, a listed entity made a confidential, conditional, non-binding, indicative proposal to David Jones Ltd (David Jones) for a potential nil-premium merger, which David Jones' chair and non-executive directors collectively thought was unworkable, and should be rejected (the 'merger information').

On 1 November 2013, David Jones released an ASX media release and a David Jones media release titled *David Jones 1Q14 sales up 2.1%* (the 'sales information').

On 29 October 2013, two non-executive directors of David Jones purchased David Jones shares while in possession of both the merger information and the financial information summarised in the sales information. The trading was conducted within the window period specified in David Jones' share trading policy, and in compliance with the notification requirements set out in that policy.

On 6 November 2013, we commenced inquiries into the directors' trading, and, in the course of our investigation, we:

- reviewed relevant documents, including board papers, agendas and minutes;
- engaged with internal and external subject matter experts; and
- formally interviewed the directors and other potentially material witnesses.

On 29 January 2014, the directors were informed that we had decided not to take enforcement action against them.

We concluded that there was insufficient evidence to warrant continuing the investigation with a view to enforcement action. The ability to prove the materiality of the particular information is critical to any potential action for insider trading and the evidence gathered would be unable to satisfy this element. We were assisted in reaching this conclusion by an opinion given by an external expert.

To succeed in an insider trading enforcement action, the prosecutor must also prove that the defendant knew or ought reasonably to have known (among other matters) that, at the relevant time, the particular information was material in the sense that it would have moved a rational investor to buy or sell shares. In this respect, we concluded that the evidence gathered fell short of establishing that element.

We have stated that we will review this case, should new evidence be revealed.

David Jones has reviewed its share trading policy in light of this matter.

Company disclosure obligations

70 Continuous disclosure is a cornerstone of market integrity. It is essential for maintaining fair and efficient markets and is critical for investors looking to make confident and informed decisions. Our oversight encourages a high standard in this space. We are committed to ensuring that directors and companies uphold disclosure obligations.

Example 37: Analyst briefings

The Federal Court imposed a \$1.2 million penalty on Newcrest Mining Limited (Newcrest) for contravening its continuous disclosure obligations, by briefing analysts on market-sensitive information ahead of it being disclosed to the market.

Newcrest disclosed in a series of briefings to analysts, from 28 May 2013, information about Newcrest's expected gold production for the 2013–14 financial year, and on 5 June 2013 disclosed information regarding Newcrest's expected capital expenditure for the 2013–14 financial year.

As this information was market sensitive and selectively disclosed to analysts, Newcrest was obliged to disclose this information to ASX. We allege Newcrest's contraventions continued until 7 June 2013 when it made an announcement to ASX, which included its 2013–14 expected gold production, capital expenditure and other matters, including write downs.

Newcrest admitted the contraventions and the parties filed a joint application for civil penalties to be imposed.

The court heard a joint submission from ASIC and Newcrest as to the appropriate penalties. The parties jointly proposed a penalty of \$800,000 for the first contravention (relating to the expected gold production for the 2013–14 financial year), and \$400,000 for the second contravention (relating to the expected capital expenditure for the 2013–14 financial year).

The court accepted these submissions.

Our investigation in relation to persons who received this information is ongoing.

Example 38: Continuous disclosure

Diploma Group Limited (DGX) paid a penalty of \$33,000 after we served an infringement notice on the company for failing to comply with its continuous disclosure obligations.

The infringement notice was issued following an ASIC investigation into an announcement made by DGX on ASX.

On 4 December 2012, DGX entered into a contract for the sale of 69 Adelaide Terrace, East Perth, for \$4.86 million. The contract was subject to two conditions:

- due diligence and syndicate funding approval; and
- development approval.

DGX did not announce the entering of the contract, but waited until 31 July 2013 to announce the settlement. The announcement included the following statements:

- the sale of this asset places the business in a stronger position financially, having reduced corporate debt by close to 30% to \$13 million; and
- DGX will recognise a profit from the sale in the first half of the 2013–14 financial year.

