



ASIC

Australian Securities & Investments Commission

REPORT 360

ASIC enforcement outcomes: January to June 2013

July 2013

About this report

This report outlines enforcement outcomes achieved by ASIC during the period 1 January 2013 to 30 June 2013 (the relevant period). The report identifies categories of gatekeeper against whom enforcement action was taken, 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 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

Our enforcement powers

- 1 ASIC's strategic framework is focused on three priorities or outcomes. First, ASIC is focused on ensuring that investors and financial consumers are confident and informed. Our second strategic priority is ensuring fair and efficient markets, and our third priority is efficient registration and licensing, with a particular focus on reducing 'red tape' for small business.
- 2 Enforcement action is one of the ways we support these priorities. We use our enforcement powers to detect and deal with unlawful conduct, to recover money in appropriate circumstances, and sometimes to prevent unlawful conduct before it happens. By doing this, we deter future misconduct.
- 3 Other regulatory tools that we use are engagement with industry and stakeholders, surveillance, guidance, education, and policy advice and implementation. This report only discusses enforcement action.
- 4 This report is the fourth of ASIC's six-monthly enforcement reports. Previous enforcement reports are available at www.asic.gov.au/reports.

Breach reporting to ASIC

- 5 Companies that breach their Australian financial services (AFS) licence are required to self-report to ASIC. Those that do not can expect greater scrutiny and possible enforcement action from us. This is an area where we expect to see stronger action from industry in the future.
- 6 It is the responsibility of participants of Australian financial markets to report compliance issues to ASIC. We expect firms to come forward to ASIC with problems they have identified, as part of the process of fixing those problems.
- 7 Between 1 January and 30 June 2013 (the relevant period), 260 notifications of significant breaches were lodged with ASIC by AFS licensees under s912D of the *Corporations Act 2001* (Corporations Act). Of this figure, planners, advisers and stockbrokers accounted for 143 reports, managed investment schemes for over 50 reports, insurers and insurance brokers for 37 reports, and superannuation trustees and administrators for 30 reports. We received a further 16 reports during this period from responsible entities under s601FC of the Corporations Act regarding breaches that may have a material adverse effect on members.

- 8 With the implementation of significant reforms in the financial advice and superannuation sectors, many firms are revising their operational focus and are consolidating systems. In doing so, we understand that they may uncover problems with older products or processes that need rectification, whether or not the problem technically stems from a clear breach.
- 9 ASIC will work constructively with companies who act promptly and appropriately in reporting breaches, to ensure that compliance issues are analysed and resolved and that consumers and investors can feel confident in the financial system: see Example 1.

Example 1: Working with ASIC to rectify problems

Suncorp Group agreed to implement a number of enhancements to its existing program of compliance systems improvement across its life and general insurance businesses.

This follows an independent review, requested by ASIC, of those compliance systems. ASIC sought the review following its own examination of a significant number of breaches reported by the group. In the period from June 2010 to June 2013 over 849,000 customers were affected by reported breaches, requiring refunds of approximately \$23 million.

Suncorp has committed to improving the processes for:

- monitoring and supervising representatives in its life and general insurance businesses;
- reporting incidents and breaches in its life and general insurance businesses;
- administering insurance policy customer discounts in its general insurance business; and
- training representatives in its general insurance business.

Suncorp will report regularly to ASIC in 2013 until the compliance system changes are complete.

'ASIC was keen to ensure Suncorp's systems were adequate to prevent the breaches happening again so requested the independent review. Suncorp has taken a constructive approach and ASIC is pleased Suncorp is improving its compliance systems in a way the review suggested,' ASIC Deputy Chairman Peter Kell said.

- 10 The benefits of cooperating with ASIC, and the factors we take into account when assessing cooperation, are explained in Information Sheet 172 *Cooperating with ASIC* (INFO 172).
- 11 Unfortunately, there are deficiencies in the way some participants approach their self-reporting obligations. Some companies prefer not to report and hope that they can rectify breaches, rather than self-reporting wrongdoing to us.

- 12 Companies that engage in risky behaviour and do not report problems can expect a visit from us, and may be the subject of enforcement action by ASIC.
- 13 In addition to the obligation for companies and responsible entities to self-report breaches to ASIC, certain other gatekeepers have reporting obligations. This includes the obligation for auditors to notify ASIC of certain matters or suspected contraventions (see Regulatory Guide 34 *Auditor's obligations: Reporting to ASIC* (RG 34)) and for market participants to report suspicious trading activity (see Regulatory Guide 238 *Suspicious activity reporting* (RG 238)).

Significant enforcement outcomes for the reporting period

- 14 In the relevant period, we achieved a total of 371 enforcement outcomes. This comprises criminal, civil and administrative actions, as well as outcomes resulting in an enforceable undertaking, negotiated outcome or the issue of a public warning notice. Seventy-eight outcomes were in the 'market integrity', 'corporate governance' and 'financial services' areas, and 293 were in the 'small business compliance and deterrence' area (between 1 July and 30 December 2012, the comparative figures were 88 and 347).
- 15 As the report shows, we are continuing to deal with the fallout from the global financial crisis: see Example 10. We expect that this trend may continue for some time as enforcement actions make their way through the courts.
- 16 Five of the most notable enforcement outcomes for ASIC were as follows:
- (a) We entered into a major enforceable undertaking with one of the wealth industry's biggest participants, Macquarie Equities Limited, which we believe will rectify some serious compliance deficiencies. The enforceable undertaking followed an ASIC surveillance which identified recurring compliance deficiencies involving a significant number of advisers: see Example 5.
 - (b) We achieved success in our ongoing efforts to achieve fair and adequate compensation for former investors in Storm Financial Limited (Storm). Without admission, Bank of Queensland Limited, Senrac Pty Limited and Macquarie Bank Limited agreed to pay \$1.1 million to former Storm investors Barry and Deanna Doyle for their financial loss arising from their Storm investments: see Example 10.
 - (c) We successfully appealed the suspended jail sentence imposed on Peter Couper, the former CFO of the parent company of Bill Express, for falsifying the accounts of Bill Express, and lying to the company's

auditor and ASIC. This appeal reinforces the serious consequences of lying to the regulator: see Example 20.

