



ASIC

Australian Securities & Investments Commission

REPORT 444

ASIC enforcement outcomes: January to June 2015

August 2015

About this report

This report outlines enforcement outcomes achieved by ASIC during the period from 1 January 2015 to 30 June 2015 (the relevant period). The report provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions 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 421	January 2015
REP 402	July 2014
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 and the scope of this report

- 1 ASIC investigates and enforces the law to give effect to our strategic priorities of:
 - (a) promoting investor and financial consumer trust and confidence;
 - (b) ensuring fair, orderly and transparent markets; and
 - (c) providing efficient and accessible registration.
- 2 ASIC is a law enforcement agency—70% of our regulatory resources are devoted to surveillance and enforcement. In line with our strategic priorities and within our available resources and powers, we will detect and take action against those who break the law. For those who intentionally break the law, we will do all that we can to ensure the ramifications are severe.
- 3 This report considers our enforcement activities and outcomes achieved during the period from 1 January 2015 to 30 June 2015 (the relevant period). In the last six months, we achieved a total of 323 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.
- 4 In the relevant period, we:
 - (a) commenced 136 investigations;
 - (b) completed 137 investigations;
 - (c) charged 10 individuals with a total of 82 criminal charges;
 - (d) banned 25 individuals from the financial services or credit industries;
 - (e) accepted six enforceable undertakings; and
 - (f) disqualified 19 directors.
- 5 In this report, we:
 - (a) focus on three of our current enforcement priorities (see Section A);
 - (b) highlight some of the actions that we have taken to enforce the law (see Section B);
 - (c) provide statistics about our enforcement outcomes (see Appendix 1); and
 - (d) provide a schedule of media releases that corresponds to the enforcement outcomes in this report (see Appendix 2).
- 6 We are committed to transparency about our enforcement work. Previous reports are available on [our website](#).

A Enforcement priorities and themes

Key points

This section focuses on three current enforcement priorities:

- tackling poor culture (see paragraphs 7–18);
- retail margin foreign exchange (FX) trading (see paragraphs 19–28); and
- illegal phoenix activity (see paragraphs 29–44).

Tackling poor culture

What is culture?

- 7 Generally speaking, culture is a set of shared values or assumptions. It reflects the underlying mindset of an organisation. It lies at the heart of how an organisation and its staff think and behave. It shapes and influences attitudes and behaviours towards, for example, customers and compliance. In the *Criminal Code Act 1995*, culture is defined as including an attitude, policy, rule and course of conduct or practice.
- 8 ASIC is concerned about culture because it is a key driver of conduct within the financial services industry. The trust and confidence of investors and financial consumers has been significantly eroded over the past few years due to poor conduct within the financial industry, including:
- (a) issues around poor advice both in large institutions and in smaller firms, and mis-selling of financial products to consumers and investors; and
 - (b) inquiries into benchmark and FX manipulation both in Australia and overseas.¹
- 9 In order to restore trust and confidence, there needs to be a fundamental shift in the culture of the financial industry—to one that focuses on achieving and rewarding good conduct and good outcomes for customers.

The price of poor culture

- 10 Poor culture imposes significant costs on businesses and consumers.

¹ Report 440 [Financial benchmarks](#) (REP 440).

Businesses

- 11 The cost of poor culture on businesses can include:
- (a) remediation costs, including compensation costs;
 - (b) fines;
 - (c) costs associated with complying with regulatory inquiries; and
 - (d) costs associated with damaging a business's brand and reputation.
- 12 Between 2008 and 2012, the cost of poor conduct for the 10 most affected global banks was approximately US\$250 billion.² Since 2011, the largest banks in the United Kingdom have paid almost 60% of their profits in fines and repayments to customers.³

Consumers

- 13 Poor culture also often results in poor outcomes for consumers. Sadly, those affected by poor culture are usually everyday Australians that can least afford it. Markets can recover, but often people do not. They are often left with a loss they cannot afford. In these circumstances, remediating consumers, which may include paying appropriate compensation quickly, is critical.
- 14 The remediation policy of an organisation, and the manner in which it is applied, is a powerful reflection of the culture of that organisation. Organisations with a positive culture proactively identify instances where remediation is required and work to remediate the consumer appropriately and as quickly as possible.

ASIC's recent remediation work

- 15 Where consumers have suffered loss due to systemic failures within an organisation, ASIC often works with that organisation to ensure that consumers are compensated appropriately. Recent examples include:
- (a) *CGU Insurance Limited (CGU), Accident and Health International Underwriting Pty Ltd (AHI) and Allianz Australian Insurance Limited (Allianz)*: CGU and AHI refunded customers over \$2 million in payday loan consumer credit insurance premiums and fees for insurance sold by The Cash Store Pty Ltd (in liquidation) (The Cash Store) alongside payday loans issued to consumers. In addition, Allianz refunded customers over \$400,000 in insurance premiums for insurance sold by The Cash Store alongside payday loans issued to consumers (see Example 3);
 - (b) *Amazing Rentals Pty Limited*: Agreed to refund all credit charges (the difference between retail and lease cost) to 34 customers in relation to

² Robin Hawkes, [Banks pay a heavy price for the crisis, but fail to count the cost](#), article, The Conversation, 17 September 2014.

³ BBC, [Banks 'pay 60%' of profits in fines and customer payments](#), article, 7 April 2015.

consumer leases for household goods after it failed to comply with its responsible lending obligations and potentially engaged in unconscionable conduct;

- (c) *Macquarie Investment Management Limited*: Agreed to refund over \$5.5 million to around 2,300 clients affected by system errors;
- (d) *Allianz Australia Life Insurance Limited and Allianz*: Refunded approximately 20,000 customers over \$1.4 million after overcharging them;
- (e) *Interactive Brokers LLC*: Refunded \$1.5 million in fees and commission payments to retail margin lending customers in accordance with an enforceable undertaking accepted by ASIC in December 2014;
- (f) *Westpac Banking Corporation (Westpac)*: Paid approximately \$5 million (to date) to investors in a failed scheme operated by Capital Growth International Club Pty Ltd (in liquidation) following their contact with former Westpac Home Finance Manager, David St Pierre;
- (g) *Commonwealth Bank of Australia (CBA)*: Agreed to release \$2.2 million to approximately 45,000 customers who had money left on expired CBA Travel Money Cards as a result of concerns raised by ASIC;
- (h) *Bank of Queensland (BOQ)*: Agreed to pay approximately \$17 million as compensation for losses suffered on investments made through Storm Financial Limited (receivers and managers appointed) (in liquidation); and
- (i) *Australia and New Zealand Banking Group (ANZ)*: Agreed to refund \$75 million to approximately 235,000 customer accounts after overcharging interest repayments for mortgage accounts.

