



ASIC

Australian Securities & Investments Commission

REPORT 485

ASIC enforcement outcomes: January to June 2016

August 2016

About this report

This report outlines the enforcement results achieved by ASIC during the period from 1 January to 30 June 2016 (the relevant period). The report provides a high-level overview of some of our enforcement priorities and highlights some important cases and decisions during this period.

About ASIC regulatory documents

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

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

Regulatory guides: give guidance to regulated entities by:

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

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

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

Previous reports on ASIC's enforcement outcomes

| Report number | Report date |
|---------------|----------------|
| REP 476 | March 2016 |
| REP 444 | August 2015 |
| REP 421 | January 2015 |
| REP 402 | July 2014 |
| REP 383 | January 2014 |
| REP 360 | July 2013 |
| REP 336 | April 2013 |
| REP 299 | September 2012 |
| REP 281 | March 2012 |

Disclaimer

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

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

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Overview

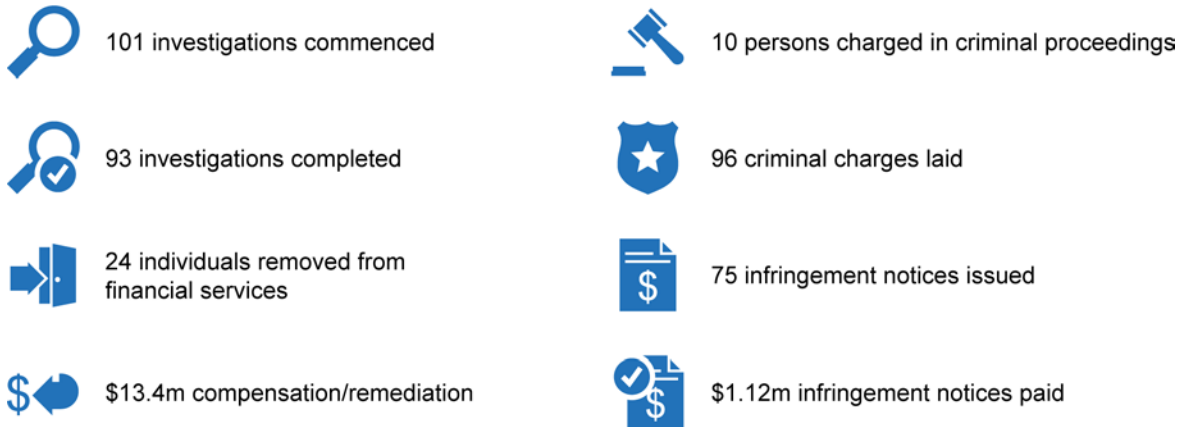
ASIC's role and the scope of this report

- 1 ASIC investigates and enforces the law to give effect to our strategic priorities of:
 - (a) promoting investor and financial consumer trust and confidence;
 - (b) ensuring fair, orderly and transparent markets; and
 - (c) providing efficient and accessible registration.
- 2 This report considers our enforcement activities and results achieved during the period from 1 January to 30 June 2016 (the relevant period).
- 3 This report covers:
 - (a) Section A—ASIC's enforcement priorities, including:
 - (i) our areas of focus and how we aim to support [ASIC's Corporate Plan 2015–16 to 2018–19](#); and
 - (ii) our priorities for the next six months, including our pending matters before the court;
 - (b) Section B—key actions that we have taken to enforce the law and support our priorities; and
 - (c) Appendix 1—statistics about our enforcement results.
- 4 We are committed to transparency about our enforcement work. Previous reports are available on [our website](#).

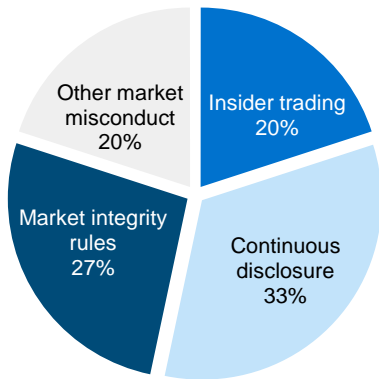
Summary of key results

- 5 Figure 1 summarises our key enforcement results in the relevant period. The pie graphs show the proportion of total activity represented by different categories of misconduct in each enforcement area.

