Appendix 2

Answers to questions on notice

Question on Notice 1

ASIC 1 (Hansard p. 5) – public complaints

CHAIRMAN—I am assuming it is not the same people complaining every year. The figures almost seem to be constant, but they grow each year by almost a constant amount with a bit of variation. It does not really tell me a lot. It just says things are as they are. There is no analytical data which says there is a variance: in this year the reason it varied by this much is because of external factors, or something that explains the numbers; otherwise, the numbers are a bit meaningless in that sense. They are just numbers.

Mr D'Aloisio—We run some stats. For example, there have been increases in more recent times around the insolvency area and around issues of corporate governance and so on with companies that have gone insolvent. Again that is more related to the market itself and where we are at the time. I think we will take that on board and have a look at whether we can distil anything from the numbers. The reasons people complain are many and varied—they are to do with the particular time and also a heightened awareness and education process with this thing being available and they can go to ASIC which does do things—

CHAIRMAN—These are the sort of measures. You might say that you got more complaints because you advertised more. There might be some analytical data to show that you had a quiet year with fewer complaints but since you advertised more you got more complaints.

Mr D'Aloisio—Yes. Let us take it on board and we will have a look to see if we can run some other things.

Response

Complaints to ASIC regarding crime and misconduct have varied in number since 2002-2003, as set out below.1

08/09	07/08	06/07	05/06	04/05	03/04	03/02
13,633	11,436	10,682	12,075	10,752	9,970	9,292

[1] Source: ASIC's Annual Reports for 08/09 and 07/08

It is difficult to see these as a constant and consistent increase, but it is true to say that there was a significant increase in complaints to ASIC in the previous year.

ASIC is improving its information classification processes. In line with this, our complaints handling unit (Misconduct and Breach Reporting) has since the start of 2009 evaluated complaints by keywords. This improvement will facilitate more specific reporting by ASIC of the nature of the complaints received by ASIC. This will allow ASIC to better evaluate and identify any trends that occur in received complaints, e.g. have they occurred after a specific announcement or event. However for the previous year, without the benefit of such keyword analysis we can only estimate there are a range of possible factors that has led to this 19% increase in complaints (and an accompanying 12% increase in calls ASIC's Infoline) in the 08/09 financial year from the 07/08 financial year which include:

- The Global Financial Crisis and the increased uncertainty for investors and consumers have led to stock-takes of their investments and increased concerns about particular companies;
- An increase in failures of Pty Ltd companies. There has been an increase in inquiries and complaints to ASIC following the collapses of a small to medium companies including seeking to better understand the insolvency process (ASIC's on-line insolvency portal has assisted greatly in this area);
- An increased awareness of ASIC's role through high profile collapses of companies such as Westpoint, Opes Prime (that have resulted in compensation for investors), Chartwell, Octaviar (formerly MFS), Allco Finance Group, ABC Learning Centres, Babcock and Brown; the failures of Storm Financial, Great Southern and Timbercorp; and the freezing of funds - Pacific First Mortgage Fund (formerly the Citi Pacific First Mortgage Fund), Wellington Premium Income Fund, LM Investment Management, Colonial First State Mortgage Income Fund, Perpetual Trustees, Challenger Howard Mortgage Fund etc; and
- In addition, the matters referred to above involved a large number of complaints regarding those matters.

Question on Notice 2

ASIC 2 (Hansard p. 8) – criminal proceedings

Senator MASON—I know Mr Robert has some questions before he goes, but I have a couple of areas to ask about. I take up where the chairman left off. On page 16 of the ASIC annual report—I suppose this question has evolved from the OneTel investigation, but I do not want to go to that at the moment—you say:

This year, in collaboration with the CDPP, we completed 39 criminal proceedings, with 34 criminals convicted, including 19 jailed.

On the face of it that seems like a very high percentage, but in those 39 criminal proceedings were there co-defendants? I notice you have 34 criminals convicted. How many co-defendants were there all up?