- (d) Insider trading has been a strong focus for ASIC during the relevant period. [REDACTED] We will continue to dedicate significant resources and energy to fighting this crime.
- (e) [Withdrawn in accordance with ASIC policy - see [INFO 152](#) *Public comment on ASIC's regulatory activities*]

Enforcement report data

- 17 Appendix 1 provides statistics about our enforcement outcomes and an explanation of the methodology for compiling this data: see Table 1 and Table 2. Appendix 2 provides a schedule of media releases that corresponds to the enforcement outcomes in this report.
- 18 For the first time, we have also included aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports: see Table 3 in Appendix 1. 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 ASIC's enforcement activity in the longer term.
- 19 We expect that current market trends may be reflected in future enforcement data from ASIC. For example, we are currently observing an increasingly vigorous search for yield by investors. Consequently, we will target misleading or deceptive advertising and sales practices by product issuers, in order to protect vulnerable consumers from the dangers associated with higher-risk products. Likewise, as the number of corporate insolvencies in Australia continues to rise, we will be looking to key gatekeepers, such as directors and insolvency practitioners, to ensure that they make appropriate decisions and uphold their obligations regarding insolvent entities. We will take enforcement action against those that do not.
- 20 In the past, ASIC has adopted a facilitative approach to the implementation of key reforms, such as the National Consumer Credit Protection reforms. We will continue to apply this approach to the implementation of new reforms, such as the Future of Financial Advice reforms. However, once gatekeepers have had sufficient time to familiarise themselves with their new

obligations, we will take a more enforcement-oriented approach to breaches of the law: see Example 28.

The role of gatekeepers

- 21 ASIC is Australia's corporate, markets and financial services regulator. We regulate financial advisers, credit licensees, mortgage brokers, auditors, liquidators and company directors, among others. We regard the people who occupy these roles as 'gatekeepers' of the Australian financial system.
- 22 Gatekeepers perform an important role in promoting sound investment practices, preventing or detecting market failures, and promoting market integrity. The community, and ASIC, expects that they will perform this role with honesty, diligence, competence and independence.
- 23 Using enforcement action to hold gatekeepers to account for reaching and maintaining these standards is an important way in which we achieve our strategic priorities.

Honesty

- 24 Ensuring that consumers and investors are confident and informed, and that financial markets are fair and efficient, depends on gatekeepers not using their position to deceive, mislead, abuse or exploit the trust of clients and the investing public.
- 25 We obtained 42 enforcement outcomes during the relevant period against individuals who breached the expected standard of honesty. One such example is that of former self-managed superannuation adviser, Craig Dangar, who pleaded guilty to two charges of obtaining financial advantage by deception after recommending that clients purchase shares belonging to him and misrepresenting the true owner of the shares: see Example 3.

Diligence

- 26 Gatekeepers must exercise their duties with proper care and attentiveness. This means that advice, decisions or actions must be properly considered and appropriate in the circumstances.
- 27 We achieved 18 enforcement outcomes against participants who failed to act with the appropriate level of diligence. [REDACTED]

Competence

- 28 All AFS licensees and credit licensees must meet legislative and regulatory requirements for training, licensing, registration and conduct. Licensees are responsible for ensuring that they understand and comply with these requirements.
- 29 An important part of ASIC's work in this area is ensuring that AFS and credit licensees have adequate arrangements in place to supervise the activities of their employees and representatives. Example 6 (AAA Financial Intelligence and AAA Shares (in liquidation)) and Example 33 (Clearing & Settlement Services Pty Ltd) are a good indicator of how we respond to compliance deficiencies of this nature.
- 30 We achieved 18 enforcement outcomes against participants who failed to meet the expected level of competence.

Independence

- 31 AFS licensees and credit licensees must have adequate arrangements in place for managing conflicts of interest that may arise in relation to the provision of financial services or credit services by the licensee or its representatives. The conflicts management obligation generally involves controlling, avoiding and disclosing conflicts of interest.
- 32 Licensees who do not manage conflicts of interest appropriately may face serious legal consequences.



Purpose and scope of this report

- 33 ASIC is committed to improving the transparency of its enforcement approach and increasing public understanding of how and why we take enforcement action. As part of this commitment, we have released a number of publications explaining our approach to enforcement action.¹
- 34 Our six-monthly enforcement reports provide an additional opportunity for us to increase the level of transparency about ASIC enforcement activity.

¹ See Information Sheet 151 *ASIC's approach to enforcement* (INFO 151), Information Sheet 152 *Public comment* (INFO 152), INFO 172 and Regulatory Guide 100 *Enforceable undertakings* (RG 100).

- 35 This report summarises key enforcement outcomes achieved by ASIC from 1 January to 30 June 2013. This report does not include a range of less formal processes that we undertake to enforce the law: see paragraph 90.
- 36 The report identifies various categories of gatekeeper against whom ASIC has taken enforcement action for failure to meet the core principles of honesty, diligence, competence or independence. The examples in this report are representative of the behaviours of current concern to ASIC. They range from minor regulatory offences through to serious misconduct.
- 37 This report is organised according to ASIC's strategic priorities to ensure:
- (a) confident and informed consumers and financial investors (Section A);
 - (b) fair and efficient financial markets (Section B); and
 - (c) efficient registration and licensing (Section C).