Figure 1: Summary of key enforcement results by misconduct type



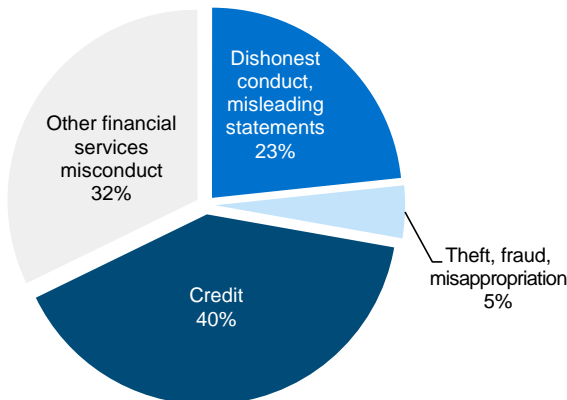
Market integrity results by misconduct type (%)



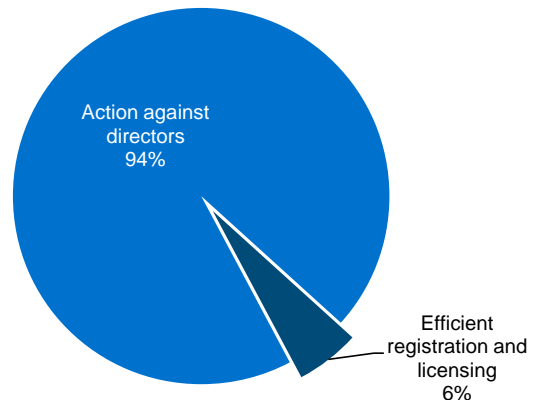
Corporate governance results by misconduct type (%)



Financial services results by misconduct type (%)



Small business results by misconduct type (%)



Note 1: Percentages are rounded to the nearest unit.

Note 2: See Table 9 to Table 13 in Appendix 2 for the data shown in this figure (accessible versions).

A Enforcement objectives

Key points

This section focuses on our enforcement priorities and how these support ASIC's Corporate Plan.

In line with ASIC's Corporate Plan, we are addressing the long-term challenges of:

- balancing a free market-based system with investor and financial consumer protection;
- digital disruption;
- structural change;
- financial innovation-driven complexity; and
- globalisation.

We have also set out our focus for addressing other challenges over the next six months.

Our long-term challenges

- 6 ASIC's Corporate Plan has been developed and published, spanning across four financial years—from 2015–16 to 2018–19. The plan forms the foundation for our areas of focus.
- 7 The priorities for our enforcement teams, during the period covered by the corporate plan, are set out below. These are based on addressing the plan's long-term challenges in regulating a broad number of industries.

Balancing a free market-based system with investor and financial consumer protection

- 8 We have identified particular risks arising from poor gatekeeper culture and conduct in relation to:
- (a) responsible entities;
 - (b) lenders;
 - (c) markets; and
 - (d) directors, auditors and insolvency practitioners.
- 9 Culture and incentives are key drivers of the behaviour of gatekeepers in our financial system. We are addressing the long-term challenge of achieving the right balance between a free market-based system and investor and financial consumer protection. In doing so, we continue to focus on responding to poor gatekeeper culture and conduct by taking enforcement or other regulatory action, where appropriate.

Digital disruption

- 10 The increasing incidence, complexity and reach of malicious cyber activity can undermine businesses and destabilise our markets, eroding investor and financial consumer trust and confidence in the financial system and the wider economy.
- 11 We will take appropriate enforcement action by accepting enforceable undertakings or issuing infringement notices where we identify wrongdoing—for example, where disclosure by companies and issuers provides insufficient information on cyber threats.

Structural change

- 12 We expect that structural change in our financial system, driven by growth in superannuation, will continue in the future. We are therefore addressing this challenge in the long term.
- 13 We will focus on:
- (a) working closely to support other proactive and reactive surveillance in the funds management sector;
 - (b) responding to poor financial advice affecting retirement savings; and
 - (c) where appropriate, taking enforcement or other regulatory action.

Financial innovation-driven complexity

- 14 An increase in the number of investors in hybrid products and exchange-traded options in recent years means that we need to protect and educate consumers.
- 15 The growing complexity and financialisation of financial markets continue to aid innovation and increase efficiency, changing how financial markets interact, including with investors. This has increased trading options for investors—for example, through dark pools and alternative exchanges.
- 16 We continue to support surveillance on complex products, services and distribution models that pose a high risk to investors and financial consumers. Where appropriate, we will take enforcement or other regulatory action.

Globalisation

- 17 The long-term challenges raised by globalisation will continue to hold our attention.
- 18 To facilitate substituted compliance and enforcement activities, we will focus on increasing recognition of Australia's regulatory regime by international authorities.

Next six months

- 19 The focus of ASIC’s enforcement activity over the next six months—from 1 July to 31 December 2016—will be on the following types of misconduct.

Market integrity

- 20 Conduct risk and the integrity of financial market benchmarks remain a high enforcement priority. We remain committed to ensuring that failure to meet disclosure obligations by entities and market abuse are addressed through enforcement action.