Mr D'Aloisio—If you go to page 18, I think, it is all set out there. There were 18 jailings and eight suspended sentences.

Senator MASON—The people who were convicted are all mentioned; you are quite right. How many co-defendants were charged?

Mr D'Aloisio—You mean how many of these were one matter as opposed to the same matter having three or four defendants?

Senator MASON—Yes.

Mr D'Aloisio—I do not have that readily here, but we can get that for you.

Response

1. How many defendants were there in aggregate in ASIC's 39 completed criminal proceedings in 2008-2009?

There were a total of 46 defendants in the 39 completed criminal proceedings. 34 defendants were convicted. In addition, in the case of three defendants, the case was found proven but no conviction was recorded and the defendant was placed on a good behaviour bond. Consequently, in total, a successful outcome was achieved in respect of 37 of the 46 defendants.

2. How many criminal proceedings completed in 2008-2009 involved co-defendants?

There were seven proceedings in which, in each case, there were two co-defendants. In four of those proceedings all defendants were convicted. In one of those proceedings the case was found proven, but no conviction was recorded and both defendants were placed on a good behaviour bond. In two of those proceedings all defendants were acquitted.

Question on Notice 3

ASIC 3 (Hansard p. 9) – civil proceedings

Senator MASON—Not a very good one! We completed 35 criminal proceedings and obtained over $14½ million in recoveries, costs and fines, with $13.8 million in assets frozen for investors and creditors. How many civil proceedings did you bring?

Mr D'Aloisio—There is a number on that as well. We would typically have brought well over 100 civil proceedings.

Ms Gibson—It would not be so many, I do not think.

Senator MASON—It was 35. How many of those were successful?

Ms Gibson—How many of those did we lose in that time period? We would have to come back on that.

Mr D'Aloisio—Hopefully, it was elsewhere in the report. I will have to take that on notice.

Response

How many civil enforcement proceedings did ASIC commence in 2008-2009?

ASIC commenced civil enforcement proceedings in respect of 27 distinct matters or investigations against a total of 72 individuals and companies.

How many civil enforcement proceedings completed in 2008-2009 were successful?

Civil enforcement proceedings against a total of 88 defendants were completed in 2008-2009. A successful outcome was achieved against 83 of the 88 defendants.

Question on Notice 4

ASIC 4 (Hansard p. 10) – further litigation statistics

Mr D'Aloisio—I agree that we have to answer that. Also, percentage of successful litigation does not break up civil and criminal, which is something you have asked about as well.

Senator MASON—Indeed, but it is something.

Mr D'Aloisio—Yes.

Senator MASON—Could you give that on notice?

Mr D'Aloisio—Yes, we will take that on notice.

Response

What is the percentage of successful litigation broken down between civil and criminal?

In 2008-2009:

(a) criminal proceedings were completed against a total of 46 defendants with a successful outcome being achieved against 37 defendants. (In the case of three defendants the successful outcome did not involve a conviction, but the case was

found to be proven and the defendant was placed on a good behaviour bond.) The success rate was 80%;

(b) civil enforcement proceedings were completed against a total of 88 defendants with a successful outcome being achieved against 83 defendants. The success rate was 94%.

Question on Notice 5

ASIC 5 (Hansard p. 10) – margin calls

Senator MASON—That would be useful. My last question relates back to margin lending. Again, just touching on Storm Financial and the committee's recent report, one of the major issues from the committee's report was that margin calls were not passed on to the client via the financial planner. You will recall that in evidence. Section 985M—amendments to the Corporations Legislation Amendment (Financial Services Modernisation) Bill—provides that a client can still elect to have a financial planner pass on margin calls. One of the concerns reflected by the committee and, indeed, in evidence from some of the witnesses, was that the same problem could occur again. I think you even said that yourself. Another issue—and I would like your comment on this—was the response time to margin calls. We heard evidence from the Commonwealth Bank that they waited for over 11 weeks to notify clients directly of margin calls. Under the corporations amendment, specifically 985M, ASIC has the power, I believe, to determine the time frame of advising a client of a margin call. Is ASIC going to provide what is regarded as a reasonable time to notify a client of a margin call?