A Confident and informed consumers and financial investors

Key points

This section highlights enforcement outcomes achieved against providers of financial services and products.

Providers of financial services and products have a significant role to play in ensuring that consumers and investors are confident and informed.

Each of the gatekeepers identified in this section failed to perform their duties with sufficient honesty, diligence, competence or independence.

Financial advisers

- 38 Financial advisers have a general obligation to do all things necessary to ensure they provide financial products and services efficiently, honestly and fairly.
- 39 ASIC will take action to prevent AFS licensees who fail to meet these standards from providing these products and services. Banning orders and licence cancellations are designed to protect financial consumers and to maintain confidence in the financial services industry by removing bad apples from this industry.

Honesty

- 40 ASIC is focused on promoting the integrity of the self-managed superannuation industry so that consumers can feel confident when dealing in this area. We will take action to protect self-managed superannuation funds by ensuring they are not accessed and abused by unscrupulous operators.
- 41 Misappropriating or misusing funds from a client's self-managed superannuation fund is unlawful and can lead to criminal conviction.



[REDACTED]

[REDACTED]

[REDACTED]

Example 3: Self-managed superannuation adviser sentenced

Craig Dangar, a former self-managed superannuation adviser, was sentenced to concurrent suspended sentences of 18 months imprisonment after pleading guilty to two charges of obtaining financial advantage by deception.

Charges were brought by ASIC, following an investigation into Mr Dangar's conduct between January 2004 and September 2007 while he was employed to provide superannuation advice to trustees of self-managed superannuation funds, and compliance advice to accounting firms.

Mr Dangar pleaded guilty to obtaining a total financial advantage of \$250,000 by recommending that two clients purchase a portion of his shares in Morris Finance Ltd, and misrepresenting the true owner of the shares. He also indicated to one of the clients that the shares were likely to increase in value.

42 ASIC can apply to Court for interim orders to preserve assets for the benefit of investors, pending the outcome of investigations by ASIC into the conduct of a licensee. Such orders may prevent the transfer or disposal of assets held by an individual or corporate entity until the outcome of court proceedings are determined, including the granting of compensation for investors (if applicable).

Example 4: Preserving assets for the benefit of investors

On 21 January 2013, ASIC commenced proceedings under s1323 of the Corporations Act seeking orders in the Federal Court against ten defendants to preserve assets for the benefit of investors whose funds had been applied to Wickham Securities Ltd (Wickham) and other corporate entities connected to Bradley Sherwin and against his wife, Deborah Sherwin.

ASIC sought interim orders pending the outcome of our investigation, which is ongoing, to preserve assets for the benefit of investors, largely self-managed superannuation funds.

Wickham was placed into administration in December 2012 in advance of ASIC's proceedings and is now in liquidation. Grant Sparks and David Leigh of PPB Advisory are the liquidators of that company. In the circumstances, asset protection orders were not sought against Wickham.

Diligence

- 43 Poor or inappropriate compliance practices damage investor confidence in the financial advice industry. ASIC will take action where this is necessary to ensure that deficiencies are rectified and to prevent further breaches from occurring.

Example 5: Failure to self-report compliance deficiencies

ASIC accepted an enforceable undertaking from Macquarie Equities Limited (MEL), following a surveillance that found some recurring compliance deficiencies by, and in the supervision of, MEL's advisers.

The enforceable undertaking followed an ASIC surveillance commencing in December 2011. The surveillance reviewed MEL's compliance systems and a significant number of client files.

ASIC identified a number of deficiencies, including instances of:

- client files not containing statements of advice;
- advisers failing to demonstrate a reasonable basis for advice provided to clients;
- poor client records and lack of detail contained in advice documents;
- lack of supporting documentation on file to determine whether there was a reasonable basis for the advice provided to the client; and
- failing to provide sufficient evidence that clients were sophisticated investors.

ASIC's review found these deficiencies, which were not reported to ASIC, to be serious and that any remediation initiatives attempted by MEL over a four-year period had been ineffective.

The enforceable undertaking requires MEL to develop and implement, with the oversight of an independent expert, a plan to rectify any licence risk management and compliance deficiencies. The independent expert will report regularly to ASIC over the next two years on MEL's implementation of the plan.

Competence

- 44 AFS licensees are responsible for ensuring that they continue to meet the obligations and standards required by their licence. This includes ensuring that the licensee has adequate compliance measures in place to appropriately supervise the activities of their employees and representatives.

Example 6: Failure to comply with AFS licence conditions

ASIC cancelled the AFS licences of AAA Financial Intelligence and AAA Shares (in liquidation) (AAA) after finding that it had comprehensively and repeatedly failed to comply with the Corporations Act and the conditions of its licence.

ASIC was particularly concerned about the level of supervision of the representatives AAA appointed and, in effect, their conduct and the advice they provided to retail clients.

- 45 AFS licensees must ensure that, as their business grows, they review their compliance arrangements and business resources accordingly.



Credit providers

- 46 The *National Consumer Credit Protection Act 2009* (National Credit Act) is intended to protect consumers and ensure ethical and professional standards in the finance industry. It establishes licensing requirements and obligations for credit providers.
- 47 Holders of an Australian credit licence (credit licence) must familiarise themselves with their obligations under the National Credit Act. ASIC has provided substantial guidance to assist credit licensees in this regard, and licensees should seek additional or external advice if they feel they need it.

- 48 Identifying misconduct by credit providers is an ongoing focus for ASIC as part of its commitment to protect consumers and investors against inappropriate or unconscionable conduct affecting all products and services. In the relevant period, we suspended or cancelled the credit licence of five individuals or companies under s55 of the National Credit Act, and banned a further two individuals from engaging in credit activity under s80 of the National Credit Act.

