



**ASIC**

Australian Securities & Investments Commission

**REPORT 336**

# **ASIC enforcement outcomes: July to December 2012**

April 2013

## **About this report**

This report outlines enforcement outcomes achieved by ASIC during the period 1 July 2012 to 31 December 2012 (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 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 enforcement powers

- 1 ASIC's regulatory activities are based on three strategic priorities:
  - (a) confident and informed investors;
  - (b) fair and efficient markets; and
  - (c) efficient registration and licensing.
- 2 In achieving these priorities, we may engage with industry and stakeholders, conduct surveillances, provide guidance and education, issue policy advice and take enforcement action. The focus of this report is on our enforcement action.
- 3 The publication of this report is part of our commitment to improve the transparency of our approach to enforcement, and increase public understanding of how and why we exercise ASIC's enforcement powers.

Note: For further information on ASIC's approach to enforcement, see Information Sheet 151 *ASIC's approach to enforcement* (INFO 151), Information Sheet 152 *Public comment* (INFO 152) and Regulatory Guide 100 *Enforceable undertakings* (RG 100).
- 4 This is the third half-yearly report published by ASIC on our enforcement activity. Previous reports are available at [www.asic.gov.au/reports](http://www.asic.gov.au/reports).

## Purpose and scope of this report

- 5 Our half-yearly enforcement outcomes report is intended to increase transparency regarding our enforcement activity and summarise key enforcement outcomes achieved.
- 6 This report summarises enforcement outcomes achieved by ASIC between 1 July 2012 and 31 December 2012 (the relevant period).
- 7 The report highlights examples of action we have taken against gatekeepers for breaching the core principles of honesty, diligence, competence and independence. The examples cited relate to a wide range of matters, from serious breaches of financial services laws to less serious regulatory breaches such as a failure to lodge reports.
- 8 The examples highlighted in this report not only illustrate the types of unlawful activity that we have targeted during the relevant period, but are

representative of the types of misconduct that the public can expect we might target in future.

- 9 The report is organised according to ASIC's strategic priorities:
- (a) confident and informed investors (Section A);
  - (b) fair and efficient markets (Section B); and
  - (c) efficient registration and licensing (Section C).
- 10 Appendix 1 provides statistics about our enforcement outcomes and an explanation of the methodology for compiling this data: see Table 1–Table 2.
- 11 Appendix 2 provides a schedule of the media releases and advisories that correspond to the enforcement outcomes in this report: see Table 3.

## Significant enforcement outcomes for the reporting period

- 12 In the relevant period, we achieved a total of 435 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. Eighty-eight were in the 'market integrity', 'corporate governance' and 'financial services' areas, and 347 in the 'small business compliance and deterrence' area (between 1 January and 30 June 2012, the comparative figures were 78 and 225, totalling 303.)
- 13 Five of the most notable enforcement outcomes for ASIC were:
- (a) Four persons were convicted of insider trading offences and sentenced to imprisonment, while a further four persons pleaded guilty to insider trading offences and were awaiting sentencing. One example was Stuart Fysh, a former executive vice-president of BG Group PLC, who was sentenced to two years imprisonment after being found guilty of two counts of insider trading. We have also disqualified Dr Fysh from acting as a director of a company for five years from the date of his release: see Example 33. These are the latest of 26 insider trading cases we have brought in the last four years.
  - (b) We assisted investors by reaching a settlement with the Commonwealth Bank of Australia (CBA), on a no admission of liability basis, to make available up to \$136 million as compensation for losses suffered on investments made through Storm Financial Limited (Storm): see Example 16. A negotiated outcome avoids the need for costly legal proceedings and provides a timely, fair and certain outcome for investors.

- (c) We permanently banned David Hobbs, an operator of more than a dozen unregistered managed investment schemes, including a \$30 million Ponzi scheme, from managing companies and providing financial services following an ASIC investigation. He was ordered to pay a penalty of \$500,000. This penalty order is the largest awarded in ASIC's history: see Example 23. In addition, Brian Wood, Jimmy Truong and Con Koutsoukos, who gave financial advice to consumers to invest in these schemes, received jail sentences of three years and 11 months (for Mr Wood) and two years and eight months (for Mr Truong and Mr Koutsoukos).
  - (d) We accepted enforceable undertakings from two auditors that failed to properly carry out their duties. Both arose from collapses during the global financial crisis. Under the enforceable undertakings:
    - (i) Simon Green of Pitcher Partners has agreed not to practice as a registered auditor for five years, following an investigation into Mr Green's conduct of the audit of the 2007 financial report of ABC Learning Centres Limited: see Example 27.
    - (ii) Stephen Cogle of PricewaterhouseCoopers (PwC), a former auditor of Centro Property Group and Centro Retail Group, has agreed not to practice as a registered auditor until 30 June 2015: see Example 26.
  - (e) The High Court of Australia dismissed the appeal by the directors of James Hardie Industries Limited against findings of a breach of their directors' duties.
- 14 During this period, the High Court upheld the appeals of Fortescue Metals Group Ltd and its chairman and former chief executive officer, Andrew Forrest, against the unanimous decision of the Full Court of the Federal Court. Based on the facts, the High Court found that Fortescue Metals did not contravene the continuous disclosure requirements of the *Corporations Act 2001* (Corporations Act).

## Cooperating with ASIC

- 15 We have the power to take a range of administrative, civil and criminal actions in relation to alleged misconduct. A cooperative approach to dealings with ASIC may benefit a person or company in many ways. For example:
- (a) early notification or a cooperative approach during an investigation will often be relevant to our consideration of which type of action to pursue and what remedy to seek; and

- (b) in any proceedings we commence, we will give due credit for any cooperation we have received from the person against whom proceedings are brought.

Note: See Information Sheet 172 *Cooperating with ASIC* (INFO 172) for further information on how people and entities who may have been involved in misconduct can cooperate with our investigations.

- 16 In the relevant period, 44 of the 88 ‘market integrity’, ‘corporate governance’ and ‘financial services’ outcomes reflected discussions of a cooperative nature between ASIC and the person concerned.
- 17 A cooperative approach may have a number of possible benefits for both ASIC and the companies and people we may take action against, including:
- (a) quicker resolution of action taken in respect of misconduct;
  - (b) time and cost savings;
  - (c) better outcomes for affected consumers (e.g. your clients or investors);
  - (d) process improvements and the setting of better standards;
  - (e) reduction in sentencing in criminal matters; and
  - (f) reduction of civil penalties.
- 18 In criminal matters, we will take into consideration any cooperation in determining:
- (a) whether to refer a matter to the Commonwealth Director of Public Prosecutions (CDPP) or, in the case of minor matters, commence a criminal prosecution;
  - (b) which offences to prosecute; and
  - (c) what penalties to seek.
- 19 The court may also recognise a person’s attempts to cooperate when deciding on an appropriate sentence: see the case of Daniel Nguyen in Example 4 and Peter Couper in Example 28.
- 20 During the relevant period, three persons convicted of insider trading offences received 25% discounts off their sentences for cooperating with ASIC and pleading guilty at the earliest opportunity (Nicholas Glynatsis, Joseph Levi and Elisa Rietbergen), while a further four persons also cooperated with ASIC by pleading guilty to insider trading offences at the earliest opportunity and were awaiting sentencing (Calvin Zhu, Ulf Lindskog, John Khoo and Jia Tan). In each of these seven cases, ASIC and the CDPP took into consideration the person’s cooperation in determining what charges to pursue and also provided information to the court about the significant value of the person’s cooperation.

- 21 If a person or company cooperates with ASIC, we may negotiate an alternative resolution to the matter. For example, where we have concerns about the nature of advertising, a cooperative approach can result in changes to the advertising that would achieve a more acceptable outcome for consumers.

#### Example 1: Changes to advertising

GE Money agreed to change its online advertising of personal loans and debt consolidation following our concerns that the advertising was potentially misleading.

The advertisements stated that consumers could borrow 'from \$3,000' with an interest rate 'from 13.99% p.a.' However, the fine print discloses that only loans over \$20,000 were eligible for an interest rate starting from 13.99% p.a. For loans of \$3,000, interest rates started at 15.79%, and could be much higher.

We were concerned that the advertising was potentially misleading because the claim in the body of the advertisement created the impression that an interest rate of 13.99% was potentially available on a \$3,000 personal loan, and the disclosure in the fine print was insufficiently prominent to qualify that impression.

GE Money subsequently changed the wording to more clearly disclose the applicable interest rate.

- 22 We may also negotiate with financial service providers for the return of fees to consumers if we believe that these have been unfairly charged, and if such an outcome would constitute a better result than pursuing other enforcement action.

#### Example 2: Refund of fees

Over 6,400 consumers were refunded more than \$3.3 million by RHG Mortgage Corporation Ltd, formerly known as RAMS Mortgage Corporation Ltd, following our concerns about discharge and early termination fees charged on some home loans. Affected customers will receive refunds ranging from \$50 to over \$10,000.

We were concerned that some of RHG Mortgage's fees were unconscionable or unjust under the Sch 1 of the *National Consumer Credit Protection Act 2009* (National Credit Code) in circumstances where:

- early termination fees on RHG Mortgage's Interest Saver products were increased for existing clients from \$1,400 in the first year (reducing to \$700 in the third year), to a flat fee of \$2,000 in the first three years;
- early termination fees were calculated by reference to the amount borrowed; and
- early termination fees did not reduce over time.



RHG Mortgage has also agreed to reduce its discharge fees on existing loans and to the staggered removal of early termination fees for thousands of customers in the future.

- 23 A cooperative approach can also result in the identification and remedy of weak processes that may prevent more serious problems from arising in the future.

### Example 3: Improvement to processes

AMP has taken steps to improve its advice processes at AMP Horizons Group following concerns raised by ASIC.

We identified a number of areas that were not of the standard expected of an Australian financial services (AFS) licensee, including:

- the quality of the advice recommendation;
- aspects of the advice process used by AMP Horizons when obtaining client information; and
- how clients' reasons for seeking advice were identified.

In response to our concerns, AMP Horizons made changes to the oversight of its advisers and enhanced its quality assurance process at the point before clients are provided with advice.

At its own initiative, and in addition to its own internal review, AMP Horizons also completed an external review of its advice process.

- 24 In appropriate cases, we may also accept an enforceable undertaking as an alternative to us taking court action or other enforcement action. We accepted seven enforceable undertakings during the relevant period.

Note: See RG 100 for further information on our approach to accepting undertakings under s93A and 93AA of the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

## The role of gatekeepers

- 25 Gatekeepers perform an important role in the Australian financial system and holding them to account is an integral part of ASIC's role as regulator.
- 26 The term 'gatekeeper' is broad, and common gatekeepers include advisers, auditors, directors, liquidators, custodians, product manufacturers and distributors, market operators, and brokers.
- 27 Gatekeepers perform a number of functions including:
- (a) verifying, certifying, approving and recommending products and services to investors;
  - (b) monitoring compliance by entities and their management; and

- (c) undertaking private supervision through the detection and deterrence of misconduct.