Mr D'Aloisio—What we are doing at the moment in terms of the legislation is that we are in the process of working through the sort of guidance we would give and so on. I do not think we have made a decision on that issue at this point. It is something that we can look at. I would take it on notice and look at it further.

Response

Obligation to notify retail clients of a margin call

Under the amendments to the Corporations Act either the issuer of a margin lending facility or the financial advisor must take reasonable steps to notify a retail client when a margin lending facility goes into margin call. The notification must be given at a time determined by ASIC, or if no time is determined by ASIC, as soon as practicable.

ASIC is currently considering our policy position to ensure that a client receives the notification of a margin call in a timely manner.

We will formulate our policy prior to the commencement of the new margin lending regime on 1 January 2011.

Question on Notice 6

ASIC 6 (Hansard p. 11) – credit regulation

Mr ROBERT—Without holding you to it, cognisant that you are still waiting for advice from the minister, what is it that you are looking to put out into the market prior to 1 July 2010? What is your vision of 1 July 2010 and what do you expect to have out there?

Mr D'Aloisio—You would want to ensure that at that point you have covered all the issues around licensing and registration. We are developing a full suite of regulatory guides that we think are going to be needed on such issues as responsible lending, the way conflicts are managed and training. There is a list of those. Again, we can provide the committee with a list of all the consultations we will do and the additional regulatory guides we are going to issue to ensure that there is a smooth transition to the new system.

Response

ASIC is committed to providing as much upfront guidance to industry as is possible before the commencement of the National Consumer Credit regime. Consistent with this, ASIC has to date issued 7 new and 2 updated regulatory guides and 2 information sheets in relation to credit. These are listed below. They are designed to help industry understand the requirements of the regime, to prepare their registration and credit licence applications and to be aware of licensee obligations. The information sheets provide a broad overview of how to prepare for the regime (Getting Ready for Credit) and a more specific guide for small businesses (Guidance for small credit businesses).

Prior to the release of these guides, ASIC published a suite of consultation papers to ensure the industry's input and feedback was considered. These are also listed below. As part of that consultation process ASIC held a number of forums with industry and consumer groups. That process is continuing.

In the first quarter of 2010, ASIC will publish an additional further regulatory guides related to credit, covering dispute resolution (both internal and external), the new responsible lending requirements, and compensation and insurance arrangements.

As part of a broad communication and consultation plan, ASIC representatives have been speaking on the new National Consumer Credit regime at industry conferences and forums over the last 12 months. That process will escalate in early 2010 as we conduct a national Credit Roadshow with 35 to 40 presentations to industry on the regime, covering both metropolitan and regional centres.

Each consultation paper and regulatory guide is published on ASIC's credit website at www.asic.gov.au/credit

ASIC's Guidance on Credit	
July 2009	**Consultation Paper 110** , ***General conduct obligations for credit licensees***
	Consultation Paper 111, ***Compensation and financial resources arrangements for credit licensees***
	Consultation Paper 112 ***Dispute resolution requirements for consumer credit and margin lending***
	Consultation Paper 113 ***Competence and training for credit licensees***
September 2009	**Consultation Paper 115** ***Responsible lending***
November 2009	**Consultation Paper 125** ***Compensation requirements for credit licensees: Further consultation***
December 2009	**New information sheets:** • **INFO 96**, ***Getting ready for credit*** • **INFO 97** ***Guidance for small credit businesses***
	New regulatory guides: • **Regulatory Guide 202** ***Credit registration and transition*** • **Regulatory Guide 203** ***Do I need a credit licence?*** • **Regulatory Guide 204** ***Applying for and varying a credit licence*** • **Regulatory Guide 205** ***Credit licensing: General conduct obligations*** • **Regulatory Guide 206** ***Credit licensing: Competence and training*** • **Regulatory Guide 207** ***Credit licensing: Financial requirements*** • **Regulatory Guide 208** ***How ASIC charges fees for credit relief applications***