16 Over the last few years, we have negotiated a number of major review and remediation programs by financial advice firms: see Table 1. These programs have been large-scale exercises to review personal financial advice provided to retail clients and to compensate those clients where loss has been suffered as a result of non-compliant advice, fraud or other breaches of the law.

Table 1: Recent compensation outcomes under review and remediation programs

Licensee	Payment period	Compensation paid
Macquarie Equities Limited	Apr 2014–Jun 2015	\$8.5 million ⁴
Commonwealth Financial Planning Ltd and Financial Wisdom Ltd	2010–2013	\$52 million ⁵

⁴ The difference between the amount of compensation paid by Macquarie Equities Limited during the period from April 2014 to 30 June 2015 and the amount of approved remediation payments (approximately \$11 million) is due to a slight time lag between the approval of remediation payments and their final payment. Macquarie Equities Limited's remediation program is ongoing.

- 17 We will develop a regulatory guide on review and remediation programs conducted by Australian financial services (AFS) licensees that provide financial advice. We want to ensure that if an AFS licensee needs to provide remediation, they do so in a way that is fair, honest and efficient. Consumers will have greater trust if they can be confident that a remediation program is consistent and transparent.

Promoting a positive culture within the financial services industry

- 18 We are planning to incorporate examinations of culture into our role as a conduct regulator. We intend to focus on:
- (a) incorporating an examination of culture into our risk-based surveillance reviews;
 - (b) using the surveillance findings to better understand how culture is driving conduct among our regulated population; and
 - (c) addressing the issue directly with entities when we see a problem with their culture and conduct.

Retail margin FX trading

- 19 Retail margin FX trading often involves leverage and is an extremely complex and risky form of retail investment. As outlined in [ASIC's Strategic Outlook 2014–15](#), financial market innovation and complexity—which includes financial services relating to FX being marketed to retail clients—is an area of focus for ASIC.

What is retail margin FX trading?

- 20 Retail margin FX trading—which is becoming more accessible through electronic trading platforms—involves buying a foreign currency and selling another foreign currency simultaneously in the hope that the currency purchased increases in value against the currency sold, and vice versa.

Risks of retail margin FX trading

- 21 Retail margin FX trading raises the stakes further by letting investors trade with borrowed money. Most retail margin FX trading products are highly leveraged. This means an investor only has to pay a fraction (e.g. a leverage

⁵ \$52 million was paid by Commonwealth Financial Planning Ltd and Financial Wisdom Ltd to clients of 17 specific advisers. This compensation was paid under a number of compensation programs, some of which were supervised by ASIC. This figure does not include compensation paid by CBA under its current open advice review program.

of 500:1 equates to 0.2%) of the value of their trade up-front, but is responsible for all losses, which may exceed their initial investment. Where the retail margin FX trading product is highly leveraged, even small market movements can have a big impact.

- 22 Retail margin FX trading is also very risky because:
- (a) there are significant investment risks as currency fluctuations may move against the investor, causing them to lose money;
 - (b) retail margin FX is an over-the-counter product, so investors are not trading on a formal exchange;
 - (c) international currency markets are open 24 hours a day, spanning six days a week (due to time zones), so an investor needs to devote a lot of time to monitoring their investment;
 - (d) currency markets are extremely difficult to predict because so many factors affect exchange rates. Even the most skilled and experienced FX traders have difficulty predicting movements in currencies. Trading in international currencies requires a large amount of knowledge, research and monitoring; and
 - (e) risk management systems, such as stop loss orders, may only provide an investor with limited protection. An investor may have to pay a premium price to guarantee their stop loss order at a certain price.

ASIC's work in protecting investors

New entrants to the retail margin FX industry

- 23 Over the past few years, an increasing number of businesses have been applying for an AFS licence to set up and operate a retail margin FX broker business in Australia.
- 24 We have been paying particular attention to these businesses to ensure they are complying with Australian regulatory requirements. We consider their business model, organisational competence and responsible managers, contractual and outsourced functions, financial resources and risk management systems and processes.
- 25 We have also observed an increase in licensed entities experiencing material changes in control which, in some cases, appears to have been the result of new entrants in the market trying to avoid the scrutiny of the AFS licensing process. We have increased our surveillance and review of these events.

Existing retail margin FX brokers

- 26 We have been investigating retail margin FX brokers to ensure that they are capable of managing their own risks and any conflicts of interest. Any systems

used must not disadvantage the client to the benefit of the broker. Any tool that has the potential to advantage a broker must be carefully managed.

Regulatory outcomes

- 27 Over the past 12 months, we have:
- (a) cancelled the AFS licences of Rainbow Legend Group Pty Ltd (Rainbow Legend) (see Example 1), Enfinium Pty Ltd and online FX broker Global Derivative Services Pty Ltd;
 - (b) suspended the AFS licence of AGM Markets Pty Ltd;
 - (c) restrained Monarch FX Group Pty Ltd and its former director and general manager, Quinten Hunter, from carrying on a financial services business;
 - (d) shut down Vault Market and removed its sole director, Mr MD Anamul Amin, from the financial services industry;
 - (e) accepted an enforceable undertaking from online FX broker Forex Financial Services Pty Ltd, prohibiting it from operating managed discretionary accounts; and
 - (f) warned investors not to deal with Grandegoldens Pty Ltd and YouTradeFX.
- 28 Our actions also resulted in:
- (a) cold-calling firm FXTS Guru agreeing to stop contacting Australian investors;
 - (b) FX Primus agreeing to make changes to its websites and to notify its Australian clients that it is not licensed to provide them with financial services;
 - (c) Advanced Markets Ltd agreeing to change potentially misleading statements on its website;
 - (d) Calibre Investments Pty Ltd changing the way it offers FX services to retail clients; and
 - (e) Pepperstone Group Ltd agreeing to stop providing financial services in Japan following inquiries by ASIC that revealed they were not licensed by the Japanese Financial Services Agency.