Honesty

- 49 Credit providers are expected to act with honesty and integrity when providing credit services and products to consumers. Failing to verify information submitted in loan applications blatantly disregards these fundamental principles.



- 50 ASIC is committed to identifying instances of poor practice by credit providers. People who deliberately flout credit laws will be caught and removed from the industry.

Example 9: Failure to comply with credit laws

ASIC permanently banned Constantinos Patriotis, of East Perth, Western Australia, from engaging in credit activities, after an investigation found he failed to comply with numerous credit laws.

ASIC's investigation found that between 2008 and 2010, during which time he was engaged by licensed finance brokers to carry out mortgage finance broking, Mr Patriotis:

- failed to maintain a trust account and deposited lenders' and borrowers' funds into his personal account;
- undertook mortgage and finance broking activities while not licensed to do so;
- misused lender funds;
- when in a position of conflict with the receipt of money, failed to obtain written authority from the borrower to repay himself in preference to the lender; and
- failed to keep proper records.

Further, ASIC found that Mr Patriotis facilitated persons to lend money to him, or through him, to be loaned to borrowers for short terms at high interest rates. During this period, Mr Patriotis was only permitted to arrange loans from commercial lenders for, or on behalf of, persons as an intermediary.

51 Where appropriate, ASIC will take enforcement action against credit providers to hold them accountable for their role in losses suffered by consumers and to establish a basis on which consumers can achieve fair and adequate compensation.

Example 10: Securing compensation for consumers

ASIC settled legal proceedings arising out of its investigation into the collapse of Storm Financial Limited (in liquidation) (receivers and managers appointed) (Storm).

ASIC commenced legal proceedings in the Federal Court of Australia on 22 December 2010 in ASIC's name—and in the name of, and on behalf of, two former Storm Financial investors, Barry and Deanna Doyle—against Bank of Queensland Limited (BOQ), Senrac Pty Limited (Senrac) and Macquarie Bank Limited (Macquarie). The proceedings were brought in relation to alleged breach of contract, contravention of statutory prohibitions against unconscionable conduct, and the banks' liability as linked credit providers of Storm.

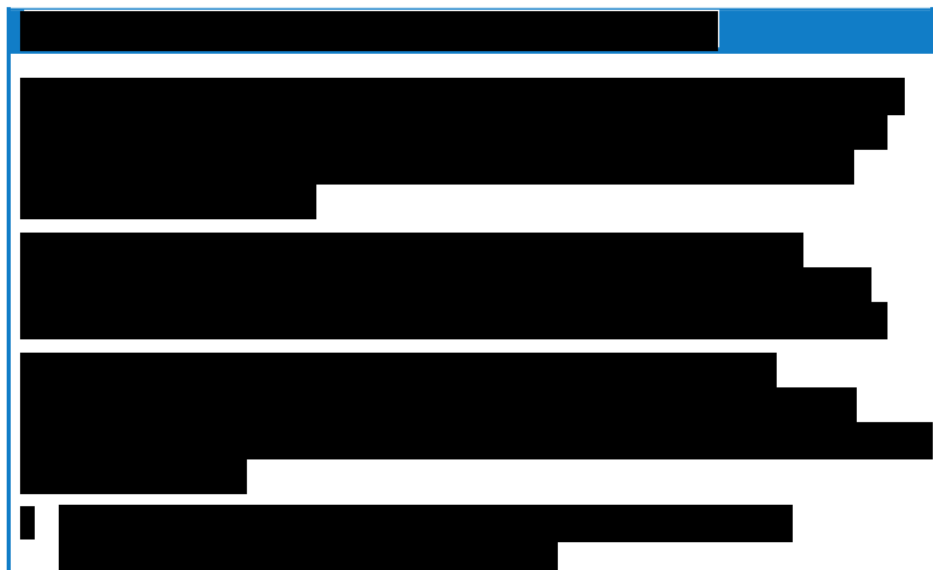
Without admission, BOQ, Senrac and Macquarie agreed to pay \$1.1 million, which will fully compensate Barry and Deanna Doyle for their financial loss arising from their Storm investments, as calculated by independent experts retained for the proceedings, and as calculated by ASIC under the compensation model it developed in connection with Storm.

Diligence

- 52 The responsible lending provisions of the National Credit Act are a key element of our national credit laws. ASIC has been, and will continue to be, very active in monitoring compliance and investigating reports of breaches of these obligations.



- 53 Credit providers must not suggest, assist with or provide a credit product that is unsuitable for a consumer. A contract is deemed unsuitable if the consumer is unable to repay it without substantial hardship, or the contract does not meet the consumer's requirements or objectives. These rules have been designed to protect consumers from exploitation. We will act to protect consumers from credit providers who try to sidestep these rules.



■ [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Competence

- 54 It is an offence to engage in credit activities without holding a credit licence, acting as a representative of a credit licensee or being exempt from the credit licensing requirement.

[REDACTED]
 [REDACTED]
 [REDACTED]

- 55 Credit providers must be 'fit and proper' to engage in credit activities. To meet this standard, providers must demonstrate the attributes of good character, diligence, honesty, integrity and judgement.
- 56 In determining whether a credit licensee or individual meets this standard, we take into account whether each of the people involved in managing the credit business are fit and proper people to perform that role.
- 57 Credit licensees and individuals whose actions demonstrate a disregard for this standard can be prevented from engaging in credit activities.