Corporate governance

- 21 We will continue to ensure that gatekeepers—company directors and officers, auditors, insolvency practitioners and business advisers—adhere to the high standards required by law. Where necessary, we will take action against those who fail to meet these standards.
- 22 We will focus on serious breaches where these indicate:
- (a) poor corporate culture;
 - (b) misuse of cross-border services and transactions;
 - (c) failure by corporations to respond appropriately to the threat of malicious cyber activity;
 - (d) misalignment between company disclosures, product design and investor understanding and expectations; and
 - (e) serious ‘phoenix’ behaviour and improper transactions in the face of insolvency.

Financial services

- 23 The Future of Financial Advice reforms introduced a number of obligations for financial advice firms and their advisers, including that they act in the best interests of their clients. We are focused on ensuring that firms and advisers comply with these obligations.
- 24 A significant component of this work falls within ASIC’s Wealth Management Project. This project aims to lift the standards of major financial advice providers—in particular, the quality of their advice and the remediation of clients who have suffered loss as a result of their failure or action.
- 25 ASIC is making progress with a number of investigations and surveillances targeting a range of misconduct within our Wealth Management Project. Figure 2 shows the results that we have achieved during the project to date.

Figure 2: ASIC's investigation into wealth management operations¹

Note: See Table 14 and Table 15 in Appendix 2 for the data shown in this figure (accessible versions).

- 26 In addition, we will concentrate on:
- (a) responsible lending practices in the credit industry; and
 - (b) ensuring that responsible entities of managed investment schemes comply with their disclosure and conduct obligations.

Matters before the courts as at 1 July 2016

- 27 In Table 1 to Table 4, we show the number of court matters, pending as at 1 July 2016, that have yet to achieve a final result. In some of these cases, the court has determined liability but not yet determined a penalty and/or final orders, or a plea of guilty has been entered but a decision on sentence has yet to be made. In other cases, the court is yet to determine whether a breach of the law or an offence has been committed.

¹ ASIC's actions are against the bank, or against licensees or advisers associated with the bank.

Table 1: Market integrity—Pending enforcement matters by misconduct type

| Type of misconduct | Criminal | Civil |
|-------------------------|----------|----------|
| Insider trading | 2 | 1 |
| Market manipulation | 1 | 2 |
| Continuous disclosure | 1 | 3 |
| Other market misconduct | 2 | 3 |
| Total | 6 | 9 |

Table 2: Corporate governance—Pending enforcement matters by misconduct type

| Type of misconduct | Criminal | Civil |
|---------------------------------------|-----------|-----------|
| Action against directors | 12 | 22 |
| Insolvency | 3 | – |
| Other corporate governance misconduct | – | 14 |
| Action against liquidators | 1 | 2 |
| Total | 16 | 38 |

Table 3: Financial services—Pending enforcement matters by misconduct type

| Type of misconduct | Criminal | Civil |
|--|-----------|-----------|
| Unlicensed conduct | 1 | 1 |
| Dishonest conduct, misleading statements | 12 | 25 |
| Misappropriation, theft, fraud | 3 | – |
| Credit | 7 | 3 |
| Other financial services misconduct | – | 31 |
| Total | 23 | 60 |

Table 4: Small business—Pending enforcement matters by misconduct type

| Type of misconduct | Criminal | Civil |
|--------------------------------------|------------|----------|
| Action against directors | 131 | – |
| Efficient registration and licensing | 7 | – |
| Total | 138 | – |

B Key matters completed over past six months supporting our enforcement objectives

Insider trading

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Insider traders are unfairly exploiting, for their financial benefit, the inherent information asymmetries between well-informed insiders and less well-informed investors, including retail investors.

Insider trading destroys trust in market fairness and transparency, and represents a market failure if it is prevalent.

Hui Xiao

- 28 Former Hanlong Mining managing director Hui Xiao was convicted of two ‘rolled up’ charges of insider trading, and was sentenced to a total of eight years and three months imprisonment. Mr Xiao had pleaded guilty to the two ‘rolled up’ charges of insider trading, and formally admitted a third ‘rolled up’ charge, involving a total of 102 illegal trades in financial products related to Sundance Resources Limited and Bannerman Resources Limited.
- 29 Before charges had been laid, Mr Xiao left Australia after receiving a variation to an existing order of the Supreme Court of New South Wales, which had been obtained by ASIC to restrain Mr Xiao’s travel. Mr Xiao failed to return to Australia in accordance with those orders.
- 30 Mr Xiao was later charged in Australia. ASIC worked with Australian and Hong Kong agencies to secure Mr Xiao’s arrest and return to Australia.
- 31 Mr Xiao had been in custody since his arrest in Hong Kong in January 2014 and his extradition from Hong Kong to Australia in October 2014. Taking into consideration time already served, Mr Xiao will not qualify for release until after 11 July 2019.
- 32 The sentence is the longest ever imposed by an Australian court for insider trading offences. Our investigations into this conduct also resulted in a number of other persons involved being convicted of insider trading.