Example 1: Rainbow Legend

Rainbow Legend promoted itself as a global FX and contracts for difference (CFD) brokerage company specialising in derivative trading. We cancelled Rainbow Legend's AFS licence on 12 May 2015 after our investigation found that Rainbow Legend had:

- falsely promoted, on a number of websites, an insurance compensation scheme for clients of up to \$2.5 million. The scheme did not exist in Australia, and would not apply to clients based in Australia or to services covered under Rainbow Legend's AFS licence;
- used ASIC's logo on its websites. The use of ASIC's logo could have led clients to wrongly believe the company was in some way endorsed or approved by ASIC; and

- not complied with a number of its reporting obligations, including failing to lodge financial statements for the years ended 30 June 2013 and 30 June 2014, and an auditor's report for two financial years.

Illegal phoenix activity

- 29 Illegal phoenix activity generally involves current or previous directors of an indebted company intentionally and dishonestly transferring assets of the company to a new company to avoid paying creditors, tax or employee entitlements. This activity is sometimes facilitated by:
- business advisers and registered liquidators who advise directors on how to illegally remove assets from one company to another and structure companies to avoid paying liabilities; and
 - business advisers who advise registered liquidators on how to act in the interests of persons other than the creditors.
- 30 The cost of illegal phoenix activity is high—for employees, business and the Government. In 2012, it was estimated that the total cost of illegal phoenix activity to the Australian economy is between \$1.78 and \$3.19 billion per annum.⁶
- 31 To combat illegal phoenix activity, ASIC has undertaken a number of initiatives, including our:
- construction industry statutory declaration campaign; and
 - proactive phoenix and registered liquidator surveillance programs.
- 32 In addition, ASIC:
- is a member of the Australian Taxation Office (ATO)'s newly-established Phoenix Taskforce which combats expanding threats from phoenix businesses;⁷ and
 - contributes to the policy debate on illegal phoenix activity through, for example, our submissions to the current Senate Inquiry into Insolvency in the Construction Industry⁸ and the current Productivity Commission Inquiry into business set-up, transfer and closure.⁹

⁶ PricewaterhouseCoopers, *Phoenix activity: Sizing the problem and matching solutions* (PDF 774 KB), report, June 2012, p. 2

⁷ ATO, *Targeting fraudulent phoenix activity*, webpage, 12 June 2015.

⁸ ASIC, *Senate Inquiry into Insolvency in the Construction Industry: Submission by ASIC* (PDF 273 KB), April 2015.

⁹ ASIC, *Productivity Commission: Review of barriers to business entries and exits in the Australian economy* (PDF 314 KB), February 2015.

Construction industry statutory declaration campaign

Why the construction industry?

- 33 The Cole Royal Commission into the building and construction industry found that there is a significant incidence of fraudulent phoenix activity in the construction industry.¹⁰
- 34 These findings are anecdotally supported by the external administrator reports lodged with ASIC of alleged misconduct in the construction industry for the financial years 2009–10 to 2013–14 (inclusive). Table 2 details the number of reports of alleged illegal phoenix activity for contraventions of s180–184, 588G and 590 of the *Corporations Act 2001* (Corporations Act) during that period.¹¹

Table 2: Reports of alleged misconduct in the construction industry¹²

Section of the Corporations Act	2009–10	2010–11	2011–12	2012–13	2013–14
Duty to exercise powers with care and diligence (s180)*	314	339	518	513	507
Duty to act in good faith (s181)*	167	144	215	274	280
Duty not to use position for improper purpose (s182)*	122	118	172	184	196
Duty not to improperly use information (s183)*	33	43	46	53	73
Duty to act in good faith, not use position dishonestly or use information dishonestly (s184)^	57	48	44	39	42
Duty to prevent the company from trading while insolvent (s588G)*	896	901	1,101	1,218	1,220
Duty to prevent the company from trading while insolvent (s588G)^	169	164	125	109	75
Offences by officers of certain companies in external administration (s590)^	32	31	37	23	25

* Civil standard.

^ Criminal standard.

ASIC's statutory declaration program

- 35 Directors are more likely to engage in illegal phoenix activity when their companies are experiencing cash flow problems.

¹⁰ Commonwealth of Australia, *Final report of the Royal Commission into the building and construction industry*, report, February 2003.

¹¹ A breach of these duties may result in civil and criminal penalties, compensation orders and in some cases imprisonment.

¹² ASIC, [Insolvency statistics—series 3 external administrators reports](#), financial years 2009–10 to 2013–14 (inclusive).

- 36 We can assess if companies are experiencing cash flow problems by checking the integrity of the payment system from principal contractors to mid-level contractors. Central to the payment system is the use of statutory declarations.
- 37 There is concern that some mid-level contractors falsely declare that they have paid small businesses contracted to work on commercial and residential projects, when this is not the case, in order to claim payment from the principal contractor. The mid-level contracting company is then liquidated without paying employees or the ATO.
- 38 This has serious flow-on effects for subcontractors in the building and construction industry. Many subcontractors are small business operators who have operating expenses and debts to pay. When they are not paid for work undertaken, it puts their business, livelihoods and creditors at risk. The endemic use of false statutory declarations in the building and construction industry was highlighted in the Collins inquiry into the construction industry in NSW.¹³
- 39 We have implemented a surveillance campaign that reviews the use of statutory declarations as the means by which principal contractors pay mid-level contractors for goods and services provided. As part of the campaign, we are undertaking surveillance activities of 40 contracting companies engaged on eight large commercial projects in New South Wales, Victoria and Queensland. As at June 2015, we had identified ten cases where mid-level contractors had provided false statutory declarations to principal contractors, and we are currently preparing to take further action against them.

Proactive phoenix and registered liquidator surveillance programs

- 40 As part of our proactive phoenix surveillance program, we have identified approximately 2,500 directors who meet the criteria for triggering the director disqualification provisions of the Corporations Act. These directors currently operate over 7,000 registered companies.¹⁴
- 41 We have employed an external data service provider to financially risk-rate those 7,000 companies to identify the directors who are most likely to engage in future illegal phoenix activity. Using that information, we are actively engaging with directors whose companies are at greatest risk of being placed in external administration, and using our coercive powers to obtain information to determine if they will engage in illegal phoenix activity.