28 The role of gatekeepers in promoting sound investment practices, detecting and preventing market failures and promoting market integrity is essential to ensuring a well-functioning financial system.

29 ASIC and the community expect that gatekeepers will act with honesty, diligence and competence, and deal properly with conflicts when performing their functions. Failing to do so may result in ASIC taking enforcement action, which may have significant ramifications, including permanent banning from providing financial services or imprisonment.

### **Honesty**

30 In the context of financial markets, honesty means: do not mislead or deceive; do not steal money belonging to others or use it for your own purposes; do not knowingly abuse your position or exploit the trust of the investing public.

31 We obtained 60 enforcement outcomes during the relevant period for conduct that breached this standard, including fraud and misleading advertising. An example is the case of Trevor Carll, a former financial adviser, who was sentenced to two years in prison after pleading guilty to one count of deception and two counts of dishonest dealing with loan related documents: see Example 9.

### **Diligence**

32 Financial market participants must exercise their duties with appropriate care and attentiveness. Advice given and decisions made must be properly considered and professionals must ensure they meet the obligations of their profession.

33 We achieved 14 enforcement outcomes against participants who failed to act with the appropriate level of diligence. For example, we banned Alec Khoo from providing financial services for three years after finding he failed to have a reasonable basis for advice he gave to clients of his business: see Example 14.

### **Competence**

34 Financial market participants must meet legislative and regulatory requirements for training, licensing, registration and conduct. Participants are responsible for ensuring that they understand and comply with these requirements.

- 35 We may take action against financial market participants who do not comply, as we did against 12 participants during the relevant period. For example, we cancelled the credit licence of Dean Mooney Pty Ltd, a finance broking firm, after it was found the company failed to hold membership of an approved external dispute resolution (EDR) scheme: see Example 7.

### **Independence**

- 36 All participants in Australia's financial markets should have adequate arrangements in place for managing conflicts of interest that may arise in the provision of services or products. Participants should have adequate prevention and disclosure arrangements in place. They must also conduct themselves to the highest standard, so their self-interest does not prejudice the quality of their advice or other services.
- 37 We achieved two enforcement outcomes during the relevant period for conduct that breached this standard. For example, we imposed additional conditions on the AFS licence of Addwealth Financial Services Pty Ltd after we had concerns that Addwealth did not have adequate arrangements in place to manage conflicts of interest and may have failed to provide advice that was appropriate to clients' circumstances: see Example 20.
- 38 For insolvency practitioners, the requirement to manage conflicts of interest also includes ensuring they comply with their obligation to make a declaration of relevant relationships and a declaration of indemnities: see the case of Geoffrey Stewart Turner in Example 25.

## A Confident and informed consumers and financial investors

### Key points

This section highlights enforcement outcomes we achieved against four important types of gatekeeper—credit licensees, financial advisers, insurance representatives, and product manufacturers and distributors.

These gatekeepers all have a significant role in ensuring consumers and investors are confident and informed.

A failure to act honestly, diligently, competently or independently in carrying out duties may result in ASIC taking action against these gatekeepers to ensure the integrity of the industries in which they operate.

### Credit licensees

- 39 The *National Consumer Credit Protection Act 2009* (National Credit Act) aims to protect credit consumers and ensure ethical and professional standards in the credit industry. It establishes licensing requirements for credit providers, and sets minimum standards of conduct.

#### Honesty

- 40 Credit licensees and their representatives are expected to act honestly in the provision of credit services and products to consumers.

#### Example 4: Providing false loan documents

Daniel Nguyen, former mortgage broker and sole director of M.A.I Pacific Pty Ltd (trading as MAI Home Loans), was convicted of 10 charges under the National Credit Act and placed on a two-year good behaviour bond.

The conviction of Mr Nguyen is the first under the national consumer credit protection legislation.

Mr Nguyen admitted to:

- nine offences against s33(2) of the National Credit Act for providing false documents to banks for nine home loans totalling more than \$3 million; and
- one offence against s11.2(1) of the *Criminal Code Act 1995* and s123(6) of the National Credit Act for assisting three clients to apply for credit contracts that were unsuitable for them.

In sentencing, the court took into account Nguyen's cooperation with our investigation, and his early guilty plea.

#### Example 5: Fraud

We permanently banned Almaza Souzie Boutros from engaging in credit activities after she was convicted of a serious fraud offence.

Ms Boutros' conduct as a director of Option 1 Mortgage Pty Ltd resulted in a conviction for fraud in April 2012. Ms Boutros was ordered to pay compensation and was placed on an 18-month good behaviour bond.

We also cancelled the credit licence issued to Option 1 Mortgage.

- 41 Advertisements may induce a person to obtain a financial product or service and must be worded in a way that adequately represents the product or service. Advertisements must not mislead or deceive consumers.

#### Example 6: Misleading advertising

Nathan Elali, former director of EasyChoice Home Loans Pty Ltd was ordered to pay a penalty of \$7,500 by the Federal Court after the court found that the company advertised that it could provide credit, despite being unlicensed.

We issued the company and Mr Elali repeated warnings to remove the advertising, which were ignored. The material was removed only after we commenced court action.

Mr Elali was found to have been knowingly concerned in the company's contravention of the National Credit Act.

### Diligence and competence

- 42 Credit licensees must ensure that they comply with the requirement under the National Credit Act to be a member of an ASIC-approved EDR scheme at all times.
- 43 A failure to maintain membership of an EDR scheme can result in ASIC cancelling a person or company's credit licence.

#### Example 7: Failure to hold membership of an EDR scheme

We cancelled the Australian credit licence of Dean Mooney Pty Ltd, a finance broking firm, after it was found the company failed to hold membership of an approved EDR scheme.

Under the National Credit Act, credit licensees are required to be members of an ASIC-approved EDR scheme. The Financial Ombudsman Service (FOS) and the Credit Ombudsman Service Limited (COSL) are the only ASIC-approved EDR schemes.

Dean Mooney's EDR membership of FOS was cancelled by FOS due to non-payment of membership fees, and Dean Mooney failed to rectify this or obtain alternate membership with COSL.

- 44 Credit licensees and their officers and representatives must ensure they comply with the licensing regime. They must also ensure they comply with legal and community standards in carrying on their business.

#### Example 8: Weaknesses in compliance processes

We accepted an enforceable undertaking from Graham Rendell, who operated Key Credit, following concerns about underlying weaknesses in Key Credit's compliance processes.

Our investigation raised concerns that:

- there may have been underlying weaknesses in Key Credit's compliance processes regarding implementation of legislative changes; and
- borrowers may have been misled about Key Credit's ability to repossess essential household property listed as security for their loans.

Key Credit agreed to engage an independent compliance consultant to review and report to ASIC on the business' compliance with the credit legislation.

Key Credit also paid a penalty of \$5,500 after we issued five infringement notices under the National Consumer Credit Protection Regulations 2010. The payment of this penalty is not an admission of guilt or liability and Key Credit is not regarded as having contravened the relevant provisions.

## Financial advisers

### Honesty

- 45 Financial advisers occupy a position of trust and are relied on by clients to act appropriately with their money. ASIC and the community expect that financial advisers will not use their position to gain an advantage for themselves, or to cause detriment to their clients.
- 46 Dishonest acts, including misappropriation of client funds, fraud and deceptive conduct, will incur severe consequences. We will act to remove dishonest advisers from the market, and take action to deter similar conduct so as to preserve confidence in the Australian financial services industry.

#### Example 9: Deception and dishonest dealings

Trevor Wayne Carll was sentenced in the Adelaide District Court to two years in prison with a non-parole period of 13 months, after pleading guilty

to one count of deception and two counts of dishonest dealings with documents.

The charges arose from our investigation into Mr Carll's conduct as a financial adviser.

Mr Carll deceived two clients about his intended use of documents signed by them, arranging for the clients' assets totalling \$900,000 to be held as security for his personal margin loan facility.

Mr Carll also provided false documents to Macquarie Bank Limited in order to secure the release of his clients' funds without their authority.

Mr Carll's sentencing was in addition to a ban on providing financial services that we had already imposed on him.

#### Example 10: Providing false information and avoiding client claims

We cancelled the AFS licence and credit licence of Morrison Carr Financial Services, and permanently banned its sole director, Dennis Cardakaris, from providing financial services and engaging in credit activities.

Morrison Carr was a national financial planning business that provided advice via a network of 42 authorised representatives and seven credit representatives located in offices around Australia.

We took action following a surveillance we conducted of the business, and as a result of concerns that Mr Caradakis provided false information to its insurer and took steps to avoid client claims. We found that:

- Morrison Carr did not have in place adequate compensation arrangements;
- Mr Caradakis arranged for the transfer of business from a previous AFS licence and, in so doing, affected the ability of claimants of the previous licensee to pursue their claims; and
- Mr Caradakis had been involved in contravening the credit legislation and there was reason to believe he was likely to do so again.

#### Example 11: Fraud

We obtained court orders permanently banning Melinda Scott from providing any financial services and disqualifying her from managing any corporations, after she defrauded clients of more than \$3.6 million over eight years.

The court declared that Ms Scott had repeatedly and persistently engaged in dishonest conduct when providing financial services, and obtained \$3.6 million from 56 separate clients that she then generally used for her own personal benefit.

The court also found that Ms Scott falsely told some clients their money had been invested in accordance with their instructions, and was making a return.

- 47 A financial adviser who promotes or assists the illegal early release of superannuation for a client may be banned by ASIC from providing financial services and advice.

#### Example 12: Illegal early release superannuation scheme

We banned Simon Turudia from providing financial services for six years after he arranged the unlawful early release of approximately \$1.7 million in superannuation benefits.

Mr Turudia was a former authorised representative of AMP Financial Planning Pty Ltd.

We found that Mr Turudia engaged in misleading and deceptive conduct by manipulating rollover request procedures, allowing 35 of his clients early access to their superannuation savings.

- 48 Cold-calling scams involve an unsolicited sales call or offer that attempts to convince victims to invest in schemes involving the purchase of shares or other investments, such as in index funds or currency trading schemes. Once an investment is made, the fraudsters provide access to a website that shows projected returns; however, these returns are fictitious. The operators of cold-calling scams operate without an AFS licence, and use false addresses and phone lines often routed to another address. People that take up these fraudulent investments usually lose all of their money.
- 49 ASIC action against these cold-calling scams and their promoters includes obtaining orders:
- (a) to wind up the companies involved;
  - (b) preventing the persons involved from carrying on a financial services business without an AFS licence;
  - (c) to freeze money held in bank accounts; and
  - (d) preventing the continued promotion of the scam.

#### Example 13: Cold-calling scam

Investors caught up in an online cold-calling scam will receive over \$80,000 following action taken by ASIC.

The Federal Court made orders against Goldsmith and Associates Pty Ltd that will result in approximately \$81,500 of previously frozen funds being distributed to investors.

The orders we obtained also prevent Goldsmith and Associates from carrying on a financial services business for 10 years and require the removal of all promotional material on any Goldsmith and Associates website.