We alleged that by failing to inform ASX of its entry into the contract for the sale of the property subject to the two conditions, DGX was in breach of its continuous disclosure obligations under the Corporations Act.

The Corporations Act provides that compliance with infringement notices is not an admission of guilt or liability. DGX is not, by reason of its compliance with the infringement notice, regarded as having contravened s674(2) of the Corporations Act.

Example 39: Ongoing disclosure obligations

We determined that Global Metals Exploration NL (Global Metals) must not rely on a short-form prospectus until June 2015. The determination followed Global Metals failing to meet its ongoing disclosure obligations.

Section 713 of the Corporations Act allows a company, in certain circumstances, to issue securities using a short-form prospectus instead of a full prospectus.

ASIC has the power to prevent a company from relying on these reduced prospectus content rules if a company breaches disclosure obligations to ensure material information is provided to investors on a continuous basis.

Global Metals failed to do the following on time:

- report to members for the 2013 financial year;
- lodge its 2013 financial year annual report; and
- lodge its report for the half-year ended 31 December 2013.

Our inquiries into Global Metals' failure to meet its disclosure obligations are continuing.

71 The requirement for substantial shareholders to disclose their relevant interests in listed companies is essential for ensuring that investors are informed about the identity and dealings of people who may have influence over the affairs of the companies in which they are investing. This underpins

confident and informed participation by investors in the Australian financial system. We will act when we are concerned that the market is not fully informed.

Example 40: Disclosure obligations

Following an application by ASIC, the Federal Court ordered the cancellation of 15 million shares in ASX-listed Northwest Resources Limited (Northwest) that were held in the name of Craigside Company Limited (Craigside), a company incorporated in the British Virgin Islands and operating from Hong Kong.

We alleged that, although Craigside was the holder of the shares (which represented 7.08% of Northwest's issued capital), it did not have a relevant interest in them. We also alleged that those who did have a relevant interest in the shares had not disclosed their interest to Northwest, contrary to legislative requirements.

The orders, which were made with Northwest's consent and not opposed by Craigside, followed ASIC and Northwest submitting to the court a joint statement of agreed facts.

Market misconduct

Benchmarks

- 72 Banks have obligations to ensure that their participation in the setting of Australian interest rate benchmarks upholds the integrity and reliability of those benchmarks. Where these obligations are not met, we will take enforcement action.

Example 41: Potential misconduct

We accepted an enforceable undertaking from BNP Paribas (BNP) in relation to potential misconduct involving the BBSW.

In November 2012, BNP reported to ASIC that it had found conduct between 2007 and 2010 that was indicative of seeking to influence its BBSW submissions, based on how the submissions may benefit BNP's derivatives positions. BNP remained a member of the BBSW submissions panel until a new methodology for calculating the BBSW was implemented on 27 September 2013.

At our request, BNP engaged an independent expert to conduct a review of BBSW submissions. The expert found that any market impact was not significant.

The enforceable undertaking requires BNP to ensure its participation in relation to the setting of Australian interest rate benchmarks upholds the integrity and reliability of those benchmarks. BNP will also make a

voluntary contribution of \$1 million to fund independent financial literacy projects in Australia.

Our inquiries in relation to the BBSW submission process are ongoing.

Fictitious trading

73 It is expected that the employees of institutions essential to the functioning of our financial markets will not act in a way that damages investor confidence. We will continue to protect the public and maintain investor and consumer confidence by taking action against people in the industry who disregard their obligations.

Example 42: [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Market integrity rules

74 ASIC market integrity rules are rules made by ASIC and apply to market operators, market participants, other prescribed entities and financial products traded on the relevant markets. They include matters such as participant conduct, participant–client relations, general trading matters and transparency matters. We are responsible for supervising compliance with these rules.

75 If we believe a breach can be established, the matter may be referred to the Markets Disciplinary Panel (MDP), which has been set up by ASIC as an

independent body to make decisions on issuing infringement notices and accepting enforceable undertakings.