¹³ NSW Government, *Final Report: Independent Inquiry into Construction Industry Insolvency in NSW*, November 2012, p. 58.

¹⁴ We may disqualify a director for a period of up to five years where the person has been an officer of two or more companies that have been wound up and liquidator reports have been lodged with ASIC under s533(1) of the Corporations Act for both failures: s206F of the Corporations Act.

- 42 Since commencing the surveillance campaign in September 2013, a number of matters have been referred for enforcement action within ASIC—resulting in various outcomes, including a number of directors being criminally charged—and to the ATO for investigation. Our surveillance campaign also aims to change the attitudes of directors and to deter or prevent them from engaging in future illegal phoenix activity.
- 43 What is clear from the campaign is that many directors are not aware that their actions may constitute illegal phoenix activity. In order to raise awareness about illegal phoenix activity, we educate directors by conducting site visits where we explain what illegal phoenix activity is and that it is a criminal offence under the Corporations Act. We also educate directors and their advisers by attending various industry conferences and through information on our website.
- 44 As part of our registered liquidator surveillance program, we work with other government agencies to review registered liquidator conduct in relation to transactions where there are concerns of illegal phoenix activity.

B Enforcement action highlights

Key points

ASIC takes action to protect consumers and financial investors, hold gatekeepers to account and maintain the integrity of Australia's financial markets. In the relevant period, we:

- commenced 136 investigations;
- completed 137 investigations;
- charged 10 individuals with a total of 82 criminal charges;
- banned 25 individuals from the financial services or credit industries;
- accepted six enforceable undertakings; and
- disqualified 19 directors.

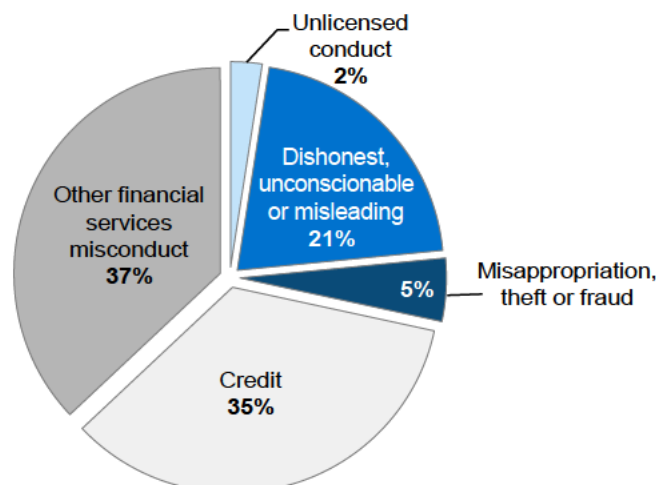
Protecting consumers

45 Making sure Australians have trust and confidence in the financial system is at the heart of everything we do. When investors and financial consumers are victims of wrongdoing, they lose trust and confidence in our financial system. It can also have a long-lasting impact on their financial wellbeing.

46 We will take on tough, complex matters to promote investor and financial consumer trust and confidence. This includes cracking down on inappropriate lending, misconduct by financial advisers and behaviour that puts the interests of self-managed superannuation fund (SMSF) members at risk.

47 In the first half of 2015, we achieved five criminal outcomes, 25 financial services or credit bannings, seven licence cancellations and suspensions and 49 infringement notices, totalling \$439,800. Figure 1 shows the proportion of enforcement activity in each category of financial services misconduct over the relevant period.

Figure 1: Financial services outcomes by misconduct type



Inappropriate lending

48 It is crucial that firms offering credit to consumers, particularly low income consumers, comply with responsible lending obligations. As the following examples show, we take action to protect consumers of credit services from taking out loans they cannot afford and to stop businesses from taking unfair advantage of financially-vulnerable people.

Example 2: Make It Mine Pty Ltd

White goods and computer rental company Make It Mine Pty Ltd (Make It Mine) sold electronic devices and white goods via instalment payments to people who receive government benefits.

Between July 2010 and March 2013, more than 24,000 customers were not told about the amount of interest being charged on top of the cash price, or market value, of the goods they were purchasing. The company also failed to make any inquiries about the financial position of more than 20,000 customers between April 2011 and March 2013. This included failing to make an assessment as to whether the contract was suitable.

We launched a civil action against the company in November 2014. Make It Mine also voluntarily issued its own proceedings before the court. The Federal Court found that Make It Mine breached consumer credit laws, including its responsible lending obligations. It failed to disclose important information to thousands of customers, and operated without a credit licence for nine months. A hearing on penalty will begin later this year.

Example 3: The Cash Store

On 19 February 2015, the Federal Court awarded record penalties totalling \$18.98 million against payday lender, The Cash Store, and loan funder, Assistive Finance Australia Pty Ltd (Assistive Finance Australia) for their failure to comply with consumer lending laws. It was the first case under the new responsible lending provisions which commenced in March 2013.

Until September 2013, The Cash Store operated as a payday lender with all loans being financed by Assistive Finance Australia. It had approximately 80 stores throughout Australia and wrote approximately 10,000 loans per month of up to \$2,200, each for a short period (usually two weeks or less). Typical of many payday lenders, The Cash Store charged very high fees and interest on the loans—total fees and charges were typically around 45% of the loan amount.

We launched civil penalty proceedings in 2013. In August 2014, the Federal Court found that there was a systemic failure on the part of The Cash Store and Assistive Finance Australia to comply with their responsible lending obligations.

The court also found that The Cash Store had unconscionably sold 'useless' consumer credit insurance to customers, the majority of whom were on low incomes or in receipt of Centrelink benefits. The court criticised The Cash Store for its role in actively encouraging staff to sell consumer credit insurance that was almost invariably inappropriate to offer to payday lending customers

and which was useless for unemployed customers—a fact that, according to the court, ‘must have been known to The Cash Store’.

The court’s decision to impose such a large penalty demonstrates the seriousness of these contraventions and the court’s strong disapproval of this predatory conduct. The significant size of the penalty imposed shows that ASIC and the courts take these obligations very seriously, no matter how small the loan is.