We alleged that Goldsmith and Associates conducted a cold-calling scam out of Melbourne that promoted investments in financial products by cold



calling investors around Australia and directing them to false financial product information on a website. Goldsmith and Associates informed investors it would generate returns on their behalf through trading in products such as shares, futures options and contracts for difference (CFDs).

Goldsmith and Associates never held an AFS licence.

The court found that Goldsmith and Associates made a false representation to investors and engaged in dishonest conduct and misleading and deceptive conduct.

## Diligence

- 50 Good quality and appropriate financial advice is essential to ensuring that consumers have confidence in the financial services industry.
- 51 The provision of poor or inappropriate advice by a financial adviser, or the failure of a financial adviser to meet their obligations when providing advice, may result in a financial adviser being banned from providing financial services.

### Example 14: Inappropriate advice

We banned Alec Khoo from providing financial services for three years after finding that Mr Khoo failed to have a reasonable basis for advice he gave to clients of his business, Alec Khoo & Associates.

Mr Khoo advised clients to borrow funds through a margin lending facility and invest a substantial portion of those funds in cash investments for up to three years. This advice resulted in a significant portion of the clients' investment portfolio making a loss, as the interest paid on the borrowed funds was higher than the interest earned on the cash investments.

### Example 15: Failure to meet obligations

Peter Holt was banned from providing financial services for three years after we found that Mr Holt failed to:

- have a reasonable basis for the advice he gave to retail clients;
- meet his obligations to disclose to clients the costs that may be incurred, and benefits that may be lost, in switching superannuation accounts; and
- ensure his business maintained professional indemnity insurance.

Mr Holt was a director and authorised representative of Holt Norman & Co and the responsible officer of Holt Norman & Co's AFS licence.

We cancelled the AFS licence of Holt Norman & Co on 19 September 2012.

Mr Holt has lodged an appeal against our decision in the Administrative Appeals Tribunal.

- 52 We may also seek to assist investors affected by bad advice or illegal conduct by negotiating a compensation arrangement.

#### Example 16: Storm—ASIC settlement with CBA

We reached a settlement with CBA, on a no admission of liability basis, with the bank to make available up to \$136 million as compensation for losses suffered on investments made through Storm.

The compensation will be available to many CBA customers who borrowed from the bank to invest through Storm.

We alleged that the Storm model of financial advice amounted to the operation of an unregistered managed investment scheme. We also alleged that CBA was knowingly concerned in the operation by Storm of the unregistered managed investment scheme.

### Competence

- 53 It is an offence to conduct a financial services business without an AFS licence or without acting as an authorised representative of an AFS licensee.

#### Example 17: Unlicensed conduct

We have permanently banned Ropati Broederlow from providing financial services after finding that he was unlicensed, acted dishonestly and made false or misleading statements.

Mr Broederlow was a financial adviser and the sole director of RN Property Pty Ltd. He advised clients to deposit funds into the trust account of RN Property in order to purchase an investment property. However, Mr Broederlow failed to use the funds for the benefit of his clients and failed to return the invested money.

More than 20 clients deposited over \$150,000 into the trust account.

We found that, in addition to acting dishonestly and making false or misleading statements, Mr Broederlow carried on a financial services business without holding an AFS licence.

#### Example 18: Unlicensed conduct, false statements

Tania Michelle Oakley of Noosa, Queensland, was sentenced to two years jail, and ordered to serve six months, following the charges we brought in relation to her role as the sole director of a purported investment company, Tanoak Pty Ltd.

Ms Oakley pleaded guilty to three charges, involving making false statements to investors in her financial advisory business, using \$776,900 of investors' funds to purchase a home for herself, and carrying on a financial advisory business without an AFS licence.

- 54 Robust compliance systems maximise delivery of quality financial advice to consumers which increases confidence in the industry.
- 55 An AFS licensee must establish adequate systems and procedures to ensure they meet all the obligations of their licence. A failure to do so can result in being banned from providing financial services.

#### Example 19: Breach of financial and reporting obligations

We cancelled the AFS licence of Lion Advantage Limited and banned the company's chief executive, David Hickie, from providing financial services for two years, after finding the company had breached a number of the financial, reporting and other obligations of an AFS licensee.

We found that Lion Advantage repeatedly failed to:

- hold adequate professional indemnity insurance;
- lodge audited financial reports on time for Lion Advantage and the schemes it operated; and
- hold membership of an ASIC-approved EDR scheme at various times.

Mr Hickie has lodged an appeal against our decision to ban him in the Administrative Appeals Tribunal.

### Independence

- 56 Independence and ensuring there are processes in place to manage conflicts of interest are key requirements for AFS licensees. We will seek to impose more onerous licence conditions and independent oversight where there are concerns that the advice given may not be meeting required standards of independence, and where there is the potential for conflicts of interest to arise.

#### Example 20: Additional AFS licence conditions

We imposed additional conditions on the AFS licence of Addwealth Financial Services Pty Ltd after conducting a surveillance of its advice business.

We were concerned that Addwealth Financial Services did not have adequate arrangements in place to manage conflicts of interest and may have failed to provide advice that was appropriate to clients' circumstances.

As part of the additional conditions, Addwealth Financial Services agreed to appoint an external compliance consultant to test and report on Addwealth Financial Services's overall compliance arrangements and the quality of financial product advice provided to clients.

## Insurance representatives

### Honesty

- 57 Consumers place their trust and confidence in insurance representatives for assistance in obtaining financial products that may be complicated and with which they may be unfamiliar.
- 58 Insurance representatives must act with honesty and integrity, and ensure they are complying with their legal obligations when dealing with client money.

#### Example 21: Dishonest conduct

A former Sydney financial adviser, Susan Heathwood, pleaded guilty to two counts of dishonest conduct in relation to financial services after we brought charges against her.

Ms Heathwood was sentenced to 19 months imprisonment and 22 months imprisonment respectively. The periods of imprisonment were wholly suspended on Ms Heathwood entering into a two-year good behaviour bond in the amount of \$1,000.

Our investigation found that, between August 2009 and May 2011, Ms Heathwood falsified 65 insurance policy applications that led to her collecting over \$380,000 in commissions.

We also permanently banned Ms Heathwood from providing financial services.

#### Example 22: Dishonest conduct

We permanently banned Phillip Paddison from providing financial services for engaging in dishonest conduct that involved more than 100 clients and over \$150,000 of client funds.

Mr Paddison was the sole director of Risk Transfer Services Pty Ltd, a representative of Insurance Advisernet Australia Pty Ltd. Mr Paddison and Risk Transfer Services failed to forward clients' business and personal insurance payments to Insurance Advisernet Australia, and failed to ensure that clients were adequately insured.

## Product manufacturers and distributors

- 59 Offshore investment schemes promising returns that are 'too good to be true' may have severe financial consequences for investors that are induced into investing their money through misrepresentations and unjustified claims.
- 60 We will seek severe penalties for the promoters of such schemes.

### Example 23: Misleading and deceptive conduct

David Hobbs, the man behind more than a dozen unregistered offshore managed investment funds, including a \$30 million Ponzi scheme, was ordered to pay a penalty of \$500,000 and was permanently banned from managing companies and providing financial services following an ASIC investigation.

The penalty order of \$500,000 is the largest awarded in ASIC's history.

Mr Hobbs was one of 13 people, including his wife Jacqueline Hobbs, who operated the unlicensed investment funds that targeted Australian investors and self-managed superannuation trusts. More than \$55 million was invested in 14 individual investment funds in countries including New Zealand, the United States, Hong Kong, Vanuatu, the Bahamas, Anguilla, and the Turks and Caicos Islands.

The scheme involved Australian investors subscribing to so-called investment education packages and setting up personal offshore companies in which they would then stream their investments in an attempt to bypass Australian laws regulating financial services and products.

The scheme operators encouraged Australian investors to participate in the scheme using false representations as to the characteristics of the scheme and the performance of the investments, including that:

- the offshore investments were legal when they were actually illegal in Australia;
- there was no risk of losing the money they invested because it was 'capital guaranteed' or 'principal protected' when, in fact, investors were at risk of losing more than 100% of the invested funds; and
- their investment return would likely be around 4% per month when it actually might make no return at all for any number of months.

The court found Mr Hobbs was the 'mastermind' behind the scheme with 'effective control' over all the scheme funds.

The court also imposed the following penalties on other people involved in operating the unlicensed funds:

- David John Collard (date of birth: 1947)—ordered to pay a penalty of \$150,000, permanently disqualified from providing financial services and disqualified from managing corporations for 20 years;
- Jacqueline Hobbs—ordered to pay a penalty of \$20,000, disqualified from providing financial services for eight years and disqualified from managing corporations for six years; and
- Huimin (Nancy) Wu—disqualified from providing financial services for eight years and disqualified from managing corporations for four years.

## B Fair and efficient financial markets

### Key points

Insolvency practitioners, auditors, directors, officers and market participants all have a key role to play in ensuring our markets are fair and efficient.

They all have a responsibility to ensure they perform their duties honestly and with sufficient diligence and competence. They must also ensure they act independently and avoid conflicts of interest.

This section reviews the enforcement outcomes in relation to these gatekeepers.

### Insolvency practitioners

#### Diligence, competence and independence

- 61 Insolvency practitioners have a responsibility to carry out their duties in a competent and timely manner. Failure to do so may have serious consequences for their ability to continue working as an insolvency professional.
- 62 Our proactive program of compliance visits aims to ensure that standards of conduct in the industry are met, and that any failure to meet these standards is adequately dealt with.

#### Example 24: Failure to properly perform duties

We accepted an enforceable undertaking from liquidator Arthur Forrest. Mr Forrest agreed to ASIC cancelling his registration permanently after we found that he failed to carry out or properly perform his duties. He also agreed not to perform any work that is done by a registered liquidator.

Mr Forrest accepted our view that he:

- failed to comply with statutory reporting requirements and lodgements;
- failed to have remuneration approved as required by the Corporations Act; and
- unnecessarily delayed the finalisation of external administrations.

- 63 Insolvency practitioners not only need to act with due care, skill and diligence, but also ensure they comply with processes for managing conflicts of interest and ensuring independence.

**Example 25: Failure to properly perform duties**

We accepted an enforceable undertaking from liquidator, Geoffrey Stewart Turner, preventing him from practising as a registered liquidator for life. Mr Turner practised under the name GS Turner & Co. in Hurstville, New South Wales.

We conducted a review of 60 external administrations of which Mr Turner was the appointed external administrator and formed the view that Mr Turner had failed to properly carry out his duties as a liquidator.

We found that Mr Turner:

- failed to comply with statutory reporting requirements and lodgements;
- failed to validly fix or determine remuneration;
- failed to make a declaration of relevant relationships and declaration of indemnities;
- used the firm's trust account to bank receipts and make payments for external administrations;
- failed to have adequate human resources to properly service his appointments;
- failed to have appropriate operational procedures and manuals for conducting external administrations; and
- unnecessarily delayed finalising external administrations.

