



**ASIC**

Australian Securities & Investments Commission

**REPORT 536**

# **ASIC enforcement outcomes: January to June 2017**

August 2017

## **About this report**

This report outlines the enforcement results achieved by ASIC during the period from 1 January to 30 June 2017 (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.

### ASIC's reports on enforcement outcomes

Year	July to December	January to June
2017	N/A	REP 536 (August 2017)
2016	<a href="#">REP 513</a> (March 2017)	<a href="#">REP 485</a> (August 2016)
2015	<a href="#">REP 476</a> (March 2016)	<a href="#">REP 444</a> (August 2015)
2014	<a href="#">REP 421</a> (January 2015)	<a href="#">REP 402</a> (July 2014)
2013	<a href="#">REP 383</a> (January 2014)	<a href="#">REP 360</a> (July 2013)
2012	<a href="#">REP 336</a> (April 2013)	<a href="#">REP 299</a> (September 2012)
2011	<a href="#">REP 281</a> (March 2012)	N/A

### 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 consumer trust and confidence;
  - (b) ensuring fair and efficient markets; and
  - (c) providing efficient registration services.
- 2 This report considers our enforcement activities and results achieved during the period from 1 January to 30 June 2017 (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 2016–17 to 2019–20: Focus 2016–17](#) (ASIC's Corporate Plan); 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 enforcement outcomes reports](#) are available on our website.

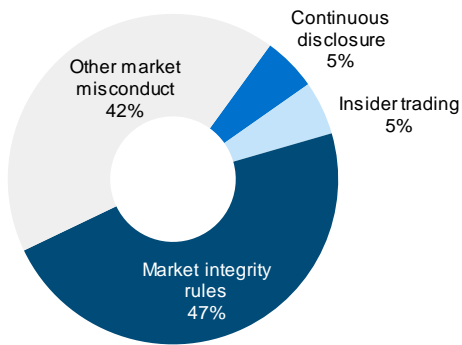
## Summary of key results

- 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.

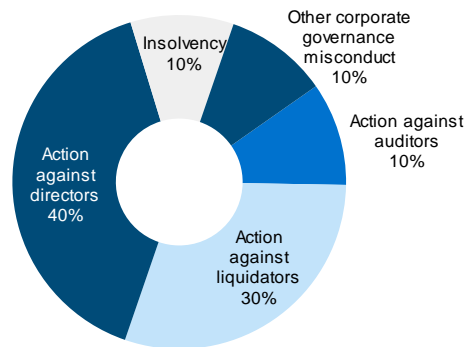
**Figure 1: Summary of key enforcement results by misconduct type**



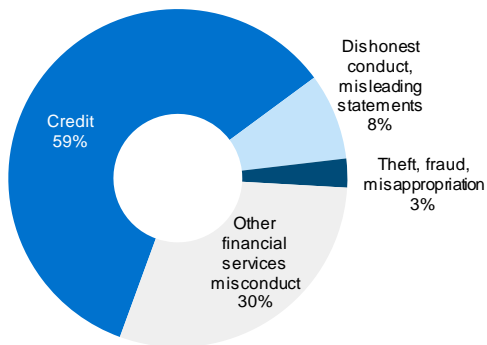
**Market integrity results by misconduct type**



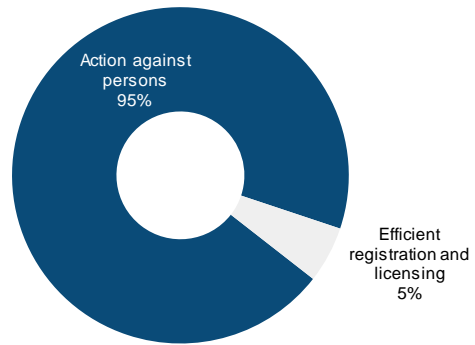
**Corporate governance results by misconduct type**



**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 version).

## 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:

- aligning conduct in a market-based system with investor and consumer trust and confidence;
- digital disruption and cyber resilience in our financial services and markets;
- structural change in our financial system through market-based financing, which is led by growth in superannuation;
- complexity in financial markets and products, driven by innovation; and
- globalisation of financial markets, products and services.

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

### Key risks 2016–17

- 6 ASIC's Corporate Plan has been developed and published, spanning across four financial years—from 2016–17 to 2019–20. 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 in paragraphs 8–13. These are based on addressing the plan's key risks in regulating a broad number of industries.