Example 43: [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

C Efficient registration and licensing

Key points

There are ongoing responsibilities and obligations associated with registration and licensing. Failure to meet these obligations may lead to enforcement action by ASIC.

This section highlights enforcement outcomes that relate to efficient licensing and registration.

Officeholders of registered companies

Reporting obligations

76 Companies have financial reporting obligations which they must adhere to. Not adhering to these responsibilities severely compromises the transparency of a company and limits shareholders' ability to make informed decisions. These obligations are important and we will not hesitate to pursue companies who disregard them.

Example 44:

[Redacted text block for Example 44]

Example 45:

[Redacted text block for Example 45]

Obligations relating to company registration

- 77 Officeholders of registered companies have a number of obligations regarding company registration. Some obligations continue even if a company is in external administration.
- 78 A director must provide assistance to an external administrator who has been appointed to a company they were associated with. As part of the liquidator assistance program, in the relevant period, 138 directors were successfully prosecuted for summary offences concerning a failure to assist an external administrator.

Appendix 1: Statistics on enforcement outcomes

- 79 This appendix provides statistics about our enforcement outcomes and an explanation of the methodology for compiling this data: see Table 1 and Table 2. We have also included aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports: see Table 3.
- 80 Table 1 lists enforcement outcomes achieved during the relevant period. ‘Enforcement outcome’ refers to any formal action taken to secure compliance, about which we have made a public announcement, and also ‘small business compliance and deterrence’ formal findings, which we do not generally announce. This includes court determinations (criminal and civil), administrative remedies and the acceptance of enforceable undertakings. It also includes outcomes where a defendant has pleaded guilty, or agreed to plead guilty, to the charges against them but has yet to be sentenced. However, it does not include the many less formal processes we undertake to secure compliance with the law once a breach has been identified. For example, it does not include negotiating a change in compliance processes after receiving a breach notification from an AFS licensee.
- 81 ‘Pending matters’ in Table 2 refers to publicly announced enforcement matters that have yet to result in a formal outcome, such as the imposition of an administrative remedy, court ordered penalty or sentence. These include, in the case of criminal matters, matters where charges have been laid but are yet to be heard and, in the case of civil matters, where the filing of an action has been announced but remains undetermined. All of the matters in this table were pending as at 30 June 2014, although they may have been announced or filed before 1 January 2014. Where a matter falls within the ‘small business compliance and deterrence’ area, a public announcement may not have been made about the matter in this table. This table provides a good indication of the number of matters that we are pursuing at any one time.

Table 1: Enforcement outcomes—1 January 2014 to 30 June 2014*

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
Market integrity	6	3	9	–	–	18
Insider trading	4					4
Market manipulation	1					1
Continuous disclosure		1	2			3
Market integrity rules			7			7
Other market misconduct	1	2				3
Corporate governance	8	1	4	4	–	17
Action against directors	7	1				8
Insolvency						
Action against liquidators			3	1		4
Action against auditors			1	3		4
Other corporate governance misconduct	1					1
Financial services	5	2	32	15	–	48
Unlicensed conduct	1					1
Dishonest conduct, misleading statements, unconscionable conduct	2		9	3		14
Misappropriation, theft, fraud			3 [^]			3

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
Credit	2	1	16 [#]	5		24
Other financial services misconduct		1	4	7		12
Subtotal	19	6	45	19	–	89
Small business compliance and deterrence	143		24			167
Action against directors	138		24 ^{&}			162
Efficient registration and licensing	5					5
Total	162	6	69	19	–	256

* Outcomes are presented per defendant.

^ Includes one outcome currently under appeal.

Includes two outcomes currently under appeal.

Note: Some of the data in this table, and in paragraph 11, was corrected on 5 August 2015.