[REDACTED]
 [REDACTED]
 [REDACTED]
 ■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Insurance brokers

Honesty

- 58 Insurance brokers must fully comply with their legal obligations and the conditions of their AFS licence when dealing with client money.
- 59 Brokers who provide misleading or false information, or misuse clients' money for their own personal benefit, will be brought to account.

Example 15: Submitting false information on loan applications

ASIC entered into an enforceable undertaking with Paul Meier, of Findon, South Australia, following an investigation into his conduct as a director and responsible manager of Barker Meier Insurance Brokers Pty Ltd (BMIB).

In offering the enforceable undertaking, Mr Meier acknowledged the views held by ASIC as a result of its investigation that:

- on 16 occasions, between 31 October 2010 and 20 November 2011, he submitted loan applications to Premium Funding Pty Ltd (Premium Funding) containing false information;
- the false loan applications caused Premium Funding to advance loan funds to Mr Meier; and
- the loan funds received by Mr Meier were used to meet the business expenses of BMIB and therefore benefited Mr Meier.

Example 16:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Responsible entities and their officers

Competence

- 60 Under s915B(3)(b) of the Corporations Act, ASIC can suspend or cancel an AFS licence without a hearing if an entity becomes an externally administered body corporate.

Example 17: Suspension of externally administered entity's licence

In April 2013, ASIC suspended the AFS licence of LM Investment Management Limited (LM) for two years. This followed the appointment, on 19 March 2013, of FTI Consulting as voluntary administrators by the directors of LM.

LM is the responsible entity of the following registered managed investment schemes:

- LM Cash Performance Fund;
- LM First Mortgage Income Fund;
- LM Currency Protected Australian Income Fund;
- LM Institutional Currency Protected Australian Income Fund;
- LM Australian Income;
- LM Australian Structured Products Fund; and
- The Australian Retirement Living Fund.

LM also operates the unregistered LM Managed Performance Fund.

Diligence

- 61 Responsible entities have a duty to ensure that they are exercising their powers in accordance with a registered managed investment scheme's constitution and the law, especially where the proposed exercise of power could affect unit holders' rights.

Independence

62 Directors of responsible entities are essential in ensuring that investment money is properly and fairly dealt with, and that investors or other directors are fully informed about relevant information. Disclosure must be made of any circumstances or relationships that cast doubt on a director's independence. When these directors fall short of the mark, ASIC will take action.

B Fair and efficient financial markets

Key points

Directors, company officers, auditors, insolvency practitioners and other market participants play a key role in ensuring that Australia's financial markets are fair and efficient.

ASIC will take enforcement action against these gatekeepers where they fail to perform their duties with sufficient honesty, diligence, competence or independence.

This section highlights some of the enforcement outcomes we achieved in relation to these gatekeepers.

Directors and officers

Honesty

- 63 There are serious consequences for company officers who breach their obligations under the Corporations Act and who then mislead ASIC. Every year, the courts send dishonest and reckless company officers to prison, impose heavy fines and award damages.

Example 20: Accounting fraud

Peter Couper, the former CFO of the parent company of Bill Express, was jailed, following an appeal by ASIC against a suspended jail sentence imposed on him over his role in the collapse of the payments processor.

In April 2013, the Victorian Court of Appeal sentenced Mr Couper to 22 months in jail—to be released after 60 days—and fined him \$10,000. In July 2012, the Victorian County Court had sentenced Mr Couper to 21 months in jail—wholly suspended—and fined him \$10,000 for falsifying the accounts of Bill Express, and lying to the company's auditor and ASIC.

In delivering the judgment, Justice Tate said Mr Couper's conduct had the potential to harm the public's confidence in the integrity of Australia's markets.

'This is particularly so when the financial crime involves deceit and fraud perpetrated not only on an unidentified class of individuals who purchased and sold BXP shares during the relevant times, but a fraud perpetrated on the general public who are entitled to rely upon the integrity of the market and the appropriate enforceability of the offences which the Commonwealth Parliament has created in relation to it,' Justice Tate said.

- 64 The law expects that a director will act in the best interests of the company, even when this is not in the director's own interests.



Competence

- 65 Directors that have been involved in two or more failed companies may be disqualified by ASIC from managing corporations. We disqualified a total of 21 directors from managing corporations, following their involvement in two or more failed companies in the relevant period.

Auditors

Diligence

- 66 The auditing profession plays an important role in maintaining and promoting confidence and integrity in Australia's capital markets. Investors rely on the information provided by auditors, and naturally expect their work to be of a high standard.

- 67 ASIC is responsible for administering the requirements of the Corporations Act as they relate to audit quality. ASIC's audit oversight activities help maintain and raise the standard of conduct in the auditing profession.
- 68 In conducting an audit or review of a financial report, an auditor must follow the auditing standards issued by the Auditing and Assurance Standards Board.

Example 22: Cancellation of auditor registration

In June 2013, ASIC cancelled the registration of the auditor of Wickham Securities Limited (Wickham), following the collapse of the \$30 million property lender.

Under an enforceable undertaking with ASIC, Brian Patrick Kingston, of Bapaume, Queensland, agreed to never reapply for auditor registration, or perform any duties or functions of an auditor.

Wickham collapsed on 21 December 2012. On 27 September 2012, Mr Kingston issued an unqualified audit opinion on the financial report of Wickham for the year ended 30 June 2012.

ASIC formed the view that, in respect of the audit, Mr Kingston failed to carry out or perform adequately and properly the duties of an auditor. In particular, ASIC was concerned that the audit was not conducted in accordance with the Australian Auditing Standards because:

- sufficient appropriate audit evidence to support material financial balances contained in the 2012 financial report was not obtained;
- an unqualified audit opinion was rendered without sufficient appropriate audit evidence supporting the appropriateness of the going concern basis of accounting in the preparation of the 2012 financial report;
- an adequate level of professional scepticism was not exercised in auditing the recoverability of loan assets and assessing going concern, and reliance was placed on representations from Wickham management and directors without having performed appropriate audit procedures to corroborate or confirm those representations; and
- key audit planning, execution and completion procedures were not performed or documented by Mr Kingston.