#### **Gatekeeper culture and conduct in financial services and credit**

- 8 We are focusing on culture and incentives that result in poor financial advice, irresponsible lending and mis-selling to retail investors and consumers, which can undermine trust and confidence in the financial system.

#### **Gatekeeper culture and conduct in markets**

- 9 We continue to focus on culture and incentives that drive poor conduct, which can undermine good governance practices and risk management systems and threaten market integrity.

**Digital disruption**

- 10 We are focusing on managing the risks that result from structural change and disruption in financial markets and services. This change and disruption arises from the rapid pace of technological developments—including new products and service delivery models that, if poorly implemented and operated, can undermine market integrity and trust and confidence.

**Cyber threats**

- 11 We continue to focus on the risks from cyber threats. The greater incidence, complexity and reach of malicious cyber activity can undermine increasingly digital businesses, destabilise markets, and erode trust and confidence in the financial system.

**Misalignment of retail product design and distribution with consumer understanding**

- 12 We are focusing on the risk from misalignment between people's understanding of financial products and how these products are designed, disclosed and marketed to them. We are targeting undesirable collective industry practices that jeopardise financial outcomes.

**Cross-border businesses, services and transactions**

- 13 We are focusing on the increasing volume of cross-border businesses, services and transactions, and the interconnectedness of markets across jurisdictions. These may compromise market integrity and trust and confidence in the global financial system.

**Next six months**

- 14 The focus of ASIC's enforcement activity over the next six months—from 1 July to 31 December 2017—will be on the following key risk areas for misconduct.

**Market integrity**

- 15 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 (e.g. insider trading and market manipulation) are addressed through enforcement action.

- 16 Over the next six months, we will continue to focus on conduct risk. We will also pay particular attention to:
- (a) technology-enabled offending and/or malicious cyber crime in the context of rapid technological developments;
  - (b) cross-border conduct that may compromise market integrity and the trust and confidence in the global financial system; and
  - (c) the implementation by the major banks of their respective enforceable undertakings to ensure the adequacy and robustness of the systems and controls in their foreign exchange businesses.

### **Corporate governance**

- 17 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.
- 18 We will have a particular focus on:
- (a) companies with poor corporate governance;
  - (b) undisclosed associations and substantial holdings in shares in public companies;
  - (c) related party transactions involving public companies;
  - (d) poor financial reporting by listed companies;
  - (e) auditing standards and audits of public companies; and
  - (f) insolvency practitioners and others who facilitate serious illegal ‘phoenix’ behaviour and improper transactions in the face of insolvency.

### **Financial services**

- 19 Over the next six months, we will continue to focus on enforcing higher standards in the financial services industry, paying particular attention to:
- (a) responsible lending practices in the consumer credit industry, including:
    - (i) what is expected of lenders in assessing loans (e.g. fraudulent loans) submitted by mortgage brokers; and
    - (ii) what is required to meet the obligations for assessing and verifying the borrower’s financial circumstances;
  - (b) financial advisers’ compliance with their obligation to act in the best interests of the client (best interests duty) and the obligation to provide appropriate advice to clients;
  - (c) Australian financial services (AFS) licensees’ failure to deliver ongoing advice services to financial advice customers who are paying fees to



receive those services—for more information, see [Report 499](#) *Financial advice: Fees for no service* (REP 499);

- (d) conduct in the credit repair industry that results in consumers being deceived or misled, either about the effectiveness of the services that they pay for, or about the credit repair firm’s ability to improve their credit history; and
- (e) instances where AFS licensees claim to provide general advice to retail clients during the sale of financial products (and therefore do not need to comply with the best interests duty and related obligations), but are actually providing personal advice.

### Matters before the courts as at 1 July 2017

20 Table 1 to Table 4 show the number of defendants in matters pending before the courts as at 1 July 2017. These matters have yet to achieve a final result because:

- (a) the court has determined liability but has not yet decided the penalty or made the final orders;
- (b) a plea of guilty has been entered but a decision on sentence has yet to be made; or
- (c) the court has yet to determine whether a breach of the law or an offence has been committed.