Financial advisers

49

In recent years, we have taken extensive enforcement action against both financial advice firms and individual advisers. We continue to crack down on advisers who act dishonestly and place their own interests ahead of their clients. Outcomes in the first half of 2015 include:

- (a) the permanent banning of Brisbane-based financial adviser Lee Robert Robin from providing financial services, for engaging in misleading or deceptive conduct whilst issuing unsecured fixed interest notes in Protect Ensure Pty Ltd and for failing to comply with financial services laws;
- (b) the sentencing of former financial advice company director Barry David Hassell to 12 months imprisonment for engaging in dishonest conduct, providing ASIC with false or misleading information and failing to provide a disclosure document to clients (to be released on his own recognisance of \$100, to be of good behaviour for a period of 12 months);
- (c) Commonwealth Financial Planning Limited employee Rebecca Locksley being banned from providing financial services for 18 months for creating false documents for client files;
- (d) former Gold Coast financial adviser Ian John Weaver being sentenced to 12 months jail for providing advice without a reasonable basis and for making a number of false or misleading statements;
- (e) Perth financial advisor Lewis Fellowes being banned for life from providing financial services for engaging in dishonest conduct and in misleading or deceptive conduct in relation to six clients; and

(f)

Example 4:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Self-managed superannuation funds

50 We will act to ensure that those who put the interests of SMSF members at risk are brought to account. As the following example shows, the courts, ASIC and the community will not tolerate behaviour that decimates people's life savings.

Example 5: ActiveSuper Pty Ltd

We commenced proceedings against Queensland-based ActiveSuper Pty Ltd (ActiveSuper), Royale Capital Pty Ltd (Royale Capital) and associated individuals and companies in the Federal Court in June 2012, following their involvement in the misuse of more than \$4 million raised from SMSF investors through the promotion to SMSFs of investments in distressed real estate in the United States and funds offered by entities registered in the Virgin Islands. Our concerns included:

- unlicensed provision of financial services;
- failure to provide disclosure documents to investors;
- cold calling practices;
- misleading and deceptive conduct; and
- distribution of investor funds to third parties without disclosure to investors.

The companies raised \$4.8 million from more than 200 SMSF investors, and the scheme aimed to raise at least \$20 million before ASIC intervened.

Federal Court judge Richard White ruled in April 2015 that Craig Gore, several other parties and financial services businesses, including ActiveSuper and Royale Capital, contravened sections of the Corporations Act or were knowingly concerned in those contraventions.

In his judgment, Justice White found that Craig Gore's purpose in establishing a share scheme offshore was to avoid compliance with the Australian regulatory regime. On 29 May 2015, Justice White made the following orders:

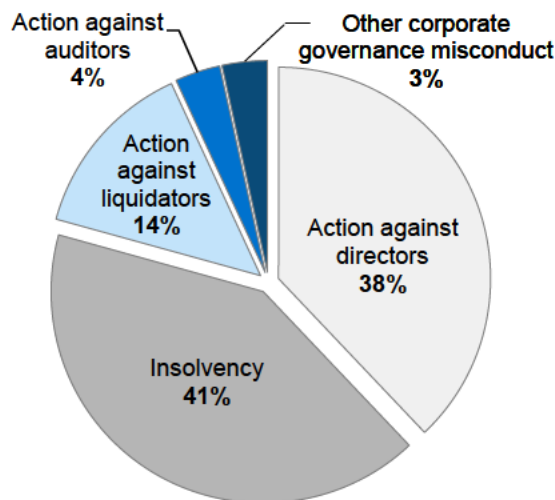
- Craig Gore—permanently banned from providing financial services;
- Marina Gore—banned from providing financial services for seven years and six months. Marina Gore has appealed this decision. ASIC plans to cross-appeal the penalty as being manifestly inadequate;
- Mark Adamson—banned from providing financial services for 10 years (by consent);

- Jason Burrows—banned from providing financial services and disqualified from managing companies for 10 years (by consent);
- Jeffrey George—permanently banned from providing financial services; and
- Justin Gibson—banned from providing financial services and disqualified from managing companies for seven years and six months (by consent).

Holding gatekeepers to account

- 51 A key aspect of what we do is holding gatekeepers (such as company directors, market participants, auditors, liquidators and custodians) to account. Poor conduct of gatekeepers can jeopardise market integrity and investor outcomes.
- 52 In the relevant period, we achieved four criminal outcomes, three civil outcomes and 19 director bannings. This includes the actions we have taken against directors and officers who have failed to comply with their regulatory obligations. Figure 2 shows the proportion of enforcement activity in each category of corporate governance misconduct over the relevant period.

Figure 2: Corporate governance outcomes by misconduct type



Directors and officers

- 53 We will act against conduct by directors and officers that undermines investor confidence and places other interests ahead of the shareholder interests they are meant to represent. Those who operate companies unlawfully also face serious consequences and will be pursued by ASIC—and directors and officers who fail to comply with the law will be removed. Outcomes in the first half of 2015 include:
- former Queensland-based director James Kwok was convicted of managing a company while disqualified (sentenced to six months jail, wholly suspended, upon entering into a three year good behaviour bond);

- (b) [REDACTED]
- (c) former managing director Michael Roger O’Sullivan was banned from managing corporations for five years, and from providing financial services for seven years, for breaching his duties as a director and failing to comply with financial services laws (see Example 7); and
- (d) Paul Anthony Scott was convicted of lodging false documents and obstructing ASIC. He was sentenced to eight months imprisonment, to be served by way of an intensive correction order.

Example 6: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Example 7: Michael Roger O’Sullivan

Michael Roger O’Sullivan was the managing director of Provident Capital Limited (Provident Capital) from 25 May 1998 to 28 January 2014.

Provident Capital issued debentures to retail investors through their Fixed Term Investment Portfolio and advanced the debenture funds to third-party borrowers. Provident Capital also operated a mortgage fund under a wholesale facility with Bendigo and Adelaide Bank and two managed investment schemes.

Our investigation found that Mr O'Sullivan:

- failed to exercise due care and diligence in the management and recording of the largest loan made by Provident Capital through its Fixed Term Investment Portfolio;
- caused Provident Capital to make misleading statements to ASIC and Australian Executor Trustees Limited;
- caused Provident Capital to issue a Debenture Prospectus in December 2010 to raise funds from the public that contained misleading statements; and
- used his position improperly to gain financial advantages for himself and for a company of which he was formerly a director.