**Auditors****Diligence and competence**

- 64 Auditors play an important oversight role and are relied on by consumers for an accurate opinion on the information contained in financial reports. Auditor integrity and competence are essential to ensuring confidence in the financial markets.
- 65 Failure by an auditor to perform their duties adequately and with due care and skill can undermine market confidence, and mislead and deceive consumers.
- 66 An auditor who fails to perform their duties with due care and skill may have their ability to practice restricted or removed.

**Example 26: Failure to adequately perform the duties of an auditor**

We accepted an enforceable undertaking from former Centro auditor, Stephen Cogle of PwC.

Mr Cogle was the lead auditor responsible for the audits of the financial reports of Centro Properties Group and Central Retail Group for the 2006–07 financial year.

We formed the view that, with respect to these audits, Mr Cogle failed to carry out or adequately perform the duties of an auditor. In particular, we were concerned the audits were not conducted in accordance with the Australian auditing standards.

Under the enforceable undertaking, Mr Cogle is prevented from practising as a registered auditor until 30 June 2015. Following the conclusion of this period of suspension, he is required to submit his first three audits for review by a registered company auditor approved by ASIC.

#### Example 27: Failure to adequately perform the duties of an auditor

We accepted an enforceable undertaking from auditor Simon Green of Pitcher Partners following an investigation into Mr Green's conduct of the audit of the 2007 financial report of ABC Learning Centres Limited.

We formed the view that Mr Green failed to adequately and properly perform his duties as an auditor. In particular, he failed to:

- obtain sufficient appropriate audit advice;
- adequately document the testing undertaken in respect to the risk of fraud;
- develop an audit procedure to deal with the assessed risks;
- perform sufficient and appropriate subsequent events procedures; and
- use professional judgement and scepticism when auditing the company's 2007 financial report.

Under the enforceable undertaking, Mr Green is prevented from practising as a registered auditor for a period of five years. Following conclusion of the period of suspension, he is required to submit his first five audits for review by a registered company auditor approved by ASIC.

- 67 We conduct regular audit surveillance visits and issues public reports on the results of our reviews: see, for example, Media Release (12-301MR) *ASIC's audit inspection findings for 2011–12* (4 December 2012).

## Directors and officers

- 68 Directors' duties are designed to promote good governance and ensure that directors act in the interests of the company. This includes putting the company's interests ahead of their own. These duties aim to protect the company and its stakeholders.
- 69 ASIC action against directors who breached their duties falls into two categories:



- (a) action taken for serious breaches of the law—we brought proceedings against three directors (one criminal and two civil) during the relevant period;
- (b) action taken for less serious summary offences—we brought proceedings against 290 directors during the relevant period.

## Honesty

- 70 A director or other officer must not use their position, or use information available to them by reason of their position, to gain an advantage for themselves, or someone else, or cause detriment to the company.
- 71 Doing so may result in significant penalties, including imprisonment.

### Example 28: Dishonest breach of duties

The former chief financial officer of OnQ Group Limited (the parent company of Bill Express Limited), Peter Couper, was sentenced to 21 months jail (wholly suspended) and fined \$10,000 in connection with four charges we brought.

Mr Couper pleaded guilty to two counts of falsifying the books of Bill Express, one count of providing misleading information to Bill Express' auditor and one count of providing false or misleading information to ASIC during an examination.

In sentencing Mr Couper, Her Honour Judge Gaynor noted that, but for Mr Couper's decision to plead guilty, he would have been sentenced to a period of immediate imprisonment.

- 72 We may disqualify a company director from managing a corporation if they have breached their duties to protect future creditors, investors and employees from loss.

### Example 29: Disqualification

We obtained court orders disqualifying Melinda Scott from managing corporations for 25 years after she defrauded clients of more than \$3.6 million over eight years.

Ms Scott was the sole director of Roach Graham Scott Pty Ltd, which carried on a financial services business.

See Example 11 for further details.

## Diligence

- 73 Directors and company officers have a duty to exercise their powers and discharge their duties with due care and diligence. This may involve taking

positive action to ensure this duty is met, including making efforts to actively manage the company.

#### Example 30: Breach of directors' duties

Antonia Baranov was disqualified from managing corporations for 18 months following an ASIC investigation into her role as director of Bar Um Pty Ltd and MIB Systems Pty Ltd.

Our investigation revealed that Ms Baranov:

- failed to take an active part in the management of Bar Um and MIB Systems;
- failed to inform herself of all the activities of Bar Um and MIB Systems; and
- breached her duties as a director of Bar Um and MIB Systems by failing to take reasonable care and act diligently and in the best interests of the companies.

74 We may make submissions to the Takeovers Panel if it appears there has been a contravention of the Corporations Act by the directors or officers of a company.

#### Example 31: Unacceptable circumstances

We made submissions to the Takeovers Panel in the matter of IFS Construction Services Ltd, which were accepted by the Takeovers Panel.

Our submissions related to the circumstances of a shareholder's meeting held by the company. At the meeting, newly appointed independent director and interim chairman, David Sanders, declared that proxy votes received were invalid and adjourned the meeting for two months. The proxies covered approximately 38.3% of IFS Construction Services and were in relation to a notice of intention to make a takeover offer from Millennium Scaffolding Systems (ASIA) Ltd. Two directors of IFS Construction Services are also directors of Millennium Scaffolding Systems.

After the adjournment of the meeting, Millennium Scaffolding Systems and its associates acquired additional shares in IFS Construction Services.

The Takeovers Panel received an application from shareholders of IFS Construction for a declaration of unacceptable circumstances. The application concerned the lengthy adjournment of the meeting convened and the rejection of the proxies.

We made submissions that the lengthy adjournment of the meeting took the meeting well beyond the time set out the Corporations Act for such a meeting to be held.

The Takeovers Panel declared the circumstances unacceptable, that the meeting should be reconvened, and that the proxies should not be treated as invalid.

The Takeovers Panel also ordered that IFS Construction Services pay the applicants and our costs.

## Competence

- 75 Company directors are expected to have adequate skills and knowledge to enable them to carry out their duties competently.
- 76 A person that has been disqualified from managing a corporation must not continue to act in a way that is consistent with managing a company, including by participating in decision making, or influencing the decisions made, by the directors of the company.

### Example 32: Managing while disqualified

Glenton Wall pleaded guilty in the Melbourne Magistrates Court to 38 charges of managing a corporation while disqualified.

Mr Wall became a bankrupt on 22 December 2008 and was automatically disqualified from managing a corporation until discharged from bankruptcy.

The court found that between 16 March and 2 November 2009, while disqualified, Mr Wall engaged in acts of management involving Xelon Ltd on 38 separate occasions.

Mr Wall was convicted of all 38 charges and sentenced to an 18-month recognisance. He was also ordered to pay a penalty of \$2,000.

## Market participants

- 77 The integrity and reputation of the financial market is crucial to ensuring a well-functioning financial system and consumer confidence. This requires a market infrastructure that is robust, where transactions are conducted in an orderly and efficient way, and where market misconduct is minimised.
- 78 Market participants are important because of their ability to influence the market, because of the trust placed in them by investors and because of their privileged access to information.
- 79 We will act decisively against misconduct that has the potential to damage the effective functioning of the Australian financial market and negatively impact its reputation.

## Honesty

- 80 The proper functioning of capital markets depends on good corporate governance. This in turn depends on market participants acting with honesty and integrity.

- 81 Insider trading—using inside information, or communicating insider information to others, in order to trade on the information—is a form of dishonesty and also a serious offence.

### Example 33: Insider trading

Stuart Alfred Fysh, a former executive vice-president of BG Group PLC, was sentenced to two years imprisonment after being found guilty of two counts of insider trading.

The charges against Dr Fysh related to his purchase of 250,000 shares in Queensland Gas Company (QGC) while in possession of inside information relating to BG Group's interest in QGC. Dr Fysh had contested the charges.

BG Group and QGC announced an \$870 million strategic alliance in February 2008. Dr Fysh purchased the QGC shares at an average price of \$3.19 per share in December 2007 and sold them in November 2008 at \$5.75 per share, resulting in a net profit of \$640,000.

In addition to receiving a two-year jail term, Dr Fysh was ordered to pay a pecuniary penalty in the amount of \$640,857 as a result of separate proceedings conducted by the Australian Federal Police under the *Proceeds of Crime Act 2002* (Proceeds of Crime Act).

We have also disqualified Dr Fysh from acting as a director of a company for five years from the date of his release.

Dr Fysh has filed a notice of intention to appeal his conviction and sentence.

### Example 34: Insider trading

Elisa Rietbergen and Joseph Levi were both sentenced to 18 months imprisonment after being found guilty of insider trading charges brought by ASIC. They were released immediately on their own recognisance in the sum of \$1,000 and were ordered to be of good behaviour for two years.

Ms Rietbergen was a former JP Morgan Chase employee who provided Mr Levi with inside information concerning the acquisition of Valad Property Group Limited by affiliates of the Blackstone Group LP. Mr Levi used this information to acquire 40,000 Valad Property securities on 27 April 2011. On 29 April, the acquisition of Valad Property was announced on the ASX.

Mr Levi made a net post-tax profit of \$24,280 as a result of his trading. This amount was forfeited under the Proceeds of Crime Act.

### Example 35: Insider trading

Nicholas Glynatsis, a former PwC tax consultant, was convicted on nine charges of insider trading following an ASIC investigation.

Mr Glynatsis acquired securities and CFDs in his name and the names of two relatives ahead of eight corporate transactions, including six takeover

bids, on which PwC was engaged to provide advice. Mr Glynatsis made approximately \$50,000 from the unlawful trading.

We alleged that, at the time Mr Glynatsis acquired the securities and CFDs, he possessed inside information that he acquired through internal PwC databases holding confidential client information.

Mr Glynatsis was sentenced to two years imprisonment and ordered to serve his sentence in the community under the strict supervision of Corrective Services NSW, under an intensive correction order.

## Diligence

- 82 Market integrity rules are designed to ensure the integrity of the market and help protect investors. They are administered by ASIC and apply to market operators, market participants and prescribed entities.
- 83 The Markets Disciplinary Panel (MDP) 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.
- 84 Infringement notices can require the payment of a monetary penalty or other remedial action.
- 85 Market participants must ensure they act diligently when dealing with client money, and ensure they promptly rectify any errors that arise.

### Example 36: Lack of client authorisation

Barclays Bank PLC paid a penalty of \$80,000 to ASIC to comply with an infringement notice given to it by the MDP.

We alleged that on 27 January 2011 that Barclays Bank wrongly withdrew \$13.8 million of client money from the Barclay's Client Segregated Account, instead of its own account, without authorisation and failed to return the client money for five business days.

Compliance with the infringement notice is not an admission of guilt or liability and Barclays Bank is not taken to have contravened s798H(1) of the Corporations Act (obligation to comply with the ASIC market integrity rules).

- 86 We obtained penalties against seven companies for breaching the market integrity rules during the relevant period.