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

Type of misconduct	Criminal	Civil	Admin
Insider trading	1	0	0
Market manipulation	1	5	4
Continuous disclosure	0	4	0
Market integrity rules	0	1	7
Other market misconduct	2	25	4
<b>Total</b>	<b>4</b>	<b>35</b>	<b>15</b>

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

Type of misconduct	Criminal	Civil	Admin
Action against directors	8	19	6
Insolvency	2	23	0
Action against auditors	0	0	1
Action against liquidators	0	3	0
<b>Total</b>	<b>10</b>	<b>45</b>	<b>7</b>

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

Type of misconduct	Criminal	Civil	Admin
Unlicensed conduct	1	1	0
Dishonest conduct, misleading statements	10	14	8
Misappropriation, theft, fraud	1	0	1
Credit	1	3	7
Other financial services misconduct	0	41	4
<b>Total</b>	<b>13</b>	<b>59</b>	<b>20</b>

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

Type of misconduct	Criminal	Civil	Admin
Action against persons	137	0	74
Efficient registration and licensing	6	0	0
<b>Total</b>	<b>143</b>	<b>0</b>	<b>74</b>

## Investigation costs recovery

- 21 In July 2015, ASIC released [Information Sheet 204](#) *Recovery of investigation expenses and costs* (INFO 204), which states that, wherever possible, we will seek to recover investigation expenses and costs from persons who have caused those expenses and costs to be incurred.
- 22 Under s91 of the *Australian Securities and Investments Commission Act 2001* and s319 of the *National Consumer Credit Protection Act 2009*

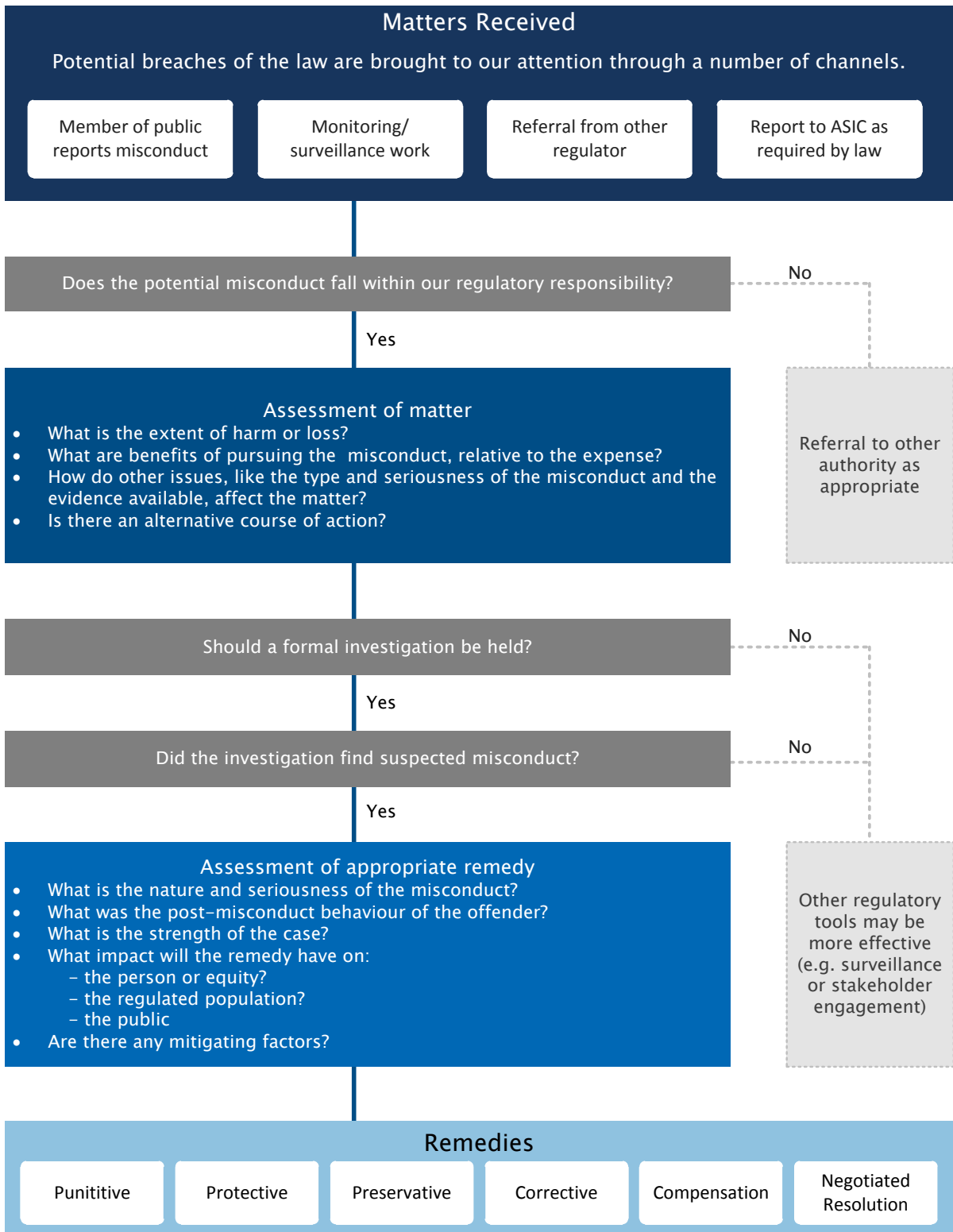
(National Credit Act), we have the power to make an order to recover our costs where, as a result of an investigation, a person is convicted, a judgement is awarded, or a declaration or other order is made.