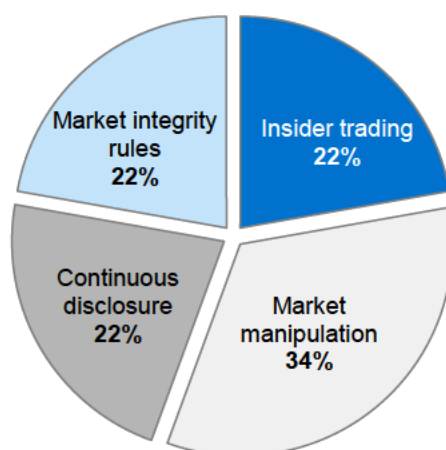
We banned Mr O'Sullivan from managing corporations for five years and from providing financial services for seven years for breaching his duties as a director and failing to comply with financial services laws.

On 23 February 2015, Mr O'Sullivan lodged an appeal against his bannings with the Administrative Appeals Tribunal (AAT). Following a hearing on 27 March 2015, the AAT granted Mr O'Sullivan an order staying the operation of the disqualification order until the AAT hears and determines the review of the decision. The stay does not affect the order banning Mr O'Sullivan from providing financial services for seven years.

Market integrity

- 54 The integrity of Australia's financial markets is a vital element in promoting investor and financial consumer trust and confidence.
- 55 In the relevant period, we achieved four criminal outcomes, one banning and three infringement notices, totalling \$213,000. This includes the actions we have taken to ensure that businesses comply with takeover laws and in combatting market manipulation and insider trading. Figure 3 shows the proportion of enforcement activity in each category of market integrity misconduct over the relevant period.

Figure 3: Market integrity outcomes by misconduct type



which had the effect of supporting the price of Cauldron Energy shares at a time their price was falling. We found that these dealings created a false and misleading appearance of the price for the shares in Cauldron Energy, and were intended to affect the trading behaviour of others in the market.

Although some of Ark Equities' clients genuinely wanted to accumulate shares in Cauldron Energy, Mr Kerstens' dealings were not consistent with a legitimate strategy to buy the maximum amount of shares at the best price.

We banned Mr Kerstens from providing financial services for five years for manipulating the price of and demand for Cauldron Energy shares.

Insider trading

- 58 We are committed to pursuing cases of insider trading and have the systems to effectively detect, analyse and investigate any form of misconduct that seeks to undermine confidence in our markets.
- 59 Since 2009, 38 people have been prosecuted for insider trading as a result of our investigations, with a success rate of 82% (i.e. 28 convictions) in the 34 cases in which liability has been determined (four persons are currently awaiting trial).

Example 10: Daniel Joffe and Nathan Stromer

Daniel Joffe and Nathan Stromer of Sydney were convicted of insider trading in the Supreme Court of NSW after pleading guilty to two counts of insider trading in December 2014. We laid charges in this matter in February 2010.

Mr Joffe, in the course of his duties as an associate analyst with Moody's, learned that two companies were going to be, or likely to be, subject to takeover bids. Mr Joffe passed this sensitive information to Mr Stromer who used this information to buy and sell shares and CFDs in the companies.

Mr Joffe was sentenced to 27 months imprisonment. Mr Stromer was sentenced to 24 months imprisonment. Both sentences were fully suspended on the condition that they pay a \$1,000 bond and be of good behaviour for two years. Mr Stromer also paid a pecuniary penalty order in the amount of \$229,349.87.

In 2010, the maximum penalty for insider trading was doubled from five to 10 years imprisonment. In sentencing, Justice RA Hulme emphasised that Mr Joffe and Mr Stromer were subject to the former lesser maximum penalty.

Appendix 1: Statistics on enforcement outcomes

Table 3: Enforcement outcomes—1 January 2015 to 30 June 2015*¹⁵

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Warning notice	Total
Market integrity	4	–	5	–	–	9
Insider trading	2	–	–	–	–	2
Market manipulation	2	–	1 [^]	–	–	3
Continuous disclosure	–	–	2	–	–	2
Market integrity rules	–	–	2	–	–	2
Other market misconduct	–	–	–	–	–	–
Corporate governance	4	3	19	3	–	29
Action against directors	4 [#]	2	5 [@]	–	–	11
Insolvency	–	–	12	–	–	12
Action against liquidators	–	1	1	2	–	4
Action against auditors	–	–	–	1	–	1

¹⁵ Table 3 lists enforcement outcomes achieved during the relevant period. In this table ‘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.

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Warning notice	Total
Other corporate governance misconduct	–	–	1	–	–	1
Financial services	5	8	50	15	3	81
Unlicensed conduct	–	–	–	–	2	2
Dishonest conduct, misleading statements, unconscionable conduct	2	6 [!]	9	–	–	17
Misappropriation, theft, fraud	–	–	4	–	–	4
Credit	2	1	21 ^{&}	4	–	28
Other financial services misconduct	1	1	16 ^{**}	11	1	30
Subtotal	13	11	74	18	3	119
Small business compliance and deterrence	192	–	12	–	–	204
Action against directors	182	–	12	–	–	194
Efficient registration and licensing	10	–	–	–	–	10
Total	205	11	86	18	3	323

* Outcomes are presented per defendant.

^ Outcome currently under appeal.

One outcome currently under appeal.

@ One outcome currently under appeal.

! One outcome currently under appeal.

& Two outcomes currently under appeal.