Oliver Curtis

- 33 Oliver Peter Curtis was convicted for conspiring to commit insider trading after being found guilty by a Supreme Court jury. Mr Curtis was sentenced to two years jail—to be released after serving one year of imprisonment upon him entering into a recognisance to be of good behaviour for 12 months.

- 34 The conspiracy involved an agreement between Mr Curtis and John Hartman, where Mr Hartman would procure Mr Curtis to trade in contracts for difference (CFDs), when Mr Hartman held inside information about the trading intentions of his employer, Orion Asset Management Limited.
- 35 Mr Hartman agreed to provide Mr Curtis with instructions to engage in CFD trading that the pair expected to be profitable. Mr Curtis used this confidential information to trade on shifts in share prices—ultimately resulting in a total net profit of \$1,432,228.
- 36 We launched our investigation in 2009 after the conspiracy was exposed by Mr Hartman’s confession to ASIC, which resulted in Mr Hartman being convicted of related and unrelated insider trading offences.
- 37 On 14 July 2016, Mr Curtis filed a notice of application for leave to appeal against his conviction. The application is listed for callover in the New South Wales Court of Criminal Appeal.

Consumer credit

- 38 Failing to comply with consumer protection provisions can result in significant penalties. We continue to monitor compliance with these provisions.
- 39 In the relevant period, we issued 65 infringement notices in relation to consumer credit, requiring payment of penalties totalling \$739,500.

Area of focus

Balancing a free market-based system with investor and financial consumer protection

ASIC will target credit providers who fail in their obligations to financial consumers.

BMW Australia Finance Ltd

- 40 Car finance provider BMW Australia Finance Ltd (BMW Finance) paid penalties totalling \$391,000 and had a condition placed on its Australian credit licence following concerns raised by ASIC.
- 41 The licence condition required BMW Finance to appoint a compliance consultant after ASIC found that it breached important consumer protection provisions relating to responsible lending and the repossession of motor vehicles.

- 42 We found that, between November 2014 and May 2015, BMW Finance:
- (a) failed to make reasonable inquiries about, and take reasonable steps to verify, consumers' stated living expenses, income and cash at bank when there were unexplained discrepancies in the figures provided; and failed to make sufficient inquiries about consumers' capacity or plans to repay substantial balloon repayments due at the conclusion of the loan term;
 - (b) failed to assess credit contracts it entered into with consumers as unsuitable, and entered into unsuitable credit contracts, when documentation provided by consumers showed there was insufficient income available after expenses to service monthly loan repayments; and
 - (c) failed in or delayed compliance with its obligations to provide customers with statutory information setting out their rights and the options available to them after a finance company repossesses a mortgaged vehicle or the consumer voluntarily returns that vehicle.
- 43 These failures by BMW Finance to comply with the requirements of the law resulted, in ASIC's view, in customers entering into unsuitable loans and losing the benefit of important protections to reduce the impact of financial hardship.

ANZ Assured

- 44 Australia and New Zealand Banking Group (ANZ) paid penalties totalling \$212,500 where ASIC had concerns that there may have been a breach of responsible lending laws by ANZ in making offers of overdraft facilities to its customers.
- 45 ANZ offers an overdraft facility known as 'ANZ Assured' to existing customers in conjunction with particular transaction accounts.
- 46 ANZ sent written offers to certain customers to enter into the overdraft facility with a specified limit of either \$500 or \$1,000. Customers could accept the offers through various means: by mail, telephone and internet banking, or by attending a branch in person.
- 47 We found that:
- (a) for offers of a \$500 limit, customers were not given an option to elect a different overdraft amount; and
 - (b) for offers of a \$1,000 limit, customers were not given an alternative limit option if they responded to the offer by mail or in person at a branch.
- 48 These failures by ANZ were, in ASIC's view, a breach of its obligation to make reasonable inquiries about the credit limit a customer requires—a protection aimed at ensuring that consumers can select the credit limit that meets their needs, particularly where they may need a lower credit limit than the one on offer.