- 23 This power allows ASIC to make an order to recover investigation expenses and costs, including:
- (a) salary costs for our staff who have worked on the investigation;
  - (b) travel expenses associated with the investigation, such as to interview witnesses;
  - (c) the costs of external legal counsel;
  - (d) the costs of employing an expert to perform an analysis; and
  - (e) investigation expenses and costs, other than litigation costs, that may be awarded by a court.
- 24 Our approach, since the release of INFO 204, has been to consider making an order for the recovery of our investigation expenses and costs in each case, where the legislative requirements are met.
- 25 For example, in December 2016, we made an order requiring German construction company Hochtief Aktiengesellschaft (Hochtief AG) to pay investigation costs of \$50,000 after the Federal Court found that the company had contravened the *Corporations Act 2001* (Corporations Act) by engaging in insider trading. This was in addition to an order made by the court that Hochtief AG pay \$50,000 for our legal costs.

## Enforcement process

- 26 Enforcement action is one of several regulatory tools used by ASIC to deter misconduct.
- 27 Figure 2 sets out the enforcement process and shows:
- (a) how potential breaches of the law are identified or brought to ASIC's attention;
  - (b) how we select matters for formal investigation;
  - (c) how we decide which enforcement tools to use; and
  - (d) the types of enforcement actions and remedies that are available.
- 28 Other regulatory tools used by ASIC include engagement with industry and stakeholders, surveillance, guidance, education and policy advice. For more information, see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

**Figure 2: ASIC’s approach to enforcement**



Note: See Table 14 in Appendix 2 for the full text description of the process shown in this figure (accessible version).

Source: INFO 151 (Figure 1)

## B Key matters completed over the past six months that support our enforcement objectives

### Foreign exchange supervision

#### Area of focus

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

ASIC remains focused on addressing the risk to financial markets arising from poor gatekeeper culture and conduct.

Confidence in financial markets can be undermined where conduct and oversight issues subvert a fair and orderly market.

#### **Enforceable undertakings by Westpac Banking Corporation, Australia and New Zealand Banking Group Limited and Macquarie Bank Limited**

- 29 ASIC accepted enforceable undertakings from each of Westpac Banking Corporation (Westpac), Australia and New Zealand Banking Group (ANZ) and Macquarie Bank Limited (Macquarie) in relation to the banks' wholesale foreign exchange businesses.
- 30 We were concerned that, between 1 January 2008 and 30 June 2013, each of the banks failed to ensure that their systems and controls were adequate to prevent, detect and respond to inappropriate conduct.
- 31 As a result of our investigation into Westpac, ANZ and Macquarie, we identified a number of instances of inappropriate conduct. These included:
- (a) disclosing confidential details of pending client orders to external parties, including identifying clients by code name;
  - (b) inappropriately exchanging confidential and potentially material information about the bank's or other institutions' client flow or proprietary positions;
  - (c) inappropriately disclosing confidential information about the bank's fix orders to an external party to inform a joint account trading strategy;
  - (d) acting with an external party to share confidential information, and enter and cancel offers on a trading platform other than in the ordinary course of hedging or market making;
  - (e) altering a proprietary position before the fix order on receipt of confidential and potentially material information about other institutions' fix orders; and
  - (f) trading in a manner that may have been intended to cause the trigger price for a stop-loss order to trade when it might not have traded at that time.

- 32 Under the enforceable undertaking, Westpac, ANZ and Macquarie will each develop a program of changes to their existing systems, controls, training and guidance, and the framework for monitoring and supervising employees within their spot foreign exchange businesses. This will be assessed by independent experts appointed by ASIC. For ANZ and Macquarie, the program will also cover their non-deliverable forwards businesses.
- 33 In addition, Westpac and ANZ each made community benefit payments of \$3 million, and Macquarie made a community benefit payment of \$2 million. The community benefit payments will support independent programs aimed at improving financial literacy.