Insolvency practitioners

- 69 ASIC has a proactive program of compliance visits for registered liquidators, including taking appropriate steps against those who have not met their obligations.

Honesty

- 70 Honesty is an essential trait for liquidators as gatekeepers in the financial services industry. A lack of honesty is one circumstance where ASIC may exercise its power to cancel the registration of a liquidator.

Example 23: Cancellation of liquidator registration

ASIC cancelled the registration of Peter Roger Grealish, of Sydney, as a registered liquidator and as an official liquidator. ASIC made this decision following the sentencing of Mr Grealish to 12 months imprisonment by the District Court of New South Wales on 26 April 2013. The sentence followed pleas of guilty to:

- one count of giving false or misleading evidence at a hearing of the Police Integrity Commission; and
- four counts of making a false statement to obtain a financial advantage. To avoid fines for various traffic offences, Mr Grealish falsely stated that another person was driving the vehicle at the time when each offence was committed.

Diligence

- 71 Insolvency practitioners who experience difficulties in managing their workload and cannot meet and maintain professional standards should seek assistance from the Insolvency Practitioners Association, their professional accounting body or from ASIC.
- 72 ASIC is willing to work with insolvency practitioners to resolve issues. However, those who do not seek assistance and fail to meet their obligations as a gatekeeper will be identified and may face enforcement action.



Competence

- 73 Insolvency practitioners must remain 'fit and proper' to be registered. Under s1290A(1) of the Corporations Act, ASIC may cancel the registration of a liquidator if a person becomes insolvent under administration.

Example 25: Cancellation of liquidator registration

ASIC cancelled the registration of Paul Anthony Pattison, of Melbourne, as a registered liquidator. ASIC made this decision following orders in the Federal Court of Australia, which resulted in Mr Pattison becoming a bankrupt.

Mr Pattison operated an insolvency and advisory practice—firstly through a company formerly called Pattison Consulting Pty Ltd (Pattison Consulting), and later through another company called Pattisons Business Recovery & Insolvency Specialists Pty Ltd (PBRIS). A third company, Pattisons Australia Pty Ltd (Pattisons Australia), subleased business premises to Pattison Consulting.

On 29 September 2010, a liquidator was appointed to Pattisons Australia, with the company owing \$150,333.58 to unsecured creditors. On 7 December 2010, a liquidator was appointed to Pattison Consulting, with the company owing \$3,579,215 to unsecured creditors. On 7 March 2011, a liquidator was appointed to PBRIS, with the company owing \$1,086,939.81 to unsecured creditors.

In a separate decision on 21 January 2013, Mr Pattison was disqualified by ASIC from managing corporations for four years, following ASIC inquiries into three failed companies, of which he was the sole director.

Mr Pattison has applied to the Administrative Appeals Tribunal for a review of ASIC's decision to cancel his registration as a liquidator and ASIC's decision to disqualify him from managing corporations.

Market participants

Honesty

- 74 The corporate community must not use or communicate inside information for its own benefit. Engaging in this conduct is a form of dishonesty and a serious offence.
- 75 Prosecuting insider trading has been a big focus for ASIC. Since 1 January 2009, ASIC and the Commonwealth Director of Public Prosecutions have prosecuted 28 insider trading actions. Of those, 19 have been successfully prosecuted, comprising 17 matters finalised and two guilty pleas where the individuals are awaiting sentencing. Five individuals are awaiting trial and are contesting their charges. Four matters have been unsuccessful.

Example 28: Market rigging conviction

ASIC banned James Pearson, of Perth, Western Australia, from providing financial services for three years for market rigging. Mr Pearson was a former client adviser with stockbroking firm DJ Carmichael.

An ASIC investigation found that Mr Pearson engaged in conduct inconsistent with the orderly operation of a financial market. In particular, Mr Pearson created a false or misleading appearance of active trading.

Between 12 May and 15 July 2011, Mr Pearson placed 20 orders on the ASX as part of an on-market buyback of units in the LinQ Resources Fund.

ASIC found that Mr Pearson's bids were for a purpose other than giving effect to the buyback. Mr Pearson was found to have placed the orders late in the day, causing the closing share price of the LinQ Resources Fund to be relatively high, thus creating a false or misleading appearance in the price for trading in the stock.

- 77 Activities that damage investor faith in the market are viewed gravely, with the severity of the sentence reflecting the serious nature of the offence.

Example 29: Withdrawn

[Withdrawn in accordance with ASIC policy - see [INFO 152](#) *Public comment on ASIC's regulatory activities*]

Diligence

- 78 Issuers are expected to know and understand their client money handling obligations and to comply with them. ASIC previously took a facilitative approach in order to improve industry standards in this area. ASIC is now taking a more enforcement-oriented approach to penalise issuers who fail to meet their money handling obligations.

Example 30:

[Redacted content]

- 79 The market integrity rules are made by ASIC and apply to market operators, market participants and prescribed entities under the Corporations Regulations 2001.
- 80 The Markets Disciplinary Panel is a peer review body that exercises ASIC's power to issue infringement notices and accept enforceable undertakings in relation to alleged breaches of the market integrity rules.

- 81 Infringement notices can require the payment of a monetary penalty. Under the Corporations Act, compliance with an infringement notice is not an admission of guilt or liability, and the disclosing entities are not taken to have contravened the provision(s) specified in the notice.