Protecting retail investors and financial consumers

Area of focus

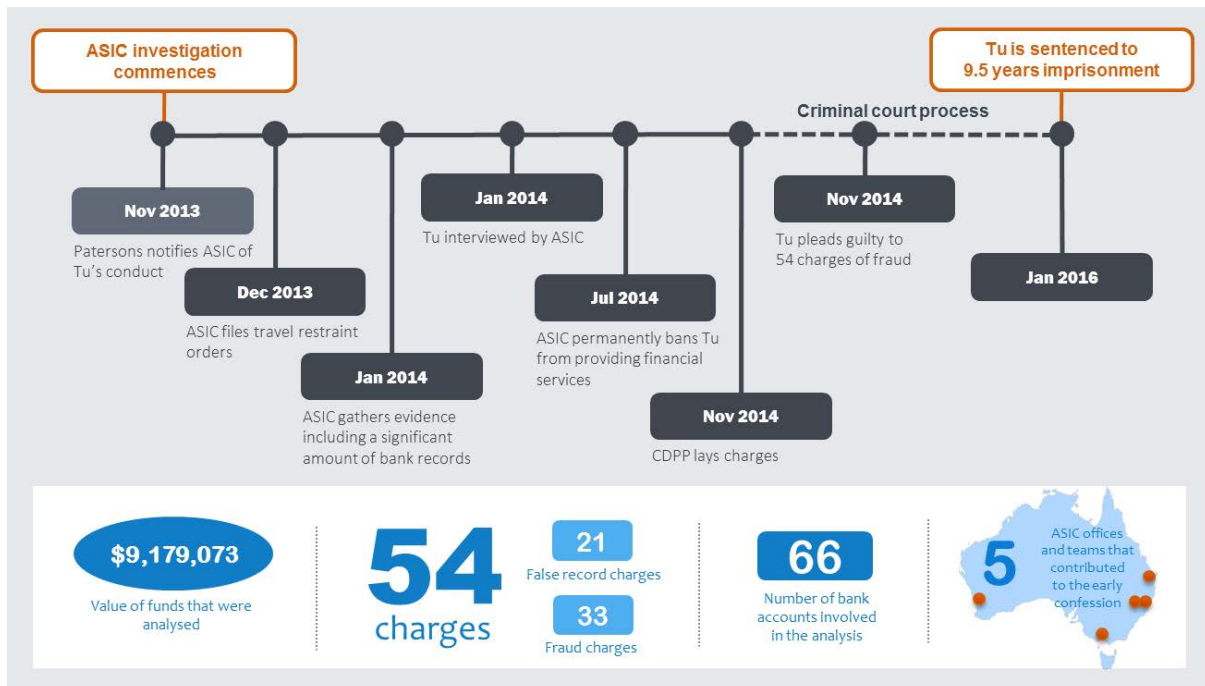
Balancing a free market-based system with investor and financial consumer protection

Financial advisers are required to discharge the obligations that are integral to their position of responsibility and trust.

Thanh Tu

- 49 Following a breach report from Patersons Securities Limited (Patersons), ASIC commenced an investigation into the activities of Thanh Tu, a former employee of Patersons.
- 50 ASIC alleged that between September 2008 and September 2013, while employed with Patersons, Mr Tu dishonestly induced 18 separate individual investors to invest approximately \$9 million. Mr Tu then fraudulently redirected the funds, through a number of different accounts, to a personal trading account held by him with another organisation. Mr Tu subsequently, for his own purposes, traded the money in risky investments and ultimately lost a total of \$8,120,073.53 of the original capital invested.
- 51 Figure 3 shows the chronology of our investigation and criminal action, and the key statistics relating to our analysis.

Figure 3: ASIC’s investigation into Thanh Tu



Note: See Table 16 and Table 17 in Appendix 2 for the data shown in this figure (accessible versions).

52 As a result of ASIC’s investigation, Mr Tu pleaded guilty to 33 counts of fraud and 21 counts of fraudulent falsification of records. Mr Tu was sentenced to nine-and-a-half years jail, and was permanently banned from providing financial services.

Area of focus

Poor advice

ASIC is investigating and has taken action against financial services businesses and advisers that have failed to comply with the Future of Financial Advice reforms. The reforms came into effect on 1 July 2013 and include the obligation to act in the best interests of clients.

Land banking

53 ASIC commenced two proceedings against a number of individuals and companies in relation to seven land banking schemes. Approximately 1,000 people invested in the schemes.

54 Land banking is a real estate investment scheme involving the acquisition of large blocks of land by promoters or developers of the scheme—often in undeveloped rural areas—who then offer portions of the land to investors. Investors either purchase a ‘lot of land’ under a standard real estate contract of sale or acquire an option to purchase a ‘lot of land’ in an unregistered plan of subdivision.

55 Our concerns related to:

- (a) the representations made about the schemes;
- (b) that the projects constituted financial products and/or managed investment schemes; and
- (c) the use of the money invested in the projects.