### **Report 525 *Promoting better behaviour: Spot FX***

- 34 On 26 May 2017, we released [Report 525 \*Promoting better behaviour: Spot FX\*](#) (REP 525), which sets out a number of behavioural drivers of conduct that we observed during our investigation into the wholesale foreign exchange market.
- 35 The report draws on these observations to identify some good practice principles for managing these drivers to more effectively prevent, detect and respond to inappropriate conduct in foreign exchange markets.
- 36 We will use this report as a reference point for our supervision of foreign exchange markets.

## **Insider trading**

### **Area of focus**

Balancing a free market-based system with investor and 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 damages trust in market fairness and transparency and, if prevalent, represents a failure of the market.

### **Steven Noske**

- 37 On 28 April 2017, the West Australian Supreme Court sentenced former managing director Steven Robert Noske to 18 months imprisonment after he was found guilty of engaging in insider trading. Mr Noske was also fined \$20,000.

- 38 The court ordered that Mr Noske be released after serving nine months of his sentence, on entering a recognisance of \$10,000, subject to good behaviour for the remainder of the term. As a result of this conviction, Mr Noske was automatically disqualified from managing corporations for a period of five years.
- 39 In 2012, Mr Noske had purchased shares in ASX-listed WestSide Corporation Limited, while he was being consulted by the managing director of LNG Limited on aspects of its proposed takeover of WestSide Corporation Limited. Following the announcement of the proposed takeover, the price of WestSide Corporation Limited shares increased by nearly 60%. Mr Noske's trading resulted in an actual profit of \$51,246.34.

## Company officers, false information and continuous disclosure

### Area of focus

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

Continuous disclosure by listed companies is essential to maintaining fair, orderly and transparent markets.

To safeguard the integrity of markets, company officers must ensure that material information is made available in a timely and accurate way.

### Benjamin David Kirkpatrick

- 40 On 30 January 2017, the former executive chairman of Waratah Resources Limited, Benjamin David Kirkpatrick, was convicted after pleading guilty to a charge of aiding and abetting Waratah Resources Limited to breach its continuous disclosure obligations. This is Australia's first criminal conviction relating to breaches of a company's continuous disclosure obligations.
- 41 In pleading guilty, Mr Kirkpatrick also admitted to an offence of having authorised the release of false information to the market. Mr Kirkpatrick was sentenced to 12 months imprisonment, to be served as a 12-month intensive corrections order. As a result of this conviction, Mr Kirkpatrick was automatically disqualified from managing corporations for a period of five years.
- 42 The conduct relates to a company announcement on 14 October 2013, asserting that Waratah Resources Limited had established a \$100 million trade finance facility with the Bank of China, when no such facility had been established or agreed on. Between 14 and 25 October 2013, Mr Kirkpatrick failed to correct this announcement, causing Waratah Resources to breach its continuous disclosure obligations.

## Protecting retail investors and consumers

### Area of focus

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

The provision of efficient, honest and fair financial services is vital to the integrity and proper functioning of Australia's financial markets.

### Shun Yuen Li

- 43 On 6 June 2017, ASIC permanently banned Shun Yuen Ken Li (also known as Leo Lee) from providing financial services.
- 44 Mr Li was banned after pleading guilty to, and being convicted of, two counts of dishonestly using his position as an employee of GAIN Capital Australia Pty Ltd (GAIN Capital) with the intention of gaining an advantage for two clients, in contravention of s184(2)(a) of the Corporations Act. Mr Li was sentenced in the Downing Centre Local Court to a community service order of 350 hours.
- 45 The charges related to Mr Li's use of his position as an employee of GAIN Capital to place orders for two clients. Mr Li's orders resulted in these clients obtaining profits of approximately \$20,150 and \$52,400 respectively. GAIN Capital has recovered the full amount of \$72,550 from the clients' accounts.

### Bingxing Hu

- 46 On 20 April 2017, ASIC banned Dr Bingxing Hu from providing financial services for five years. Dr Hu had been a director of AFS Capital Securities Limited since 8 April 2010.
- 47 The banning follows our investigation into Dr Hu's conduct between 4 August 2014 and 4 June 2015 when AFS Capital Securities Limited was acting as lead manager for a company's listing on ASX. The conduct relates to misrepresentations by Dr Hu that the minimum shareholder spread requirements of the ASX listing rules had been met.
- 48 Following a hearing, the ASIC delegate found that Dr Hu had failed to comply with a financial services law by engaging in conduct that was likely to mislead in contravention of s1041H(1) of the Corporations Act.
- 49 The ASIC delegate also found that Dr Hu may not be adequately trained or competent to provide financial services, given his misunderstanding and disregard of the rules applying to the financial services he was providing.