Example 32: Breach of market integrity rules

Merrill Lynch Equities (Australia) Limited paid a penalty of \$120,000 to comply with an infringement notice given to it by the Markets Disciplinary Panel. The penalty was for not ensuring that it had in place:

- organisational and technical resources for its system for the automated processing of orders, including appropriate automated filters; and
- processes to record any changes to the filters to enable automated orders to be submitted into ASX's trading facility, without interfering with the efficiency and integrity of ASX's market or the proper functioning of that facility.

Competence

- 82 ASIC regulates AFS licensees, including indirect market participants known as 'securities dealers'. Monitoring of securities dealers is an area of focus for ASIC. We will continue to undertake surveillances and follow up where we identify deficiencies.
- 83 AFS licensees who sublet their licence must have in place adequate compliance and governance standards. This includes being responsible for the conduct of representatives they appoint.

Example 33: Failure to comply with AFS licence conditions

A Queensland-based securities dealer, Clearing & Settlement Services Pty Ltd (CSS), downsized its operations after an ASIC review found it had failed to comply with conditions of its AFS licence. ASIC was particularly concerned about the level of supervision of the representatives CSS appointed.

Based in Southport, CSS promoted a range of investment education and financial markets trading and modelling tools to investors through a network of more than 35 corporate and individual authorised representatives in Queensland, New South Wales and Victoria.

Following ASIC's review of CSS' operations in 2012, ASIC found numerous licence compliance issues—in particular:

- providing services outside those authorised under its licence;
- publication of promotional and marketing materials by authorised representatives;
- supervision and monitoring of authorised representatives;
- breach assessment and reporting processes; and
- complaints assessment and handling, and general licence obligations, including lodgement of statutory forms.

In February 2013, CSS revoked the authorisations for all but one of its representatives. ASIC acknowledges CSS' cooperation in the matter.

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 reviews the enforcement outcomes achieved by ASIC in the area of registration and licensing.

Officeholders of registered companies

Honesty

- 84 An employee of a company who engages in conduct that results in the falsification of any books relating to the affairs of the company is guilty of an offence.



Diligence

- 85 Officeholders of registered companies are required to fulfil a number of 'housekeeping' obligations in connection with company registration. Some of these obligations continue even when a company is in external administration. For example, a director must provide assistance to an external administrator who has been appointed to a company with which they were associated.
- 86 As part of our liquidator assistance program, 249 directors were successfully prosecuted for summary offences concerning a failure to assist an external administrator.

Competence

- 87 Officeholders of registered companies have ongoing reporting obligations. Compliance with these obligations is central to the confident and informed participation of consumers in the financial services markets.
- 88 ASIC views reporting deficiencies seriously and will take enforcement action to send a message to the market about the consequences of non-lodgement.



Appendix 1: Statistics

Table 1: Enforcement outcomes—1 January 2013 to 30 June 2013*

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Total
Market integrity	6		3		9
Insider trading	6				6
Market manipulation			1		1
Continuous disclosure					
Market integrity rules			2		2
Other market misconduct					
Corporate governance	1		3	2	6
Action against directors	1				1
Insolvency			1 [^]		1
Action against liquidators			2 [#]	1	3
Action against auditors				1	1
Other corporate governance misconduct					

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Total
Financial services	9	13	28	13	63
Unlicensed conduct		1			1
Dishonest conduct, misleading statements, unconscionable conduct	5 [†]	12	3	4	24
Misappropriation, theft, fraud	2		4		6
Credit	2		15	3	20
Other financial services misconduct			6	6	12
Subtotal	16	13	34	15	78
Small business compliance and deterrence	263	2	28		293
Action against directors	258		28 ^{&}		286
Efficient registration and licensing	5	2			7
Total	279	15	62	15	371

* Outcomes are presented per defendant.

^ Includes one outcome currently under appeal.

Includes one outcome currently under appeal.

† Includes one outcome currently under appeal.

& Includes seven credit related outcomes.

Table 2: Pending matters as at 30 June 2013

Area of enforcement	Criminal	Civil
Market integrity	5	
Insider trading	4	
Market manipulation	1	
Continuous disclosure		
Market integrity rules		
Other market misconduct		
Corporate governance	6	5
Action against directors	3	5
Insolvency	3	
Action against liquidators		
Action against auditors		
Other corporate governance misconduct		
Financial services	4	28
Unlicensed conduct		
Dishonest conduct, misleading statements, unconscionable conduct	1	15
Misappropriation, theft, fraud	2	
Credit	1	
Other financial services misconduct		13
Small business compliance and deterrence	118	
Action against directors	114	
Efficient registration and licensing	4	
Total	133	33

Explanation

89 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 a licensee.

- 90 ‘Pending matters’ in Table 2 refer 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 2013, although they may have been announced or filed before 1 January 2013. Where a matter falls within the ‘small business compliance and deterrence’ area, a public announcement may not have been made about the matter. This table provides a good indication of the number of matters that we are pursuing at any one time.