56 In March 2016, liquidators were appointed to eight companies associated with Jamie McIntyre and five 21st Century land banking schemes. This followed the appointment of provisional liquidators in October 2015, who reported to the Federal Court of Australia that each of the companies:

- (a) was insolvent; and
- (b) should be wound up to enable a liquidator to conduct further investigations into their respective affairs and identify any recoveries that might be made for the benefit of creditors.

57 At a final hearing of the proceeding, to commence in October 2016, ASIC will seek orders that Jamie and Denis McIntyre be disqualified from managing corporations.

58 In another proceeding brought by ASIC, liquidators were appointed in April 2016 to two companies—Bilkura Investments Pty Ltd and Foscari Holdings Pty Ltd—that each operated a land banking scheme in Victoria. These schemes raised a total of \$24 million from investors.

Ace Insurance

59 ASIC accepted a comprehensive enforceable undertaking from Ace Insurance Ltd following an in-depth investigation into the activities of Combined Insurance, a division of Ace Insurance.

60 ACE Insurance contracted salespeople who travelled door-to-door, selling and renewing Combined Insurance products. The majority of policies were sold in regional communities Australia wide.

61 Our investigation into misconduct by these salespeople found that they:

- (a) made misleading statements to consumers;
- (b) sold policies to consumers that duplicated coverage already held by the consumer and exceeded the underwriting limits imposed by Combined Insurance;
- (c) encouraged consumers to cancel existing policies and take up new policies that resulted in a change of coverage for no benefit and, on some occasions, to the consumer's detriment; and
- (d) sold policies to consumers that were unsuitable for them.

62 Our investigation also focused on systemic failures and poor culture within the Combined Insurance division.

63 ACE Insurance admitted that there had been contraventions of the Corporations Act and *Australian Securities and Investments Commission Act 2001* (ASIC Act), including the obligation to ensure its representatives complied with the duty to act in the best interests of clients. ACE Insurance also admitted that it failed to effectively implement a framework to foster and consistently maintain a culture of compliance within Combined Insurance.

64 Under the enforceable undertaking, ACE Insurance is required to:

- (a) appoint an independent expert to review Combined Insurance's compliance systems;
- (b) implement a remediation plan to compensate affected consumers; and
- (c) make a donation of \$1 million to financial counselling and financial literacy initiatives.

Tackling misuse of investors' funds

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Senior executives are important gatekeepers in the financial system. Company directors and senior executives are required to discharge the obligations that are integral to their position of responsibility and trust in any organisation.

Continental Coal

- 65 ASIC commenced an investigation into publicly listed Continental Coal Limited (CCC).
- 66 We alleged that CCC was not being properly managed and that the company had been involved in multiple contraventions of the corporations legislation, including:
- (a) a failure to comply with its continuous disclosure obligations;
 - (b) a failure to lodge its audited accounts and convene its annual general meeting;
 - (c) a failure to appoint a second Australian resident director;
 - (d) a failure to hold application money received under a rights issue on trust; and
 - (e) insolvency.
- 67 Following an ASIC application, the Federal Court of Australia in Perth made interim asset preservation orders by consent of the parties against a director of CCC—Peter Neil Landau—and two related entities.
- 68 In March 2016, ASIC restricted CCC from issuing a reduced content prospectus until 26 February 2017.
- 69 In May 2016, on ASIC's application, the Federal Court of Australia made orders winding up CCC on just and equitable grounds, and appointed Robert Kirman of McGrathNicol as official liquidator of CCC.

Holding gatekeepers to account

Area of focus

Balancing a free market-based system with investor and financial consumer protection

Responsible entities have an important role to play in ensuring that managed investment schemes are administered properly for the benefit of investors.

Macquarie Investment Management Ltd

- 70 ASIC commenced civil penalty proceedings in the Supreme Court of New South Wales against Macquarie Investment Management Ltd (MIML) as the responsible entity of the van Eyk Blueprint International Shares Fund (VBI Fund). The proceeding relates to investments of \$30 million made by the VBI Fund in 2012 into a Cayman Islands based fund, known as Artefact Partners Global Opportunities Fund (Artefact).
- 71 On 15 August 2014, MIML terminated the VBI Fund, with investors owed around \$30.9 million relating to the Artefact investments. Since then, Artefact has repaid \$20 million to the VBI Fund and MIML has paid the remaining approximate \$10.9 million plus interest to investors, the majority of which it expects to recover from Artefact's liquidator.
- 72 In the proceeding, MIML has admitted to five contraventions of the *Corporations Act 2001* (Corporations Act) arising from its failure to comply with its obligations as responsible entity of the VBI Fund and, in particular, its failure to adequately supervise and monitor the fund.
- 73 The penalty amount payable by MIML will be determined by the court following a hearing, which has been scheduled for 23 August 2016.