## Consumer credit

### Area of focus

Vulnerable consumers

ASIC has a priority to ensure that credit providers act conscientiously and in compliance with their responsible lending obligations when dealing with vulnerable consumers.

Failing to comply with the consumer credit protection provisions can result in significant penalties. We continue to monitor compliance with these provisions.

### Channic Pty Ltd and Cash Brokers Pty Ltd

- 50 On 7 April 2017, the Federal Court ordered Colin William Hulbert—the sole director of Cairns-based lender Channic Pty Ltd—and Cash Brokers Pty Ltd to pay costs of \$420,000. Mr Hulbert was also fined \$776,000 for breaching consumer credit laws.
- 51 We commenced civil penalty proceedings after the Indigenous Consumer Assistance Network reported that Channic and Cash Brokers were dealing unjustly with vulnerable Indigenous consumers.
- 52 The misconduct involved Cash Brokers assisting consumers to obtain loans from Channic to purchase vehicles at 48% interest. Channic failed to assess the lending capacity of customers.
- 53 The Federal Court found that Channic and Cash Brokers breached the responsible lending provisions of the National Credit Act, and Channic engaged in unconscionable conduct and entered into unjust transactions.

## Holding gatekeepers to account

### Area of focus

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

Company directors and senior executives and officers are important gatekeepers who hold positions of responsibility and trust, and who are required to lawfully discharge the obligations that these positions carry.

### Octaviar

- 54 On 26 May 2017, the Supreme Court of Queensland disqualified four former officers and the funds manager of MFS Investment Management Limited (MFSIM) from managing corporations, and imposed financial penalties.

55 The bans ranged from a permanent ban down to five years, and the financial penalties ordered by the court ranged from \$650,000 to \$90,000. The court also ordered that the former officers pay various amounts of up to \$205,755,601 in compensation and legal costs.

56 The court had earlier found that Michael Christodoulou King, Craig Robert White, David Mark Anderson, Guy Hutchings and Marilyn Anne Watts had collectively committed 217 contraventions of the Corporations Act.

57 The MFS Group collapsed in 2008 owing \$2.5 billion.

58 In late 2009, we launched civil penalty proceedings against MFS Group, alleging the misappropriation of \$143.5 million of funds that had been held by the managed investment scheme known as Premium Income Fund on behalf of unitholders. The misappropriated funds were used to pay debts owed by other related entities in the MFS Group (which was subsequently known as Octaviar).

### **AWB**

59 On 10 April 2017, the Supreme Court of Victoria ordered that Trevor Flugge—former chairman of AWB Limited—pay a pecuniary penalty of \$50,000 and be disqualified from managing corporations for a period of five years.

60 These orders followed the court delivering a judgment in December 2016, in which it found that Mr Flugge had contravened s180(1) of the Corporations Act. Mr Flugge had breached his duties as a director of AWB by failing to make adequate inquiries about the propriety of payments made to the Government of Iraq while the country was subject to United Nations sanctions. As a consequence, the court found that Mr Flugge failed to prevent AWB from engaging in improper conduct.

### **Avestra Asset Management Ltd**

61 On 12 May 2017, the Federal Court delivered a judgment disqualifying former directors of Avestra Asset Management Ltd (Avestra)—Paul Rowles and Clayton Dempsey—from managing corporations and from providing financial services for a period of 10 years.

62 The court held that Avestra, Mr Rowles and Mr Dempsey had engaged in numerous contraventions of the Corporations Act, including failing to comply with duties owed by them as officers of the responsible entity and as directors of Avestra.

63 Avestra was a Queensland-based responsible entity and AFS licensee that operated a number of registered and wholesale managed investment schemes. Following an application brought by ASIC, the Federal Court

appointed provisional liquidators on 27 October 2015. The court subsequently ordered the winding up of Avestra's five registered managed investment schemes on 11 December 2015, and ordered the winding up of Avestra on 19 February 2016.

### **Michael O'Sullivan and Provident Capital**

64 On 2 May 2017, the Administrative Appeals Tribunal upheld a decision made by ASIC to disqualify Michael Roger O'Sullivan—former managing director of Provident Capital Ltd—from managing corporations for five years and from providing financial services for seven years.

65 The five-year period for which Mr O'Sullivan was banned from managing corporations is the maximum period of disqualification that ASIC can impose under s206F of the Corporations Act.