** One outcome currently under appeal.

Table 4: Pending matters¹⁶

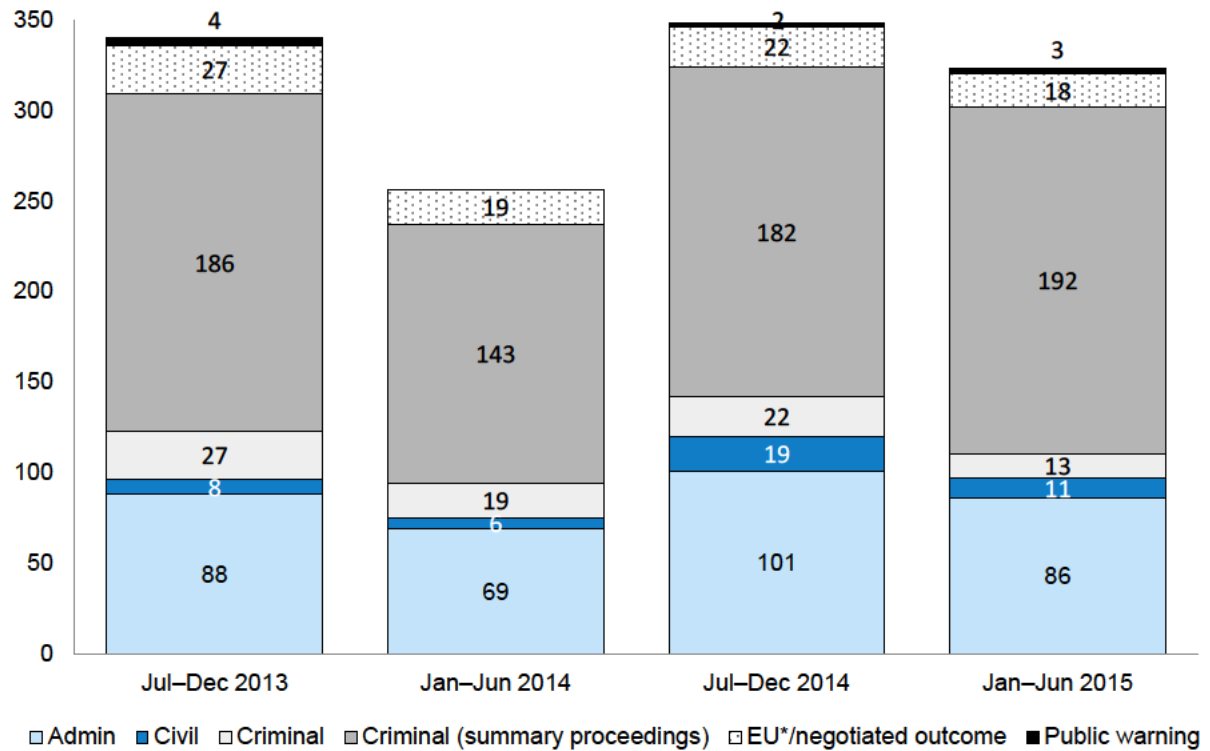
Area of enforcement	Criminal	Civil
Market integrity	16	4
Insider trading	8	2
Market manipulation	7	–
Continuous disclosure	–	1
Market integrity rules	1	1
Other market misconduct	–	–
Corporate governance	15	7
Action against directors	13	6
Insolvency	1	–
Action against liquidators	1	1
Action against auditors	–	–
Other corporate governance misconduct	–	–
Financial services	17	18
Unlicensed conduct	1	2
Dishonest conduct, misleading statements, unconscionable conduct	5	5
Misappropriation, theft, fraud	3	1
Credit	6	5
Other financial services misconduct	2	5
Small business compliance and deterrence	167	–
Action against directors	155	–
Efficient registration and licensing	12	–
Total	215	29

Note: The data in this table for 'Small business compliance and deterrence' was corrected on 30 November 2016.

¹⁶ Table 4 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 2015, although they may have been announced or filed before 1 January 2015. 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 5: Other enforcement statistics—1 January 2015 to 30 June 2015

Investigations commenced	136
Investigations completed	137
Persons charged in criminal proceedings	10
Criminal charges laid	82
Infringement notices issued	52
Infringement notices paid	\$652,800
Compensation/remediation	\$12,048,657
Civil penalties imposed	\$18,975,000

Figure 4: Aggregate enforcement outcomes—July 2013 to Jun 2015¹⁷

* Enforceable undertaking.

¹⁷ Figure 4 provides a summary of the aggregate enforcement data for the past two years, as reported in our six-monthly enforcement reports. 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.

Appendix 2: Schedule of media releases

Table 6: Market integrity enforcement media releases

Media release	Date	Link
ASIC acts against Pluton Resources for disclosure and reporting failures	21/01/2015	15-007MR
ASIC bans former securities dealer	15/04/2015	15-078MR
FC Stone Australia Pty Ltd pays \$130,000 infringement notice penalty	28/04/2015	15-087MR
ICAP Futures (Australia) Pty Ltd pays \$50,000 infringement notice penalty	14/05/2015	15-109MR
Healthzone director and former director plead guilty	20/05/2015	15-116MR
Rhinomed Ltd pays penalty for alleged continuous disclosure breach	10/06/2015	15-144MR
Two Sydney men convicted of insider trading	12/06/2015	15-145MR

Table 7: Corporate governance enforcement media releases

Media release	Date	Link
ASIC bans former directors from managing companies	21/01/2015	15-006MR
ASIC issues stop order on pre-prospectus publications by Bitcoin Group Limited	13/02/2015	15-025MR
ASIC accepts enforceable undertaking from Victorian liquidator	19/02/2015	15-030MR
Gold Coast chartered accountant sentenced following ASIC investigation	19/02/2015	15-031MR
ASIC bans former managing director of Provident Capital Limited	20/02/2015	15-033MR
ASIC cancels Victorian auditor's registration	30/03/2015	15-068MR
ASIC accepts EU from Western Australian liquidator	14/04/2015	15-079MR
Disqualified director convicted	05/05/2015	15-098MR
ASIC disqualifies former directors of Reed Constructions Australia Pty Limited	05/05/2015	15-099MR
Company director pleads guilty	07/05/2015	15-107MR
ASIC intervenes in proceedings against South Australian liquidator	15/05/2015	15-111MR
Provisional liquidator appointed to Sino Australia Oil and Gas Ltd upon ASIC application	25/05/2015	15-124MR
Court appoints provisional liquidator to Planet Platinum following ASIC application	15/06/2015	15-146MR
CALDB admonishes Queensland liquidator	26/06/2015	15-159MR

Media release	Date	Link
ASIC winds up 12 abandoned companies that owed more than \$335,000 in employee entitlements	30/06/2015	15-164MR