Ocataviar

- 74 The MFS Group—subsequently known as Octaviar—collapsed in 2008, owing \$2.5 billion. ASIC launched a civil action alleging that five senior executives of MFS misappropriated \$143.5 million of unitholders' money to repay the debts of other companies within the MFS Group. We alleged that the conduct involved misappropriating funds that were only available for investing in assets for the benefit of investors in the Premium Income Fund, and then falsifying and backdating company documents to justify the transactions.
- 75 The Supreme Court of Queensland found the five former executives—Michael Christodoulou King, Craig Robert White, David Mark Anderson, Guy Hutchings and Marilyn Anne Watts—liable for breaching their directors' and officers' duties.
- 76 The court's decision confirms the core obligations of a responsible entity and its directors and officers to operate the fund with due care and diligence, and in the best interests of the fund's members.
- 77 The matter will return to court in October 2016 for a hearing on penalties.

Appendix 1: Summary of enforcement results

Enforcement results—1 January 2016 to 30 June 2016

- 78 Table 5 to Table 8 show the results of our enforcement activity. These are reported on by reference to specialist enforcement teams and grouped by category of misconduct. Results achieved include court determinations (criminal and civil), administrative remedies, criminal guilty pleas which are yet to be the subject of a sentencing decision by the court, and the acceptance of enforceable undertakings.
- 79 These tables also include:
- (a) any regulatory action taken to secure compliance, about which we have made a public announcement; and
 - (b) a number of outcomes in our ‘small business compliance and deterrence’ team, which we do not generally announce through a media release.
- 80 It should be noted that we also undertake a significant number of surveillances and investigations that result in a less formal or non-public result (e.g. a negotiated agreement). These may not be covered in this report.

Table 5: Market integrity—Results by misconduct type

| Type of misconduct | Criminal | Civil | Admin | Enforceable undertaking | Negotiated outcome |
|-----------------------------------|----------|----------|----------|-------------------------|--------------------|
| Insider trading | 3 | – | – | – | – |
| Continuous disclosure | 1 | – | 3 | 1 | – |
| Market integrity rules | – | – | 4 | – | – |
| Other market integrity misconduct | 2 | – | 1 | – | – |
| Total | 6 | – | 8 | 1 | – |

Table 6: Corporate governance—Results by misconduct type

| Type of misconduct | Criminal | Civil | Admin | Enforceable undertaking | Negotiated outcome |
|---------------------------------------|----------|----------|-----------|-------------------------|--------------------|
| Action against directors | 7 | – | 4 | – | – |
| Action against auditors | – | – | – | – | 1 |
| Action against liquidators | 1 | – | – | 2 | 3 |
| Other corporate governance misconduct | – | 4 | 11 | 1 | – |
| Total | 8 | 4 | 15 | 3 | 4 |

Table 7: Financial services—Results by misconduct type

| Type of misconduct | Criminal | Civil | Admin | Enforceable undertaking | Negotiated outcome |
|--|----------|----------|-----------|-------------------------|--------------------|
| Dishonest conduct, misleading statements | 3 | 6 | 10 | – | 2 |
| Misappropriation, theft, fraud | 2 | – | 2 | – | – |
| Credit | 2 | – | 26 | 1 | 7 |
| Other financial services misconduct | 1 | 1 | 10 | 9 | 8 |
| Total | 8 | 7 | 33 | 10 | 17 |

Note: The two administrative remedies in the 'misappropriation, theft, fraud' category are currently under appeal.

Table 8: Small business—Results by misconduct type

| Type of misconduct | Criminal | Civil | Admin | Enforceable undertaking | Negotiated outcome |
|--------------------------------------|------------|----------|-----------|-------------------------|--------------------|
| Action against directors | 190 | – | 16 | – | – |
| Efficient registration and licensing | 12 | – | – | – | – |
| Total | 202 | – | 16 | – | – |

Note: Two of the 16 administrative remedies in the 'action against directors' category are currently under appeal.

Appendix 2: Accessible versions of figures

81 This appendix is for people with visual or other impairments. It provides the underlying data for each of the figures included in this report.

Summary of key enforcement results by misconduct type

82 Table 9 to Table 13 show the data contained in Figure 1.

Table 9: Summary of enforcement results

| Type | Number (or value) |
|---|-------------------|
| Investigations commenced | 101 |
| Investigations completed | 93 |
| Persons charged in criminal proceedings | 10 |
| Criminal charges laid | 96 |
| Individuals removed from financial services | 24 |
| Infringement notices issued | 75 |
| Infringement notices paid (value) | \$1.12m |
| Compensation/remediation (value) | \$13.4m |

Table 10: Market integrity results by misconduct type

| Type of misconduct | Proportion of total (%) |
|-------------------------|-------------------------|
| Insider trading | 20 |
| Continuous disclosure | 33 |
| Market integrity rules | 27 |
| Other market misconduct | 20 |

Note: Percentages are rounded to the nearest unit.