66 The conduct of Mr O'Sullivan related to the period between May 1998 and January 2014. Following our investigation, we found that Mr O'Sullivan breached his duties as a director and failed to comply with financial services laws.

67 We also banned two former non-executive directors and one former executive director of Provident Capital from providing financial services. The bans ranged from five years down to two years.

### **David St Pierre**

68 On 9 February 2017, a former Westpac Home Finance Manager, David St Pierre, was sentenced by the Southport District Court to three years imprisonment. The court ordered that Mr St Pierre be released after six months on a recognisance order, subject to good behaviour.

69 Mr St Pierre had been charged with dishonestly inducing Westpac to deliver property to the amount of approximately \$2.5 million. On 2 November 2016, Mr St Pierre had pleaded guilty to three counts of dishonest use of his position, with the intention of directly or indirectly gaining financial advantage for himself or others.

70 Our investigation arose from Mr St Pierre using his position in the bank to submit loan applications containing false information on behalf of elderly and vulnerable customers who had limited financial means and capacity.

### **Gavin Hyland**

71 On 15 May 2017, the Brisbane District Court convicted Gavin Keith Hyland of two counts of dishonestly using his position to misappropriate investor funds. Mr Hyland was the former director of Jacqalex Pty Ltd between 8 March 2010 and 4 November 2010.

- 72 Mr Hyland dishonestly applied \$104,110 of investor funds for personal use, including personal trading and using the funds to pay personal expenses and credit cards.
- 73 The court sentenced Mr Hyland to two years of imprisonment for the first count of dishonesty, and a further one year's imprisonment for the second count.
- 74 The court ordered that Mr Hyland be released on a recognisance order after serving six months of his sentence, subject to good behaviour for a period of three years and that he provide security of \$3,000.
- 75 As a result of this conviction, Mr Hyland was automatically disqualified from managing corporations for a period of five years.

## Appendix 1: Summary of enforcement results

### Enforcement results—1 January 2017 to 30 June 2017

- 76 Table 5 to Table 8 show the results of our enforcement activity. Each table sets out the results of a specialist enforcement team, which are grouped by category of misconduct. Results achieved include court determinations (criminal and civil), administrative remedies, criminal guilty pleas yet to receive sentencing decisions by the court, and the acceptance of enforceable undertakings.
- 77 These tables also include:
- (a) any regulatory action taken to secure compliance, which we have reported in public announcements; and
  - (b) a number of outcomes in our Small Business Compliance and Deterrence team, which we do not generally announce in media releases.
- 78 We undertake a significant number of surveillances and investigations that lead to less formal or unpublicised results (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	1	0	0	0	0
Continuous disclosure	1	0	0	0	0
Market integrity rules	0	0	9	0	0
Other market misconduct	2	1	3	2	0
<b>Total</b>	<b>4</b>	<b>1</b>	<b>12</b>	<b>2</b>	<b>0</b>

Note: One administrative remedy in the 'other market misconduct' category is currently under appeal.

**Table 6: Corporate governance—Results by misconduct type**

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Action against directors	2	1	1	0	0
Insolvency	0	1	0	0	0
Action against auditors	0	0	1	0	0
Action against liquidators	1	0	0	1	1
Other corporate governance misconduct	0	0	1	0	0
<b>Total</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>

**Table 7: Financial services—Results by misconduct type**

Type of misconduct	Criminal	Civil	Admin	Enforceable undertaking	Negotiated outcome
Dishonest conduct, misleading statements	1	2	8	1	0
Misappropriation, theft, fraud	0	0	4	0	0
Credit	2	3	80	0	1
Other financial services misconduct	0	9	26	4	4
<b>Total</b>	<b>3</b>	<b>14</b>	<b>118</b>	<b>5</b>	<b>5</b>

Note: Two administrative remedies in the 'dishonest conduct, misleading statements' category, one administrative remedy in the 'misappropriation, theft, fraud' category and one civil remedy in the 'credit' 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 persons	191	0	18	0	0
Efficient registration and licensing	12	0	0	0	0
<b>Total</b>	<b>213</b>	<b>0</b>	<b>18</b>	<b>0</b>	<b>0</b>