### Example 37: Breach of market integrity rules

Commonwealth Securities Ltd (CommSec) paid a penalty of \$50,000 to ASIC in order to comply with an infringement notice given to it by the MDP.

We alleged that, between 4 August 2010 and 20 January 2011 CommSec executed 48 crossings on account of its client that involved no change in

beneficial ownership in the fully paid, ordinary shares of Oaks Hotels and Resorts Limited, and which interfered with the efficiency and integrity of the ASX market.

CommSec was alleged to have contravened s798H(1) by contravening Rule 5.5.2 of the ASIC Market Integrity Rules (ASX Market) 2010.

Compliance with the infringement notice is not an admission of guilt or liability, and CommSec is not taken to have contravened s798H(1) of the Corporations Act.

- 87 Listed and unlisted disclosing entities have an obligation to disclose material information on a timely basis, and comply with the relevant listing rules.
- 88 We will take action against a company if it is in breach of its continuous disclosure obligations to ensure that market participants are diligent about releasing information to the market.

#### Example 38: Breach of continuous disclosure rules

Northern Iron Limited paid a \$66,000 penalty to ASIC to comply with an ASIC infringement notice.

Northern Iron was alleged to have failed to comply with the continuous disclosure provisions of the Corporations Act and relevant provisions of the ASX Listing Rules.

The alleged continuous disclosure breach related to Northern Iron's failure to immediately disclose information to ASX after it ceased to be confidential. The information concerned Essel Mining & Industries Ltd making a non-binding indicative offer to acquire Northern Iron.

Compliance with the notice is not an admission of guilt or liability, and Northern Iron is not regarded as having contravened s674(2) of the Corporations Act (obligation of a listed entity to provide information immediately to the market operator).

## C Efficient registration and licensing

### Key points

Registering a company carries with it responsibilities and requires ongoing compliance with certain obligations.

Some responsibilities and obligations continue even when a company is in external administration.

### Officeholders of registered companies

#### Diligence

- 89 We maintain a register of all companies registered in Australia. The register is an important source of information for consumers, investors and the public.
- 90 Companies and individuals have a responsibility to ensure the information contained in the corporate register is accurate and up-to-date, and that all documents required to be lodged with ASIC are lodged. A failure to do so may result in ASIC taking action against the company or the persons responsible.

#### Example 39: Failure to lodge reports

Mawson Gold NL was convicted of five charges of failing to lodge its financial report, directors' report and auditor's report for the financial years ending 2006, 2007, 2008, 2009 and 2010, following an ASIC investigation.

Ivan Peter Lewis, director and secretary of Mawson Gold during this period, admitted responsibility for the failure to lodge the documents.

Mawson Gold's failure to comply with its reporting and lodgement obligations was identified as part of a regular compliance program conducted by ASIC.

The company was fined a total of \$5,625.

- 91 A director must provide assistance to an external administrator who has been appointed to a company with which they were associated. As part of our Liquidator Assistance Program, 275 directors were successfully prosecuted for summary offences concerning a failure to assist an external administrator.

**Example 40: Failure to assist liquidator**

We disqualified Mark Baranov from managing corporations for two years following an investigation into his roles as director of Bar Um Pty Ltd and MIB Systems Pty Ltd.

MIB Systems went into liquidation in March 2005 and Bar Um went into liquidation in January 2009.

Our investigation revealed that Mr Baranov failed to:

- assist the liquidator to locate items in relation to MIB Systems;
- take reasonable steps to ensure that financial records were maintained in relation to Bar Um;
- assist the liquidator with the provision of information and certain company records in relation to Bar Um; and
- act with the reasonable care and diligence in allowing Bar Um to trade for a prolonged period in circumstances where its expenses exceeded its income.

**Competence**

- 92 Directors that have been involved in two or more failed companies may be disqualified from managing corporations by ASIC.
- 93 We disqualified a total of 31 directors from managing corporations following their involvement in two or more failed companies in the relevant period.



## Appendix 1: Statistics

Table 1: Enforcement outcomes: 1 July 2012 to 31 December 2012\*

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Market integrity</b>	<b>9</b>	<b>1</b>	<b>8</b>			<b>18</b>
Insider trading	8					8
Market manipulation	1					1
Continuous disclosure		1	1			2
Market integrity rules			7			7
Other market misconduct						
<b>Corporate governance</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>1</b>	<b>13</b>
Action against directors	3 <sup>^</sup>	2	2	1	1	9
Insolvency						
Action against liquidators				2		2
Action against auditors				2		2
Other corporate governance misconduct						

Area of enforcement	Criminal	Civil	Administrative remedies	Enforceable undertakings/ negotiated outcomes	Public warning notice	Total
<b>Financial services</b>	<b>10</b>	<b>14</b>	<b>26</b>	<b>7</b>		<b>57</b>
Unlicensed conduct		2				2
Dishonest conduct, misleading statements, unconscionable conduct	8	10	9 <sup>#</sup>	2		29
Misappropriation, theft, fraud	1		2			3
Credit	1	2	7	4		14
Other financial services misconduct			8 <sup>†</sup>	1		9
<b>Subtotal</b>	<b>22</b>	<b>17</b>	<b>36</b>	<b>12</b>	<b>1</b>	<b>88</b>
<b>Small business compliance and deterrence</b>	<b>313</b>		<b>34</b>			<b>347</b>
Action against directors	301		31			332
Efficient registration and licensing	12		3			15
<b>Total</b>	<b>335</b>	<b>17</b>	<b>70</b>	<b>12</b>	<b>1</b>	<b>435</b>

\* Outcomes are presented per defendant.

^ Includes one outcome currently under appeal.

# Includes one outcome currently under appeal.

† Includes three outcomes currently under appeal.

**Table 2: Pending matters**

Area of enforcement	Criminal	Civil
<b>Market integrity</b>	<b>10</b>	<b>1</b>
Insider trading	8	
Market manipulation	2	
Continuous disclosure		
Market integrity rules		
Other market misconduct		1
<b>Corporate governance</b>	<b>8</b>	<b>3</b>
Action against directors	5	2
Insolvency	2	
Action against liquidators		1
Action against auditors		
Other corporate governance misconduct	1	
<b>Financial services</b>	<b>13</b>	<b>9</b>
Unlicensed conduct	1	1
Dishonest conduct, misleading statements, unconscionable conduct	8	4
Misappropriation, theft, fraud	4	
Credit		
Other financial services misconduct		4
<b>Small business compliance and deterrence</b>	<b>166</b>	
Action against directors	129	
Efficient registration and licensing	37	
<b>Total</b>	<b>197</b>	<b>13</b>

## Explanation

94

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.

- 95 ‘Pending matters’ in Table 2 refers to publicly announced enforcement matters that have yet to result in a formal outcome, such as the imposition of an administrative remedy, court ordered penalty or sentence. These include, in the case of criminal matters, matters where charges have been laid but are yet to be heard and, in the case of civil matters, where the filing of an action has been announced but remains undetermined. All of the matters in this table were pending as at 31 December 2012, although they may have been announced or filed before 1 July. 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.

## Appendix 2: Schedule of media releases

Table 3: Media releases for enforcement outcomes: 1 July 2012 to 31 December 2012

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Market integrity</b>				
<b>Criminal</b>				
<b>Elisa Rietbergen</b>	Insider trading	Provided Mr Levi with inside information she gained while with JP Morgan Chase Bank, which netted over \$24,000	18 months imprisonment, to be released immediately on her own recognisance in the sum of \$1,000, to be of good behaviour for two years	<a href="#">12-305MR</a>
<b>Joseph Levi</b>	Insider trading	Acquired 40,000 Valad Property Group Pty Ltd securities while in possession of the inside information provided by Ms Rietbergen	18 months imprisonment, to be released immediately on his own recognisance in the sum of \$1,000, to be of good behaviour for two years  Forfeited \$24,280.28 to the Commonwealth under the Proceeds of Crime Act	<a href="#">12-305MR</a>
<b>Nicholas Glynatsis</b>	Insider trading	Acquired securities and CFDs in his name and the names of two relatives ahead of eight corporate transactions, including six takeover bids, on which PwC was engaged to provide advice. Total profits from the trading amounted to approximately \$50,000	Two years imprisonment—to serve sentence in the community, under an intensive correction order	<a href="#">12-313MR</a>
<b>Stuart Fysh</b>	Insider trading	Purchased 250,000 shares in QGC while in possession of inside information regarding a pending \$870 million strategic alliance between QGC and BG Group PLC	Two years imprisonment and ordered to spend at least 12 months in prison before being eligible for parole  Forfeited \$640,857.18 to the Commonwealth under the Proceeds of Crime Act	<a href="#">12-325MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Bo Shi Zhu (Calvin Zhu)</b>	Insider trading	<p>Pleaded guilty to insider trading charges relating to conduct engaged in by Mr Zhu while working for three different employers: Caliburn Partnership Pty Limited, Credit Suisse Management (Australia) Pty Ltd and Hanlong Mining.</p> <p>While working for each employer, Mr Zhu acquired inside information relating to proposed takeovers and procured one or more persons to acquire financial products relating to the proposed target companies</p>	<p>Sentencing handed down in February 2013.</p> <p>See <a href="#">13-027MR</a></p>	<a href="#">12-179MR</a>
<b>Ulf Ronnie Lindskog</b>	Insider trading	<p>Pleaded guilty to four charges of insider trading. The charges relate to seven separate orders Mr Lindskog placed in March, April, May and June 2011, to purchase a total of 88,676 shares in Spotless Group Ltd. At the time, Mr Lindskog was a member of a consulting team working with multinational private equity firms on a proposed takeover of Spotless in 2011</p>	Awaiting sentencing	<a href="#">12-294MR</a>
<b>John Khoo, Jia Tan</b>	Insider trading	<p>Mr Khoo and Mr Tan pleaded guilty to insider trading charges.</p> <p>Mr Khoo, a former investment banking associate at the Royal Bank of Canada in Sydney, pleaded guilty to a total of four charges of communicating inside information to Mr Tan and another person.</p> <p>Mr Tan, a former day trader and director of Active Capital Management, pleaded guilty to one charge of acquiring 10,000 CFDs in Macarthur Coal Limited on 8 July 2011 while in possession of the inside information he received from Mr Khoo</p>	Awaiting sentencing	<a href="#">12-322MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Enzo Di Donato</b>	Market manipulation	Provided false or misleading information to ASIC during the course of an examination under s19 of the ASIC Act	Twelve months imprisonment, wholly suspended on giving security by recognisance of \$5,000, and to be of good behaviour for three years	<a href="#">12-284MR</a>
<b>Administrative</b>				
<b>Northern Iron Limited</b>	Continuous disclosure	Alleged to have failed to comply with the continuous disclosure provisions of the Corporations Act and relevant provisions of the ASX Listing Rules in relation to its failure to immediately disclose information to ASX when the information ceased to be confidential	\$66,000 penalty paid in compliance with an infringement notice. Compliance with the notice is not an admission of guilt or liability and Northern Iron is not taken to have contravened the continuous disclosure provisions of the Corporations Act	<a href="#">12-324MR</a>
<b>Citigroup Global Markets Australia Pty Ltd</b>	Market integrity rules	Alleged to have entered a priority crossing in the ordinary shares of Fantastic Holdings Limited (FAN) on 20 May 2011 that allegedly resulted in the market for FAN not being both fair and orderly	\$30,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and Citigroup Global Markets Australia Pty is not taken to have contravened s 798H(1) of the Corporations Act	<a href="#">12-204MR</a>
<b>Commonwealth Securities Ltd (CommSec)</b>	Market integrity rules	Alleged to have executed 48 crossings that involved no change in beneficial ownership in the fully paid, ordinary shares of Oaks Hotels & Resorts Limited, which allegedly interfered with the efficiency and integrity of the ASX market	\$50,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and CommSec is not taken to have contravened s798H(1) of the Corporations Act	<a href="#">12-234MR</a>
<b>Credit Suisse Equities (Australia) Limited</b>	Market integrity rules	Alleged to have erroneously initiated a Credit Suisse trading strategy with an instruction to purchase ordinary shares in Celamin Holdings NL into the incorrect trading system within Credit Suisse's automated order processing system	\$52,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and Credit Suisse is not taken to have contravened s798H(1) of the Corporations Act	<a href="#">12-239MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Barclays Bank PLC</b>	Market integrity rules	Alleged to have erroneously withdrawn \$13.8 million of client monies from the Barclays' Client Segregated Account instead of its own account on 27 January 2011 without authorisation and failing to return the client monies for five business days	\$80,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and Barclays is not taken to have contravened s798H(1) of the Corporations Act	<a href="#">12-252MR</a>
<b>JP Morgan Securities Australia Limited</b>	Market integrity rules	Alleged to have effected, on two occasions, an off-market special crossing in securities (stock code 'NHF') of an issuer, NIB Holdings Limited, on behalf of NIB during the term of an on-market buy-back offer being conducted by NIB	\$50,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and JP Morgan is not taken to have contravened s798H(1) of the Corporations Act	<a href="#">12-287MR</a>
<b>BGC Partners (Australia) Pty Limited</b>	Market integrity rules	Alleged to have intentionally withheld the entry of buy and sell orders on the ASX 24 market to enable them to transact with one another, which potentially precluded other participants from participating as counterparty to the orders	\$45,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and BGC Partners is not taken to have contravened s 798H(1) of the Corporations Act	<a href="#">12-303MR</a>
<b>Euroz Securities Limited</b>	Market integrity rules	Alleged to have effected an off-market special crossing in the shares of an Issuer, iiNet Limited, on behalf of that issuer, during the term of an on-market buy-back offer being conducted by that issuer	\$20,000 penalty paid in compliance with an infringement notice. Compliance is not an admission of guilt or liability and Euroz Securities is not taken to have contravened s798H(1) of the Corporations Act	<a href="#">12-310MR</a>
<b>Corporate governance</b>				
<b>Criminal</b>				
<b>Peter Couper</b>	Falsification of books and giving false or misleading information	Falsified the books of Bill Express, provided misleading information to Bill Express's auditor and provided false or misleading information to ASIC during an examination	Twenty-one months imprisonment, wholly suspended, and fined \$10,000	<a href="#">12-150MR</a>



Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Bryan Northcote</b>	Directors duties	<p>Mr Northcote pleaded guilty to one count of breaching his duty as a director, between 9 October 2007 and 22 April 2008, by dishonestly withholding information from the Compass Hotel Group Ltd board and using his position to gain a financial advantage.</p> <p>Mr Northcote also pleaded guilty to two counts of submitting documents to ASIC that were misleading by falsely claiming he had resigned from Yard House Australia and New Zealand Pty Ltd on 1 October 2007</p>	Awaiting sentencing	<a href="#">12-312MR</a>
<b>Tania Oakley</b>	Carried on a financial services business without holding an AFS licence	<p>Ms Oakley gained a financial advantage for herself by using approximately \$766,900 of investor funds to purchase a house.</p> <p>Ms Oakley also issued false statements, between 1 June 2009 and 13 November 2010, to about 10 investors to cover losses she had made from trading investors' funds, and is alleged to have carried on a financial services business between 27 January 2009 and 1 November 2009 without holding an AFS licence</p>	Two years jail, ordered to serve six months	<a href="#">12-216MR</a>
<b>Civil</b>				
<b>Andrew Lindberg, former Managing Director of AWB Limited</b>	Directors duties	Contravened the Corporations Act by failing to act on information available to him to ascertain whether or not inland transport fees were ultimately paid to the government of Iraq arising from AWB's supply of wheat to Iraq under the United Nations Oil-for-Food Programme	Fined \$100,000 and disqualified from managing corporations until 14 September 2014	<a href="#">12-191MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Paul Ingleby, former Chief Financial Officer of AWB Limited</b>	Directors duties	Contravened the Corporations Act by failing to act on information available to him to ascertain whether or not inland transport fees were ultimately paid to the government of Iraq arising from AWB's supply of wheat to Iraq under the United Nations Oil-for-Food Programme	Fined \$40,000 and disqualified from managing corporations for 15 months. See <a href="#">13-055MR</a>	<a href="#">12-192MR</a>
<b>Administrative</b>				
<b>Mark Baranov, former director of Bar Um Pty Ltd and MIB Systems Pty Ltd</b>	Directors duties	Mr Baranov did not assist the liquidator to locate items in relation to MIB Systems, failed to take reasonable steps to ensure that financial records were maintained in relation to Bar Um, failed to assist the liquidator with the provision of information and certain company records in relation to Bar Um, and failed to act with the reasonable care and diligence in allowing Bar Um to trade for a prolonged period in circumstances where its expenses exceeded its income	Disqualified from managing corporations for two years	<a href="#">12-283MR</a>
<b>Antonia Baranov, former director of Bar Um Pty Ltd and MIB Systems Pty Ltd</b>	Directors duties	Ms Baranov failed to take an active part in the management of Bar Um and MIB Systems, failed to inform herself of all of the activities of Bar Um and MIB Systems, and breached her duties as a director of Bar Um and MIB Systems by failing to take reasonable care and act diligently and in the best interests of the companies	Disqualified from managing corporations for 18 months	<a href="#">12-283MR</a>
<b>Enforceable undertakings and negotiated outcomes</b>				
<b>Simon Durant</b>	Managed a company while disqualified	In September 2009 Mr Durant was disqualified from managing a corporation for two years. On 13 December 2012, ASIC accepted an enforceable undertaking from Mr Durant. Mr Durant acknowledged ASIC's concerns that he may have performed management duties during this disqualification period	Under the enforceable undertaking, Mr Durant is prevented from managing a corporation for a further two years	<a href="#">09-174AD</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Simon Green</b>	Failed to properly carry out his duties as an auditor	We are of the view that during the audit of ABC Learning Centres Limited's 2007 financial report, Mr Green failed to perform adequately and properly his duties as an auditor	Under the enforceable undertaking, Mr Green is prevented from practising as a registered auditor for a period of five years	<a href="#">12-186MR</a>
<b>Stephen Cogle</b>	Failed to properly carry out his duties as an auditor	We formed the view that, in relation to the audits of the financial reports of Centro Properties Group and Centro Retail Group, Mr Cogle failed to carry out or perform adequately and properly the duties of an auditor. In particular, we were concerned the audits were not conducted in accordance with the Australian auditing standards	Under the enforceable undertaking, Mr Cogle is prevented from practising as a registered auditor until 30 June 2015	<a href="#">12-288MR</a>
<b>Geoffrey Turner</b>	Failed to properly carry out his duties as a liquidator	<p>We are of the view that Mr Turner failed significantly to comply with statutory reporting requirements and lodgements, including:</p> <ul style="list-style-type: none"> <li>• lodgement of six-monthly receipts and payments;</li> <li>• holding annual meetings of members and creditors or lodging a report with ASIC;</li> <li>• lodging reports of his investigations; and</li> <li>• drawing up, signing and lodging minutes of meetings of creditors.</li> </ul> <p>We are also of the view that Mr Turner failed to validly fix or determine remuneration, failed to make a declaration of relevant relationships and a declaration of indemnities, and used the firm's trust account to bank receipts and make payments for external administrations</p>	<p>ASIC has accepted an enforceable undertaking from Mr Turner, which prevents him from practising as a registered liquidator for life.</p> <p>Under the enforceable undertaking, Mr Turner has undertaken to ask ASIC to cancel his registration as a liquidator within seven days of our acceptance of the enforceable undertaking and to not ever re-apply for registration as a liquidator</p>	<a href="#">12-248MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Arthur Forrest</b>	Failed to properly carry out his duties as a liquidator	<p>Mr Forrest acknowledged and accepted our view that he failed to comply with statutory reporting requirements and lodgements, including:</p> <ul style="list-style-type: none"> <li>• lodgement of six-monthly receipts and payments;</li> <li>• holding annual meetings of members and creditors or lodging a report with ASIC; and</li> <li>• lodging reports of his investigations.</li> </ul> <p>Mr Forrest also acknowledged and accepted our view that he failed to have remuneration approved as required by the Corporations Act, and unnecessarily delayed the finalisation of external administrations</p>	Under the enforceable undertaking, Mr Forrest has undertaken to ask ASIC to cancel his registration permanently as a liquidator within seven days of our acceptance of the enforceable undertaking and not perform any duty or function of a registered liquidator	<a href="#">12-277MR</a>
<b>Public warning notices</b>				
<b>Robert McClelland</b>	Misleading conduct	We believe that Mr McClelland promoted investments and share placements in Roadships and Cycclone by suggesting that the companies developed revolutionary technology in circumstances where he should have known that such statements were false or misleading	Public warning notice	<a href="#">12-223MR</a>
<b>Financial services</b>				
<b>Criminal</b>				
<b>Susan Heathwood</b>	Dishonest conduct	Falsified 65 insurance applications that led to her collecting over \$380,000 in commissions	Imprisoned for 19 months and 22 months respectively. The periods of imprisonment were wholly suspended immediately on Ms Heathwood entering a two-year good behaviour bond in the amount of \$1000.	<a href="#">12-273MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Trevor Carll</b>	Dishonest conduct	Deceived two clients about his intended use of documents signed by them and dishonestly arranged for the clients' assets totalling over \$900,000 to be held as security for his personal margin loan facility	Two years jail with a non-parole period of 13 months	<a href="#">12-332MR</a>
<b>Daniel Nguyen</b>	Providing false documents to banks for nine home loans	Pleaded guilty to 10 offences under the National Credit Act, including providing false documents to banks to secure approvals for home loans of more than \$3 million over a five-month period	Sentencing handed down in January 2013. See <a href="#">13-008MR</a>	<a href="#">12-237MR</a>
<b>Craig Horsell</b>	Dishonest conduct	Pleaded guilty to three charges of dishonestly using his position to authorise payments totalling \$414,299.87 into his personal bank account	Awaiting sentencing	<a href="#">12-286MR</a>
<b>Craig Dangar</b>	False or misleading statements	Pleaded guilty to obtaining a total financial advantage of \$250,000 when recommending that two clients purchase a portion of his shares in Morris Finance Ltd. Mr Dangar deceived the two clients by misrepresenting the true owner of the shares and by also stating to one of the clients that the recommended shares would experience likely capital growth.  Mr Dangar also pleaded guilty to falsely claiming, in a document lodged with ASIC, to being a director of SMSF Consulting Pty Ltd	Awaiting sentencing	<a href="#">12-166MR</a>
<b>Jonathon Kur</b>	Fraud	Pleaded guilty to three charges of fraud with a total value of \$7,749,106. The charges relate to Mr Kur's conduct as an authorised representative of Perth-based stockbrokers, Hogan and Partners Stockbrokers Pty Ltd, and his advice in relation to options trading and dealing in options trading for a number of clients based in Botswana	Sentencing handed down in February 2013. See <a href="#">13-032MR</a>	<a href="#">12-285MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Robert Bean</b>	Dishonest conduct	Pleaded guilty to 52 charges of engaging in dishonest conduct in which he misappropriated more than \$3.1 million of client funds	Awaiting sentencing	<a href="#">12-318MR</a>
<b>Brian Wood, Jimmy Truong and Con Koutsoukos</b>	Misleading and deceptive conduct	Operated an unregistered managed investment scheme, which targeted Australian investors and self-managed superannuation funds	<p>Brian Wood was sentenced to three years and 11 months imprisonment, to serve a minimum term of two years and six months.</p> <p>Jimmy Truong and Con Koutsoukos were both sentenced to two years and eight months imprisonment, to serve minimum terms of two years</p>	<a href="#">13-025MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Civil</b>				
<b>David Hobbs, David John Collard (date of birth: 1947), Huimin (Nancy) Wu, Jacqueline Hobbs</b>	Misleading and deceptive conduct	Operated an unregistered managed investment scheme, which targeted Australian investors and self-managed superannuation funds	<p>The court found Mr Hobbs was the 'mastermind' behind the scheme, with 'effective control' over all of the scheme funds, and that there was 'ample evidence' of improper payments out of fund monies, including Ponzi payments, the payment of Mr Hobbs' private expenses, and payments to Mr Hobbs' family and also to some scheme administrators.</p> <p>Penalties were handed down in February 2013:</p> <ul style="list-style-type: none"> <li>• Mr Hobbs was permanently banned from providing financial services, permanently disqualified from managing corporations and fined \$500,000;</li> <li>• Mr Collard was permanently banned from providing financial services, disqualified from managing corporations for 20 years and fined \$150,000;</li> <li>• Ms Hobbs was banned from providing financial services for eight years, disqualified from managing corporations for six years and fined \$20,000; and</li> <li>• Ms Wu was banned from providing financial services for eight years and disqualified from managing corporations for four years.</li> </ul> <p>See <a href="#">13-031MR</a></p>	<a href="#">12-266MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Investment Intelligence Corporation Pty Ltd</b>	Unlicensed conduct	We acted to secure funds invested in Investment Intelligence Corporation while we investigated concerns that the company and its sole director, Senen Pousa, were carrying on a financial services business without holding an AFS licence	We obtained a prohibition of departure order against Mr Pousa and interim orders, by consent, over \$3,092,799 held by St George Bank and \$313,136 held by American Express Australia in the accounts of Investment Intelligence Corporation	<a href="#">12-175MR</a>
<b>Secured Collateral Pty Ltd, Diversified Collateral Pty Ltd, Intra Management Pty Ltd, Keiron Michael Weertman, Dylan Robson and Shane Rodney Hasell</b>	Unlicensed conduct	Used cold calling and a website to induce investors to deposit funds into a number of bank accounts with the promise that the funds would used to buy shares on behalf of the investors and generate returns well above markets	We obtained interim court orders against the operators of three unlicensed financial services businesses, preventing them from carrying on their activities and freezing approximately \$273,000 held in three bank accounts	<a href="#">12-265MR</a>
<b>Royale Capital Pty Ltd and ActiveSuper Pty Ltd</b>	Allegedly provided misleading and/or deceptive information to investors	Allegedly offered their self-managed superannuation fund clients shares in companies based in the United States and the British Virgin Islands, when the appropriate disclosure documents had not first been lodged with ASIC	Interim court orders preventing the companies from carrying on some of their activities	<a href="#">12-161MR</a>
<b>Goldsmith and Associates Pty Ltd</b>	Cold-calling	Promoted investments in financial products by cold calling investors around Australia who in turn were directed to false financial product information contained on a website	Federal Court made orders against Goldsmith that will result in approximately \$81,500 of previously frozen funds being distributed to investors. The orders also prevent Goldsmith from carrying on a financial services business for 10 years	<a href="#">12-181MR</a>
<b>Commonwealth Bank of Australia (CBA)</b>	Alleged unregistered managed investment scheme	We alleged that the Storm model of financial advice amounted to the operation of an unregistered managed investment scheme. We also alleged that CBA was knowingly concerned in the operation by Storm of the unregistered managed investment scheme	We reached a settlement with CBA, on a no admission of liability basis, with the bank to make available up to \$136 million as compensation for losses suffered on investments made through Storm	<a href="#">12-227MR</a>



Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Melinda Scott and Roach Graham Scott Pty Ltd</b>	Engaged in dishonest conduct when providing financial services	<p>Repeatedly engaged in dishonest conduct when providing financial services.</p> <p>Ms Scott and Roach Graham Scott also:</p> <ul style="list-style-type: none"> <li>obtained more than \$3.6 million from 56 separate clients, which Ms Scott generally used for her own personal benefit knowing that this was not in accordance with the clients' instructions; and</li> <li>falsely told some clients their money had been invested in accordance with their instructions and was making returns</li> </ul>	<p>Ms Scott was permanently banned from providing any financial services and disqualified from managing corporations for 25 years.</p> <p>Roach Graham Scott was permanently restrained from providing any financial services</p>	<a href="#">12-302MR</a>
<b>West Trade Group Pty Ltd, West Trade Cars Pty Ltd, West Two Pty Ltd, Tiffany Lea O'Donnell, Russell John Lewis, John Steven Pitcher</b>	Carried on a financial services business without holding an AFS licence	Used cold calling and a website to induce investors to deposit funds into a number of bank accounts in the names of West Trade Group, West Trade Cars and West Two with the promise that the funds would be used to buy shares on behalf of the investors and generate returns well above markets	The court made declarations against West Trade Group, West Trade Cars and West Two and its directors, finding the companies had carried on a financial services business without holding an AFS licence. The companies and the directors were restrained from carrying on any financial services business in Australia without being licensed to do so	<a href="#">12-157MR</a>
<b>Easy Choice Home Loans</b>	Unlicensed credit activity	Company advertised on its website that it provided home and investment property loans without holding a credit licence	\$7,500 penalty	<a href="#">12-217MR</a>
<b>ACM Group Limited</b>	Debtor harassment	ACM harassed and coerced debtors and engaged in 'widespread' and 'systemic' misleading and deceptive conduct when recovering money	The court concluded that declarations of misconduct and injunctive relief, restraining ACM from future similar conduct, be granted	<a href="#">12-261MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Administrative</b>				
<b>Leigh Barker</b>	False or misleading statements	Mr Barker and his companies promoted to investors a 'parallel imports business' purportedly operated by TATL Pty Ltd, offering investors a return of 15% every three months. Our investigation found that TATL did not carry on a business of parallel importing. Instead, Mr Barker pooled the money invested in TATL and invested it in a parallel imports business purportedly run by another company, Reseau International Trading Pty Ltd	Banned from providing financial services for five years	<a href="#">12-177MR</a>
<b>Simon Turudia, former authorised representative of AMP Financial Planning Ltd</b>	Misleading and deceptive conduct	Mr Turudia arranged the unlawful early release of superannuation benefits to 35 clients	Banned from providing financial services for six years	<a href="#">12-235MR</a>
<b>City Index Australia Pty Ltd</b>	Allegedly false or misleading representations	We alleged that City Index made statements were in breach of prohibitions in the ASIC Act relating to false or misleading representations and misleading conduct in relation to financial services	\$13,200 in total paid in compliance with two infringement notices. Compliance is not an admission of guilt or liability and City Index Australia Pty Ltd is not taken to have contravened the relevant provisions of the ASIC Act	<a href="#">12-256MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Apple Investment Company Pty Ltd</b>	Failed to comply with financial services laws	Breached referral selling provisions when it offered its 'Apple Tree', where clients could receive commissions from the trading of family or friends they had referred to Apple Investment. It was found that despite our advice to Apple Investment that the Apple Tree program was non-compliant, Apple Investment failed to take all steps to cease promoting Apple Tree. We also found that Apple Investment made false or misleading statements to clients, and failed to give a Product Disclosure Statement to all clients	Banned from providing financial services for five years	<a href="#">12-258MR</a>
<b>Ricky Gillespie</b>	Failed to comply with financial services laws	Forged clients' signatures on documents such as a direct debit request, transaction without advice documents, confidential fact finder and Financial Services Guide receipts. We also found that Mr Gillespie created false file notes, provided advice to a client that was not appropriate in the circumstances, and charged excessive fees	Permanently banned from providing financial services	<a href="#">12-269MR</a>
<b>Walter Fullerton-Smith</b>	Failed to comply with financial services laws	Breached the 'client-planner' relationship as the financial adviser for an elderly couple, in their 80s, by using their MLC investments as security for a margin loan taken out in the name of a trust of which he was the trustee and one of the beneficiaries while knowing they stood to lose their entire investment.  We also found that Mr Fullerton-Smith engaged in misleading or deceptive conduct, or conduct likely to mislead or deceive, when procuring the elderly couple's units in an MLC MasterKey Unit Trust as security for the trust margin loan account, and did not pass on to his elderly clients \$60,051 paid to him in error by the CBA as a settlement under the CBA Storm Resolution Scheme	Permanently banned from providing financial services	<a href="#">12-296MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Ropati Broederlow</b>	Unlicensed conduct, dishonest conduct and made false or misleading statements	Advised clients to deposit funds into a trust account looked after by his company, RN Property Pty Ltd. Mr Broederlow told clients that their savings would be used by them to purchase a house, with the assistance of RN Property. However, when the clients called for their savings, both RN Property and Mr Broederlow failed to use the funds on the clients' behalf or refund the invested money	Permanently banned from providing financial services. ASIC also permanently banned from engaging in credit activities, with ASIC also cancelling the credit licence of Yourefund Pty Ltd, of which he was the sole director	<a href="#">12-158MR</a>
<b>Phillip Paddison</b>	Dishonest conduct	Engaged in dishonest conduct that involved more than 100 clients and over \$150,000. Mr Paddison failed to forward clients' business and personal insurance payments	Permanently banned from providing financial services	<a href="#">12-159MR</a>
<b>Robert Henley</b>	Misleading and deceptive conduct	We found that Mr Henley failed to ensure that Apple Investment Company Pty Ltd did not make misleading statements in its website and brochure, and failed to ensure that Apple Investment provided a Product Disclosure Statement to all clients who required one. Mr Henley also failed to take an active role in ensuring Apple Investment complied with its obligations as a provider of financial services.  We have reason to believe that Mr Henley will not comply with financial services laws	Banned from providing financial services for five years	<a href="#">12-319MR</a>
<b>Colin Oberg</b>	Dishonest conduct	Withdrew over \$1.55 million of client funds without their authorisation or approval	Permanently banned from providing financial services	<a href="#">12-164MR</a>
<b>Mark Booty</b>	Gained a benefit by fraud	Following an investigation by WA Police, was convicted of defrauding seven clients involving more than \$1.1 million	Permanently banned from providing financial services or engaging in any credit activities	<a href="#">12-299MR</a>
<b>Almaza Boutros</b>	Fraud	Engaged in credit activities after being convicted of a serious fraud offence	Permanently banned from engaging in credit activities	<a href="#">12-163MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Australian Performance Finance Pty Limited</b>	Company ceased engaging in credit activities	Australian Performance Finance entered into receivership and was no longer engaging in credit activities	Credit licence cancelled	<a href="#">12-247MR</a>
<b>Athol Halverson</b>	False and misleading conduct	Submitted loan applications which contained information that was false and misleading about the income and employment of the borrowers	Banned from providing financial services and engaging in credit activities for six years	<a href="#">12-249MR</a>
<b>Property and Gearing.Com Pty Ltd (previously known as Australian Finance Club Pty Ltd)</b>	False and misleading conduct	Athol Halvorsen, who acted as Property and Gearing.Com's senior manager and was largely responsible for the administration of its licence, was banned from engaging in credit activities and from providing financial services for six years after it was found that he had engaged in conduct that was false and misleading	Credit licence cancelled	<a href="#">12-249MR</a>
<b>Key Credit</b>	Allegedly engaged in conduct contrary to provisions in the National Credit Act	Allegedly entered into credit contracts with consumers which created mortgages over essential household goods	\$5,500 in total paid in compliance with five infringement notices. Compliance is not an admission of guilt or liability and Key Credit is not taken to have contravened the relevant provisions of the National Credit Act	<a href="#">12-267MR</a>
<b>Driss Doukari</b>	False and misleading conduct	Provided false documents to Suncorp-Metway Limited in support of a home loan application in his own name	Permanently banned from engaging in credit activities and providing financial services	<a href="#">12-321MR</a>
<b>Janece Giraldo</b>	Failed to comply with financial services laws	Engaged in misleading and deceptive conduct, failed to determine the personal circumstances of her clients when giving advice, failed to provide Statements of Advice on providing recommendations concerning financial products, and failed to disclose relevant benefits, including fees and commissions, to her clients	Banned from providing financial services for five years	<a href="#">12-202MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Morrison Carr Financial Services, Dennis Cardakari</b>	Provided false information to its insurer and took steps to avoid client claims	Morrison Carr did not have in place adequate compensation arrangements, Mr Cardakaris provided false information in relation to an application for professional indemnity insurance and arranged for the transfer of business from a previous AFS licence, Morrison Carr Australia and in doing so, affected the ability of claimants of the previous licensee to pursue their claims	AFS licence and credit licence cancelled, Mr Cardakari permanently banned from providing financial services and engaging in credit activities	<a href="#">12-183MR</a>
<b>Lion Advantage Limited</b>	Breach of licence obligations	Failed to have adequate professional indemnity insurance in place, failed to lodge audited financial reports on time for Lion Advantage and the schemes it operated, and failed to hold membership of an ASIC-approved EDR scheme	AFS licence and credit licence cancelled	<a href="#">12-199MR</a>
<b>David Hickie</b>	Failed to comply with financial services laws	As the chief executive of Lion Advantage, Mr Hickie failed to comply with the obligation to notify ASIC of significant breaches, and did not have adequate compliance measures in place to ensure compliance with financial services laws	Banned from providing financial services for two years	<a href="#">12-199MR</a>
<b>Addwealth Financial Services Pty Ltd</b>	Alleged failure to provide appropriate advice to clients	Addwealth may have failed to provide advice that was appropriate to certain clients in light of their circumstances and may have failed to have in place adequate arrangements for the management of conflicts of interest	Licence conditions imposed. Licence subsequently cancelled as Addwealth was unable to comply with its licence conditions. See <a href="#">13-050MR</a>	<a href="#">12-215MR</a>
<b>Peter Holt</b>	Failed to comply with financial services laws	Failed to have a reasonable basis for the advice he gave to retail clients. Further, Mr Holt failed to meet his disclosure obligations to disclose the costs and benefits that may be lost in switching a clients' superannuation and failed to ensure the business maintained professional indemnity insurance	Banned from providing financial services for three years	<a href="#">12-236MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Australian Performance Financial Planning</b>	Company had been put under the control of an external administrator	Company had been put under the control of an external administrator	AFS licence cancelled	<a href="#">12-255MR</a>
<b>Alec Khoo</b>	Failed to comply with financial services laws	Failed to have a reasonable basis for advice that clients borrow funds through a margin lending facility and invest a substantial portion of those funds in cash investments for up to three years. This advice resulted in a significant portion of the clients' investment portfolio making a loss as the interest paid on the borrowed funds was higher than the interest earned on the cash investments	Banned from providing financial services for three years	<a href="#">12-259MR</a>
<b>Enforceable undertakings and negotiated outcomes</b>				
<b>James Mousa</b>	Inappropriate advice	We were concerned that Mr Mousa did not demonstrate that he had a reasonable basis for some advice provided or that he had determined the risk tolerance of clients before providing advice	Mr Mousa has undertaken to complete specified courses of professional development within six months and to submit to a regime of supervision, audit and review of the financial services he provides to clients by an independent senior financial planner for a period of two years	<a href="#">12-270MR</a>
<b>RAMS Financial Group Pty Limited</b>	Potentially misleading advertising	We were concerned that advertising for the RAMS Saver account left out important information and failed to give enough prominence to the conditions associated with the 0.8% bonus. In particular, we were concerned that the advertising did not disclose that in order to achieve the monthly bonus rate, consumers could not make any withdrawals from the account during the month	In response to our concerns, RAMS amended its advertisement and is also taking steps to clarify its product information with customer	<a href="#">12-153MR</a>

Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>Graham Rendell, Key Credit</b>	Compliance requirements	We were concerned there may have been underlying weaknesses in Key Credit's compliance processes	Under the enforceable undertaking, Key Credit has agreed: <ul style="list-style-type: none"> <li>to contact each affected borrower informing them that the mortgages over their essential household property are void and not enforceable; and</li> <li>that if borrowers default in their loan repayments, Key Credit will not and cannot take possession of that essential household property</li> </ul>	<a href="#">12-267MR</a>
<b>RHG Mortgage Corporation Ltd</b>	Unconscionable or unjust conduct	We were concerned some of RHG Mortgage Corporation's fees were unconscionable or unjust under the National Credit Code	Over 6,400 consumers will be refunded more than \$3.3 million by RHG Mortgage Corporation, following our concerns about discharge and early termination fees charged on home loans terminated since 1 July 2010. Affected customers will receive refunds ranging from \$50 to over \$10,000, with the most common refund being \$400.  RHG Mortgage Corporation has also agreed to reduce its discharge fees on existing loans and to the staggered removal of early termination fees for thousands of customers going forward	<a href="#">12-169MR</a>
<b>Cash Today Pty Ltd</b>	Potentially misleading advertising	Cash Today's website advertised the regular repayment amounts on loans, in some cases without disclosing what interest rate would apply. In other cases, while rates were disclosed, they were not expressed as annual percentage rates, as required by the National Credit Act	Cash Today changed the advertising of its low-value short-term loans	<a href="#">12-197MR</a>



Defendant	Conduct	Summary of offence, contravention or misconduct	Outcome	Media release
<b>GE Money</b>	Potentially misleading advertising	Advertisements stated that consumers could borrow 'from \$3,000' with an interest rate 'from 13.99% p.a.' However, the fine print disclosed that only loans over \$20,000 were eligible for an interest rate starting from 13.99% p.a. For loans of \$3,000, interest rates started at 15.79%, and could be much higher	GE Money changed its online advertising to more clearly disclose the applicable interest rate	<a href="#">12-198MR</a>
<b>Terence Webb</b>	Inappropriate advice	Mr Webb, while employed at Storm, only advised clients to invest in accordance with the single investment strategy predominantly recommended by Storm. Further, we were concerned that he failed to warn those clients that this advice may not have been tailored to meet their financial goals and objectives	Mr Webb has agreed to complete specified courses of professional development within twelve months. He must also submit to a regime of supervision, audit and review of the financial services he provides to clients by an ASIC-approved independent senior financial planner for two years	<a href="#">12-291MR</a>

## 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 out a financial services business to provide financial services  Note: this is a definition contained in s761A of the Corporations Act.
AFS licensee	A person who holds an Australian financial services licence under s913B of the Corporations Act  Note: This is a definition contained in s761A of the Corporations Act
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASX	ASX Limited or the exchange market operated by ASX Limited
Australian auditing standards	Standards issued by the Auditing and Assurance Board pursuant to s336 of the Corporations Act
CBA	Commonwealth Bank of Australia
CDPP	Commonwealth Director of Public Prosecutions
CFDs	Contracts for difference
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purpose of that Act
CommSec	Commonwealth Securities Ltd
COSL	Credit Ombudsman Service Limited
credit activity (or credit activities)	Has the meaning given in s6 of the National Credit Act
credit licensee	A person who holds an Australian credit licence under s35 of the National Credit Act
EDR	External dispute resolution
EDR scheme (or scheme)	An external dispute resolution scheme approved by ASIC under the Corporations Act (see s912A(2)(b) and 1017G(2)(b)) and/or the National Credit Act (see s11(1)(a)) in accordance with our requirements in Regulatory Guide 139 <i>Approval and oversight of external dispute resolution schemes</i>
enforcement outcome	Any formal action to secure compliance, about which ASIC has made a public announcement

Term	Meaning in this document
financial service	Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act
FOS	Financial Ombudsman Services
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
MDP (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>
National Credit Code	National Credit Code at Sch 1 of the National Credit Act
Proceeds of Crime Act	<i>Proceeds of Crime Act 2002</i>
PwC	PricewaterhouseCoopers
QGC	Queensland Gas Company
relevant period	1 July to 31 December 2012
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 100 *Enforceable undertakings*

### Legislation

ASIC Act, s19, 93A, 93AA

*Criminal Code Act 1995*, s11.2(1)

Corporations Act, s674(2), 798H(1)

National Credit Act, Sch 1 (National Credit Code), s33(2), 123(6); National Consumer Credit Protection Regulations 2009

Proceeds of Crime Act

### 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