Table 11: Corporate governance results by misconduct type

| Type of misconduct | Proportion of total (%) |
|---------------------------------------|-------------------------|
| Action against directors | 32 |
| Action against liquidators | 18 |
| Action against auditors | 3 |
| Other corporate governance misconduct | 47 |

Note: Percentages are rounded to the nearest unit.

Table 12: Financial services results by misconduct type

| Type of misconduct | Proportion of total (%) |
|--|-------------------------|
| Dishonest conduct, misleading statements | 23 |
| Misappropriation, theft, fraud | 5 |
| Credit | 40 |
| Other financial services misconduct | 32 |

Note: Percentages are rounded to the nearest unit.

Table 13: Small business results by misconduct type

| Type of misconduct | Proportion of total (%) |
|--------------------------------------|-------------------------|
| Action against directors | 94 |
| Efficient registration and licensing | 6 |

Note: Percentages are rounded to the nearest unit.

Return to Figure 1.

ASIC's investigation into wealth management operations

83

Table 14 and Table 15 show the data contained in Figure 2.

Table 14: Wealth management operations—ASIC actions²

| Financial institution | Number of actions |
|--------------------------------|-------------------|
| Westpac Bank | 2 |
| National Australia Bank (NAB) | 6 |
| Macquarie Bank | 5 |
| Commonwealth Bank of Australia | 6 |
| ANZ | 2 |
| AMP | 3 |

Table 15: Wealth management operations—Types of action taken

| Types of action | Number or amount |
|---|------------------|
| Enforceable undertakings | 2 |
| Bannings for a specified period | 14 |
| Permanent bannings | 3 |
| Conditions and fines | 4 |
| Persons charged in criminal proceedings | 1 |

Return to Figure 2.

² ASIC's actions are against the bank, or against licensees or advisers associated with the bank.

ASIC's investigation into Thanh Tu

84 Table 16 and Table 17 show the data contained in Figure 3.

Table 16: Thanh Tu—Timeline

| Date | Events |
|---------------|---|
| November 2013 | <ul style="list-style-type: none"> • ASIC investigation commences • Patersons notifies ASIC of Tu's conduct |
| December 2013 | ASIC files travel restraint orders |
| January 2014 | <ul style="list-style-type: none"> • ASIC gathers evidence including a significant amount of bank records • Tu interviewed by ASIC |
| July 2014 | ASIC permanently bans Tu from providing financial services |
| November 2014 | <ul style="list-style-type: none"> • Commonwealth Director of Public Prosecutions (CDPP) lays charges • Criminal court process commences • Tu pleads guilty to 54 charges of fraud |
| January 2016 | Tu sentenced to 9.5 years imprisonment |

Table 17: Thanh Tu—Key statistics

| Type | Number or amount |
|--|---|
| Value of funds that were analysed | \$9,179,073 |
| Criminal charges laid | 21 false record charges 33 fraud charges |
| Number of bank accounts involved in the analysis | 66 |
| Location of ASIC teams that contributed to the investigation and its outcome | 5 |

Return to Figure 3.

Key terms

| Term | Meaning in this document |
|-------------------------|--|
| AFS licence | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A. |
| AFS licensee | A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A. |
| ASIC | Australian Securities and Investments Commission |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| ASIC's Corporate Plan | ASIC's Corporate Plan 2015–16 to 2018–19 |
| CDPP | Commonwealth Director of Public Prosecutions |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| credit activities | Has the meaning given in s6 of the National Credit Act |
| credit licence | An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities |
| credit licensee | A person who holds a credit licence under s35 of the National Credit Act |
| enforceable undertaking | An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations |
| enforcement result | Any formal action to secure compliance, about which ASIC has made a public announcement |
| financial service | Has the meaning given in Div 4 of Pt 7.1 of the Corporations Act |
| market integrity rules | Rules made by ASIC, under s798G of the Corporations Act, for trading on domestic licensed markets |
| NAB | National Australia Bank |
| National Credit Act | <i>National Consumer Credit Protection Act 2009</i> |
| relevant period | 1 January 2016 to 30 June 2016 |
| s180 (for example) | A section of the Corporations Act (in this example numbered 180), unless otherwise specified |

Related information

Headnotes

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

Legislation

ASIC Act

Corporations Act, s180–184, s588G and s590G

National Credit Act

Other documents

ASIC's Corporate Plan 2015–16 to 2018–19