## Appendix 2: Accessible versions of figures

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

### Summary of key enforcement results by misconduct type

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

**Table 9: Summary of enforcement results**

Type	Number (or value)
Investigations commenced	57
Investigations completed	80
Persons charged in criminal proceedings	5
Criminal charges laid	32
Persons charged in summary prosecutions for strict liability offences	203
Criminal charges laid in summary prosecutions for strict liability offences	399
Individuals removed from financial services	23
Infringement notices issued	11
Infringement notices paid (value)	\$1.4 million
Compensation/remediation (value)	\$618.8 million

**Table 10: Market integrity results by misconduct type**

Type of misconduct	Proportion of total
Insider trading	5%
Continuous disclosure	5%
Market integrity rules	47%
Other market misconduct	42%

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	40%
Action against liquidators	30%
Action against auditors	10%
Insolvency	10%
Other corporate governance misconduct	10%

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	8%
Misappropriation, theft, fraud	3%
Credit	59%
Other financial services misconduct	30%

Note: Percentages are rounded to the nearest unit.

**Table 13: Small business results by misconduct type**

Type of misconduct	Proportion of total
Action against persons	95%
Efficient registration and licensing	5%

Note: Percentages are rounded to the nearest unit.

Return to Figure 1.

**Table 14: ASIC's approach to enforcement**

Step	Process
Step 1	<p>Potential misconduct is brought to ASIC's attention through:</p> <ul style="list-style-type: none"> <li>• a report of misconduct from a member of the public;</li> <li>• our monitoring or surveillance work;</li> <li>• a referral from another regulator; or</li> <li>• a report to ASIC as required by law.</li> </ul> <p>Does the potential misconduct fall within our regulatory responsibility?</p> <ul style="list-style-type: none"> <li>• If no, refer to another authority as appropriate.</li> <li>• If yes, go to Step 2.</li> </ul>



Step	Process
Step 2	<p>Assessment of matter:</p> <ul style="list-style-type: none"> <li>• What is the extent of harm or loss?</li> <li>• What are the benefits of pursuing the misconduct, relative to the expense?</li> <li>• How do other issues, like the type and seriousness of the misconduct and the evidence available, affect the matter?</li> <li>• Is there an alternative course of action?</li> </ul> <p>Go to Step 3.</p>
Step 3	<p>Should a formal investigation be held?</p> <ul style="list-style-type: none"> <li>• If no, go to Step 5.</li> <li>• If yes, go to Step 4.</li> </ul>
Step 4	<p>Did the investigation find suspected misconduct?</p> <ul style="list-style-type: none"> <li>• If no, go to Step 5.</li> <li>• If yes, go to Step 6.</li> </ul>
Step 5	<p>Other regulatory tools may be more effective (e.g. surveillance or stakeholder engagement).</p>
Step 6	<p>Assessment of appropriate remedy:</p> <ul style="list-style-type: none"> <li>• What is the nature and seriousness of the misconduct?</li> <li>• What was the post-misconduct behaviour of the offender?</li> <li>• What is the strength of the case?</li> <li>• What impact will the remedy have on: <ul style="list-style-type: none"> <li>– the person or entity?</li> <li>– the regulated population?</li> <li>– the public?</li> </ul> </li> <li>• Are there any mitigating factors?</li> </ul> <p>Go to Step 7.</p>
Step 7	<p>What are the appropriate remedies?</p> <p>ASIC selects from a range of enforcement remedies:</p> <ul style="list-style-type: none"> <li>• punitive;</li> <li>• protective;</li> <li>• preservative;</li> <li>• corrective;</li> <li>• compensation; and</li> <li>• negotiated resolution.</li> </ul>

Note: This table describes the process shown in Figure 2.

## 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's Corporate Plan	<i>ASIC's Corporate Plan 2016–17 to 2019–20: Focus 2016–17</i>
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
enforceable undertaking	An enforceable undertaking that may be accepted by ASIC under reg 7.2A.01 of the Corporations Regulations 2001
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
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
National Credit Act	<i>National Consumer Credit Protection Act 2009</i>
relevant period	1 January 2017 to 30 June 2017
REP 499 (for example)	An ASIC report (in this example numbered 499)
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 repair, cyber threats, enforceable undertaking, enforcement process, enforcement result, financial service, gatekeepers, infringement notice, misleading or deceptive conduct

### Legislation

*Australian Securities and Investments Commission Act 2001*

Corporations Act, s180–184 and 588G

National Credit Act

### Other documents

[ASIC's Corporate Plan](#)

[INFO 151](#) *ASIC's approach to enforcement*

[INFO 204](#) *Recovery of investigation expenses and costs*

[REP 499](#) *Financial advice: Fees for no service*

[REP 525](#) *Promoting better behaviour: Spot FX*