Table 2: Pending matters

Area of enforcement	Criminal	Civil
Market integrity	12	5
Insider trading	6	2
Market manipulation	4	
Continuous disclosure		1
Market integrity rules		
Other market misconduct	2	2
Corporate governance	15	4
Action against directors	14	4
Insolvency	1	
Action against liquidators		
Action against auditors		
Other corporate governance misconduct		
Financial services	15	17
Unlicensed conduct	1	1
Dishonest conduct, misleading statements, unconscionable conduct	7	4
Misappropriation, theft, fraud	5	1
Credit	1	6
Other financial services misconduct	1	5
Small business compliance and deterrence	70	–
Action against directors	70	
Efficient registration and licensing		
Total	112	26

Table 3: Aggregate enforcement outcomes—1 July 2012 to 30 June 2014

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
Market integrity	29	4	30	3	–	66
Insider trading	25					25
Market manipulation	3		1	1		5
Continuous disclosure		2	6			8
Market integrity rules			23			23
Other market misconduct	1	2		2		5
Corporate governance	19	6	11	12	1	49
Action against directors	18	3	2	1	1	25
Insolvency		1	1			2
Action against liquidators		2	7	4		13
Action against auditors			1	7		8
Other corporate governance misconduct	1					1
Financial services	36	34	120	58	4	252
Unlicensed conduct	1	3				4
Dishonest conduct, misleading statements, unconscionable conduct	19	22	27	14	1	83

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
Misappropriation, theft, fraud	8		14			22
Credit	7	3	52	21	3	86
Other financial services misconduct	1	6	27	23		57
Subtotal	84	44	161	73	5	367
Small business compliance and deterrence	905	2	128	–	–	1035
Action against directors	878		125			1003
Efficient registration and licensing	27	2	3			32
Total	989	46	289	73	5	1402

Appendix 2: Schedule of media releases

82 This appendix provides a list of the media releases that correspond to the enforcement outcomes in this report: see Table 4.

Table 4: Media releases that correspond to the enforcement outcomes in this report

Media release (by area of enforcement)	Date	Link
Market integrity		
Citigroup Global Markets Australia Pty Limited pays \$40,000 infringement notice penalty	21/01/2014	14-009MR
Pershing Securities Australia Pty Ltd pays \$15,000 infringement notice penalty	31/01/2014	14-019MR
Diploma Group Ltd issued infringement notice for continuous disclosure breach	10/02/2014	14-025MR
Hartleys Limited pays \$35,000 infringement notice penalty	19/03/2014	14-054MR
Three Sydney men convicted of insider trading	1/04/2014	14-063MR
ASIC obtains orders cancelling 15 million shares held in Northwest Resources Limited	11/04/2014	14-076MR
Former Portfolio manager pleads guilty to misusing his position	11/04/2014	14-077MR
Commonwealth Securities Limited pays \$55,000 infringement notice penalty	17/04/2014	14-049MR
Instinet Australia Pty Limited pays \$50,000 infringement notice penalty	17/04/2014	14-050MR
D2MX Pty Ltd pays \$110,000 infringement notice penalty	6/05/2014	14-095MR
Newcastle man pleads guilty to disseminating false information	23/05/2014	14-112MR
ASIC obtains extension of injunction freezing bank accounts of Sino Australia Oil and Gas Limited	3/06/2014	14-121MR
Merrill Lynch Equities (Australia) Limited pays \$65,000 infringement notice penalty	10/06/2014	14-123MR
Reward Minerals pays penalty for alleged continuous disclosure breach	13/06/2014	14-126MR
New South Wales man jailed for market manipulation	17/06/2014	14-131MR
Newcrest admits to breaching continuous disclosure laws	18/06/2014	14-133MR