Table 3: Aggregate enforcement outcomes—1 July 2011 to 30 June 2013

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notices	Total
Market integrity	21	3	22	1		47
Insider trading	19	1				20
Market manipulation	2		1			3
Continuous disclosure		1	8	1		10
Market integrity rules			13			13
Other market misconduct		1				1
Corporate governance	29	15	8	14	1	67
Action against directors	27	14	2	2	1	46
Insolvency	1		2			3
Action against liquidators	1	1	4	4		10
Action against auditors				7		7
Other corporate governance misconduct				1		1

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notices	Total
Financial services	39	45	98	53	1	236
Unlicensed conduct	2	7				9
Dishonest conduct, misleading statements, unconscionable conduct	24	28	21	14		87
Misappropriation, theft, fraud	10	2	12	5		29
Credit	3	3	37	10		53
Other financial services misconduct		5	28	24	1	58
Subtotal	89	63	128	68	2	350
Small business compliance and deterrence	986	57	125			1,168
Action against directors	963		122			1,085
Efficient registration and licensing	23	57	3			83
Total	1,075	120	253	68	2	1,518

Appendix 2: Schedule of media releases

Media release (by area of enforcement)	Date	Link
Market integrity		
[REDACTED]	[REDACTED]	[REDACTED]
Sydney man pleads guilty to insider trading	30/05/2013	13-124MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Merrill Lynch Equities (Australia) Limited pays \$120,000 infringement notice penalty	31/05/2013	13-129MR
ASIC bans Perth financial adviser for three years	6/05/2013	13-099MR
[REDACTED]	[REDACTED]	[REDACTED]
Corporate governance		
Wickham auditor removed from industry	27/06/2013	13-156MR
ASIC cancels registration of Sydney liquidator	5/06/2013	13-132MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
ASIC cancels Melbourne liquidator's registration and bans him from managing corporations	25/02/2013	13-033MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Financial services		
ASIC extends freezing orders in Wickham Securities Ltd collapse	19/07/2014	13-185MR
Suncorp Group's life and general insurance businesses to improve compliance systems following independent expert review	27/06/2013	13-155MR
Former Everest CEO provides two-year enforceable undertaking to ASIC	27/06/2013	13-157MR

Media release (by area of enforcement)	Date	Link
ASIC acts to improve consumer understanding of funeral insurance	26/06/2013	13-152MR
Former director sentenced for credit offences	25/06/2013	13-151MR
Former mortgage broker pleads guilty to submitting false documents to lenders	18/06/2013	13-145MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
ASIC settles in Storm Financial proceedings	29/05/2013	13-122MR
Former Bell Potter adviser sentenced to five years jail	23/05/2013	13-118MR
ASIC concerns sees payday lender change advertising	23/05/2013	13-112MR
ASIC permanently bans motor vehicle finance and insurance broker	22/05/2013	13-113MR
Former director of South Australian insurance broker sentenced	17/05/2013	13-109MR
ASIC shuts down China Environment Group share scam	16/05/2013	13-107MR
ASIC cancels Money Choices licence and bans its director Matthew George	15/05/2013	13-106MR
ASIC concerns lead to insurance comparison website changes	7/05/2013	13-101MR
ASIC cancels licences of All Class Insurance Brokers	6/05/2013	13-100MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
ASIC cancels Flowers Financial Management Pty Limited's licence	18/04/2013	13-082MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
ASIC suspends AFS licence of LM Investment Management Limited	9/04/2013	13-075MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Media release (by area of enforcement)	Date	Link
ASIC permanently bans Sydney insurance broker	21/03/2013	13-060MR
Provisional liquidators appointed in SMSF investigation	19/03/2013	13-054MR
ASIC cancels the licence of Addwealth Financial Services	15/03/2013	13-050MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Former Astarra investment manager permanently banned from financial services industry	6/03/2013	13-041MR
Former Hogan and Partners stockbroker sentenced to jail for \$7.5 million fraud	22/02/2013	13-032MR
Self-managed super adviser sentenced on ASIC charges	21/02/2013	13-030MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
ASIC accepts enforceable undertaking from Mr Rental	12/02/2013	13-022MR
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Sydney director banned from engaging in credit activities, Australian credit licence suspended	7/02/2013	13-020MR
ASIC permanently bans former WA credit representative	6/02/2013	13-018MR
ASIC cancels licences of national financial planning business	6/02/2013	13-019MR
[REDACTED]	[REDACTED]	[REDACTED]
ASIC cancels AAA Shares Pty Ltd's licence	31/01/2013	13-014MR
ASIC accepts enforceable undertaking from Macquarie Equities Ltd	29/01/2013	13-010MR
Former mortgage broker convicted	24/01/2013	13-008MR
ASIC accepts permanent undertaking from former Adelaide insurance broker	22/01/2013	13-006MR
[REDACTED]	[REDACTED]	[REDACTED]

Key terms

Term	Meaning in this document
12-301MR (for example)	An ASIC media release (in this example numbered 12-301)
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.
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
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
enforcement outcome	Any formal action to secure compliance, about which ASIC has made a public announcement
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
INFO 151 (for example)	An ASIC information sheet (in this example numbered 151)
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
Markets Disciplinary Panel	ASIC's Markets Disciplinary Panel, through which ASIC exercises its power to issue infringement notices and to accept enforceable undertakings in relation to breaches of the market integrity rules
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
relevant period	1 January 2013 to 30 July 2013

Term	Meaning in this document
REP 281 (for example)	An ASIC report (in this example numbered 281)
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
Storm	Storm Financial Limited

Related information

Headnotes

ASIC's strategic priorities, banning, competence, credit activity, diligence, enforceable undertaking, enforcement outcome, financial service, gatekeepers, honesty, independence, infringement notice

Regulatory guides

RG 34 *Auditor's obligations: Reporting to ASIC*

RG 100 *Enforceable undertakings*

RG 238 *Suspicious activity reporting*

Legislation

Australian Securities and Investments Commission Act 2001

Consumer Credit (Queensland) Act 1994

Corporations Act, s798H(1), 1307(1), 1323

Corporations Regulations 2001

Criminal Code Act 1995

National Credit Act

National Consumer Credit Protection Regulations 2009

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*

Information sheets

INFO 151 *ASIC's approach to enforcement*

INFO 152 *Public comment*

INFO 172 *Cooperating with ASIC*

Market integrity rules

ASIC Market Integrity Rules (ASX Market) 2010