Table 8: Financial services enforcement media releases¹⁸

Media release	Date	Link
ASIC accepts enforceable undertaking from online FX broker operating managed discretionary accounts	25/02/2014	14-036MR
ASIC cancels margin forex company's AFS licence	09/09/2014	14-226MR
ASIC and Bank of Queensland reach Storm Financial settlement	22/09/2014	14-244MR
ASIC concerns see CBA release \$2.2 million for 45,000 travel card customers	08/10/2014	14-262MR
ASIC welcomes Westpac's payments to CGIC investors	10/10/2014	14-264MR
ASIC concerns see Pepperstone exit the Japanese market	13/10/2014	14-267MR
ASIC issues warning about unlicensed FX dealer YoutradeFX	18/11/2014	14-306MR
ASIC shuts down unlicensed FX business and removes its director from the industry	20/11/2014	14-309MR
ASIC surveillance prompts FX provider to enhance compliance procedures	08/12/2014	14-327MR
ASIC action restrains FX business and sole director from carrying on a financial services business	19/12/2014	14-342MR
ASIC imposes conditions on Guardian Advice licence	7/01/2015	15-003MR
ASIC ensures QBE meets expected outsourcing standards for dispute resolution	2/02/2015	15-010MR
ASIC concerns prompt national warranty company to remove a potentially misleading representation	3/02/2015	15-011MR
ASIC bans Sydney insurance broker for three years	30/01/2015	15-012MR
ASIC concerns prompt Wide Bay to review lending standards	3/02/2015	15-013MR
ASIC warns consumers about Shaun Gregory Morgan and companies associated with him	10/02/2015	15-016MR
Former financial adviser jailed for \$5.9 million fraud	10/02/2015	15-018MR
ASIC action leads to refunds and savings totalling over \$230,000 for consumers	11/02/2015	15-019MR

¹⁸ Table 8 contains all relevant releases from January to June 2015, together with some releases from 2014 that relate to the themes identified in Section A.

Media release	Date	Link
ASIC warns of Opteck and other unlicensed binary option providers	13/02/2015	15-024MR
ASIC cancels licence of margin foreign exchange provider	16/02/2015	15-026MR
Federal Court orders record penalty	19/02/2015	15-032MR
ASIC bans former managing director of Provident Capital Limited	20/02/2015	15-033MR
BMW Finance pays \$306,000 penalty for poor repossession practices	25/02/2015	15-037MR
ASIC bans Queensland financial advisor for five years	25/02/2015	15-038MR
Equity Trustees Limited and Como Financial Services each pay \$20,400 penalty for misleading website	25/02/2015	15-039MR
Equanimity penalised for misleading ads	4/03/2015	15-043MR
Allianz agrees to refund \$400K in 'useless' payday insurance premiums	3/03/2015	15-044MR
AAMI Pays \$20,400 penalty for misleading car insurance advertising	6/03/2015	15-046MR
Melbourne man pleads guilty to multi-million dollar home-loan fraud conspiracy	9/03/2015	15-047MR
Charterhill director George Nowak, banned from providing financial services	10/03/2015	15-048MR
Australian Financial Planning Solutions pays \$10,200 penalty for misleading advertising	12/03/2015	15-052MR
ASIC bans Perth financial adviser for life	12/03/2015	15-054MR
ASIC suspends licence of wholesale service provider	12/03/2015	15-055MR
Former Gold Coast financial adviser sentenced	17/03/2015	15-057MR
Permanent ban for former insurance broker	20/03/2015	15-062MR
ASIC bans finance broker and cancels Australian Credit Licence	20/03/2015	15-064MR
ASIC issues warning about Grandegoldens	27/03/2015	15-066MR
ASIC bans Commonwealth Financial Planning employee	31/03/2015	15-070MR
ASIC suspends FX company's licence	2/04/2015	15-075MR
FX broker Advanced Markets clarifies its AFS licence	24/04/2015	15-085MR
ASIC bans former Sydney financial adviser for 3 years	29/04/2015	15-088MR
Allianz repays \$1,400,000 after overcharging customers	30/04/2015	15-089MR
ASIC accepts new enforceable undertaking from Wealthsure Pty Ltd and Wealthsure Financial Services Pty Ltd	30/04/2015	15-090MR

Media release	Date	Link
ASIC cancels AFS licences for failing to lodge annual statements	05/05/2015	15-100MR
ASIC cancels Australian credit licence of property spruiking firm	06/05/2015	15-102MR
ASIC bans Sydney finance broker and cancels licence	7/05/2015	15-105MR
Court orders surrender of Ostrava directors' passports	7/05/2015	15-106MR
ASIC bans convicted finance broker	19/05/2015	15-115MR
ASIC permanently bans Australian mastermind of UK fraud	21/05/2015	15-119MR
ASIC requires FX Primus to cease targeting Australian investors	21/05/2015	15-120MR
ASIC bans former representative of Macquarie Equities Limited	25/05/2015	15-121MR
ASIC concerns prompt Bank of Queensland to improve lending practices	25/05/2015	15-125MR
Sydney man pleads guilty to home loan fraud	26/05/2015	15-128MR
ASIC permanently bans convicted fraudster	27/05/2015	15-130MR
ASIC cancels TCI Capital Adviser's AFS licence	27/05/2015	15-129MR
ASIC suspends BBY Ltd's AFS licence	28/05/2015	15-133MR
Decision in ActiveSuper civil proceedings	29/05/2015	15-134MR
ASIC bans New Zealand man from providing financial services	4/06/2015	15-140MR
ASIC accepts EU from Amazing Rentals	5/06/2015	15-141MR
ASIC bans promoter of non-existent fund	09/06/2015	15-142MR
Former director convicted of dishonest conduct	15/06/2015	15-147MR
BT pays \$20,400 penalty for misleading statements	16/06/2015	15-149MR
Macquarie Investment Management to refund clients after review of system errors	17/06/2015	15-150MR
Cold calling firm FXTS Guru cut off following ASIC concerns	18/06/2015	15-152MR
ASIC permanently bans Brisbane financial adviser	30/06/2015	15-161MR
ASIC action sees One Big Switch come under review	30/06/2015	15-163MR
Update on Interactive Brokers	03/07/2015	15-172MR

Key terms

Term	Meaning in this document
15-007MR (for example)	An ASIC media release (in this example numbered 15-007)
AAT	Administrative Appeals Tribunal
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.
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CFD	Contracts for difference
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
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
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations
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
FX	Foreign exchange
market integrity rules	Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
relevant period	1 January 2015 to 30 June 2015

Term	Meaning in this document
s180 (for example)	A section of the Corporations Act (in this example numbered 180), unless otherwise specified
SMSF	Self-managed superannuation fund

Related information

Headnotes

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

Legislation

Corporations Act, s180–184, s588G and s590G

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 402 *ASIC enforcement outcomes: January to June 2014*

REP 421 *ASIC enforcement outcomes: July to December 2014*