Media release (by area of enforcement)	Date	Link
Corporate governance		
ASIC accepts enforceable undertaking from Sydney-based auditors	13/02/2014	14-028MR
██	████████	████████
ASIC bankrupts perpetual engine spruiker	9/04/2014	14-074MR
CALDB suspends NSW joint liquidator for six months	16/04/2014	14-080MR
Kleenmaid auditor suspended	16/04/2014	14-082MR
NSW man pleads guilty to \$260,000 fraud	16/04/2014	14-081MR
ASIC to suspend liquidator from industry	29/04/2014	14-088MR
ASIC accepts enforceable undertaking from Perth liquidator	29/04/2014	14-089MR
Former Perth director jailed for providing false and misleading information	16/05/2014	14-103MR
Guilty pleas in Phosphagenics matter	11/06/2014	14-125MR
ASIC suspends former Banksia auditor for five years	13/06/2014	14-127MR
NSW liquidator ceases practice	16/06/2014	14-128MR
Directors of Queensland lending business sentenced on dishonesty charges	20/06/2014	14-137MR
Former investment manager jailed	27/06/2014	14-144MR
Financial services		
Media Super pays infringement notice in relation to superannuation advertising	6/01/2014	14-001MR
ASIC accepts enforceable undertaking from Tru Blu	9/01/2014	14-005MR
ASIC continues to focus on funeral insurance	20/01/2014	14-007MR
ASIC bans key person and responsible manager from Melbourne credit business	23/01/2014	14-011MR
ASIC bans former Sydney mortgage broker and real estate agent	23/01/2014	14-012MR
ASIC accepts enforceable undertaking from BNP Paribas	28/01/2014	14-014MR
South Yarra accountant pleads guilty to ASIC charges	28/01/2014	14-015MR
Unlicensed rental companies enter into enforceable undertaking with ASIC	4/02/2014	14-021MR

Media release (by area of enforcement)	Date	Link
Finance broker pays \$20,400 infringement notice penalty	5/02/2014	14-022MR
Court freezes assets and restrains travel following collapse of the Charterhill group	6/02/2014	14-024MR
ASIC cancels Capital Advisers' licence	12/02/2014	14-027MR
ASIC concerns about loan applications result in cancellation of mortgage broker's licence	18/02/2014	14-030MR
ASIC accepts enforceable undertaking from former director	19/02/2014	14-033MR
ASIC investigation leads to Cash Stop Financial Services Pty Ltd refunding more than 650 consumers	24/02/2014	14-035MR
ASIC accepts enforceable undertaking from online FX broker operating managed discretionary accounts	25/02/2014	14-036MR
Former financial adviser convicted for dishonest conduct	5/03/2014	14-039MR
ASIC bans former Westpac bank home finance manager in relation to false loan applications	12/03/2014	14-043MR
ASIC accepts enforceable undertaking from Franchelen Pty Ltd	25/03/2014	14-057MR
ASIC permanently bans former authorised representative	25/03/2014	14-056MR
ASIC concerns about ANZ advertising	26/03/2014	14-058MR
ASIC bans bankrupt financial adviser	28/03/2014	14-062MR
Small amount lender pays \$30,600 penalty for misleading online advertisements	2/04/2014	14-065MR
ASIC bans former Commonwealth Financial Planning adviser from financial services and credit activities	4/04/2014	14-068MR
Wealth Within Ltd pays \$20,400 in penalties over misleading advertising	11/04/2014	14-075MR
ASIC bans convicted former adviser from credit industry	15/04/2014	14-078MR
Sonray director jailed following \$46 million collapse	17/04/2014	14-085MR
ASIC cancels Australian financial services licence of AIE Fiduciary Services Pty Ltd	18/04/2014	14-052MR
SuperHelp Australia Pty Ltd pays infringement notice in relation to FREE SMSF fund setup claims	18/04/2014	14-051MR
ASIC cancels Parramatta insurance broker's AFS licence	24/04/2014	14-086MR
ASIC cancels Banksia's AFS licence	28/04/2014	14-087MR

Media release (by area of enforcement)	Date	Link
Virgin Money pays \$30,600 penalty for misleading advertising	29/04/2014	14-091MR
ASIC bans former Melbourne credit representative	30/04/2014	14-092MR
ASIC accepts enforceable undertaking from LCL Capital Pty Ltd	14/05/2014	14-101MR
Australian Mutual Holdings pays \$20,400 in penalties for misleading statements	15/05/2014	14-102MR
ASIC to impose licence conditions on two Commonwealth Bank financial planning businesses	16/05/2014	14-104MR
ASIC bans former Sydney trader	20/05/2014	14-107MR
ASIC concerns prompt Sentry Financial Services to undertake a review of SMSF advice	21/05/2014	14-109MR
ASIC bans convicted Victorian finance broker from credit activities	23/05/2014	14-111MR
Former mortgage broker convicted of falsifying home loan applications	28/05/2014	14-117MR
Former finance broker convicted of fraud	28/05/2014	14-118MR
ASIC bans bankrupt financial adviser	10/06/2014	14-122MR
ASIC bans former Victorian client adviser for five years	10/06/2014	14-124MR
ASIC permanently bans veteran adviser	16/06/2014	14-130MR
ASIC permanently bans former financial services and credit representative	20/06/2014	14-134MR
ASIC permanently bans former Southport based financial adviser	20/06/2014	14-135MR
Industry Super Australia agrees to change comparative advertising	24/06/2014	14-138MR

Key terms

Term	Meaning in this document
14-137MR (for example)	An ASIC media release (in this example numbered 14-137)
AFMA	Australian Financial Markets Association
AFP	Australian Federal Police
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.
AGM	Annual general meeting
AOP	Automated order processing
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	ASX Limited or the exchange market operated by ASX Limited
Australian auditing standards	Standards issued by the Auditing and Assurance Board under s336 of the Corporations Act
BBSW	Australian bank bill swap rate
CALDB	Companies Auditors and Liquidators Disciplinary Board
CDPP	Commonwealth Director of Public Prosecutions
CFD	Contracts for difference
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
credit licensee	A person who holds a credit licence under s35 of the National Credit Act

Term	Meaning in this document
enforcement outcome	Any formal action to secure compliance, about which ASIC has made a public announcement
Federal Court	The Federal Court of Australia
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
IOSCO	International Organization of Securities Commissions
IPO	Initial public offering
LIBOR	London interbank offered rate
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
MDP	Markets Disciplinary Panel
MOU	Memorandum of understanding
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
Product Disclosure Statement (PDS)	A document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
relevant period	1 January 2014 to 30 June 2014
REP 360 (for example)	An ASIC report (in this example numbered 360)
RG 100 (for example)	An ASIC regulatory guide (in this example numbered 100)
s798G (for example)	A section of the Corporations Act (in this example numbered 798G), unless otherwise specified
SMSF	Self-managed superannuation fund

Related information

Headnotes

ASIC's strategic priorities, banning, credit activity, enforceable undertaking, enforcement outcome, financial service, gatekeepers, infringement notice, misleading or deceptive advertising

Regulatory guides

RG 100 *Enforceable undertakings*

RG 234 *Advertising financial products and services (including credit): Good practice guidance*

Legislation

ASIC Act

Corporations Act

National Credit Act

Reports

REP 281 *ASIC enforcement outcomes: July to December 2011*

REP 299 *ASIC enforcement outcomes: January to June 2012*

REP 336 *ASIC enforcement outcomes: July to December 2012*

REP 360 *ASIC enforcement outcomes: January to June 2013*

REP 383 *ASIC enforcement outcomes: July to December 2013*

REP 389 *ASIC regulation of registered liquidators: January to December 2013*

REP 393 *Handling of confidential information: Briefings and unannounced corporate transactions*

Media releases

14-142 *ASIC statement on Senate Economics Committee report*

14-145 *Former WealthSure financial adviser jailed for \$500,000 fraud*

14-148 *Newcrest ordered to pay \$1.2 million for breaching continuous disclosure laws*

14-156 *Former portfolio manager sentenced to jail*