	Updated regulatory guides: • **Regulatory Guide 51** , ***Applications for relief*** • **Regulatory Guide 108** , ***No-action letters***
To be released in 2010	**Updated Regulatory Guides 139 and 165 on dispute resolution**
	Regulatory guide on responsible lending
	Regulatory guide on compensation and insurance arrangements for credit licensees

Question on Notice 7

ASIC 7 (Hansard p. 13) – gender pay equity

Senator BOYCE—You say in your report that 45 per cent of your senior executives are women and 59 per cent of total employees are women. Have you undertaken a gender pay equity analysis of your positions?

Mr D'Aloisio—We have, but I would have to provide you with the numbers on notice.

Response

ASIC1-4 and Executive Levels

The gender pay analysis of remuneration for staff below the senior executive level indicates that the gender gap in remuneration ranges from between -2% to 3% across the classification levels.

Senior Executive Levels

At the senior executive level the gender pay gap is 4%.

Conclusion

These salary gap amounts are well below published benchmarks for both the public sector and comparable industry sectors.

Question on Notice 8

ASIC 8 (Hansard p. 13) – frozen mortgage funds

Senator BOYCE—Have you got statistics on the people who sought to make withdrawals from the frozen mortgage funds? You have in the past provided us with the number of people who applied, how many were successful et cetera

Mr Medcraft—As you know, we extended the hardship relief a few months ago. We can come back to you with statistics on exactly what the numbers are.

Response

Statistics as at Jan 5th, 2010. Numbers are cumulative from the date Hardship Relief was available.

Currently 19 Responsible Entities have hardship relief in respect of 61 registered mortgage schemes.

Applications made under Hardship: 3,385
Of those, Applications that successfully satisfied the hardship criteria: 2,746 (81%)

Amount in dollars applied for: $126,430,170
Of that, amount subsequently paid: $67,699,472 (54%)
Many different factors may influence this statistic, such as the cap/limit imposed on amount able to be redeemed under hardship. Members may apply for their entire investment when they are only able to redeem a maximum of $100,000 / calendar year.

Total Assets under Management (Frozen Mortgage Funds with Hardship Relief): $17,268,682,355
Percentage of Hardship paid relative to AUM: 0.39%

Question on Notice 9

ASIC 9 (Hansard p. 14) – frozen mortgage funds

Senator BOYCE—Has the level of withdrawals increased or decreased, or wouldn't you know?

Mr Medcraft—We can come back to you on that.

Response

180 applications for redemption under hardship were made between November & December 2009. From those 140 applications successfully met the criteria. From our

statistics, the amount of applications being made has decreased. September – October 2009, 333 new applications were made with 262 of them being successful.

Question on Notice 10

ASIC 10 (Hansard pp 20-21) – ASIC field officers

CHAIRMAN—Mr D'Aloisio, going back to some process issues about how complaints are dealt and particular field officers—and I am assuming you have a number of field officers—is there a specific category of person who is employed as a field officer working for ASIC?

Mr D'Aloisio—I will get some advice on that.

CHAIRMAN—That is okay. I do not know either.

Mr D'Aloisio—We do have analysts within that figure of 95 that I gave you earlier who are full-time equivalents. In that group we have analysts, largely lawyers, who would be ASIC level three and above, right up to senior executive leaders or senior leaders. They do the analysis of the complaints and the issues and what needs to be handled.

CHAIRMAN—Can I give it to you as a question on notice for you get to back to the committee with. I am wanting to understand the number of field officers you have—those who go out to the companies, seek further information and look at specifically what happens after a complaint is received and ASIC has made a determination that it warrants further assessment. I am really after that specific detail. What I would also like to know—and you can answer this now or take it on notice—

Mr D'Aloisio—I will take it on notice.

CHAIRMAN—is the process by which they work. Do they work to a set process? Do they got through and analyse specific things based on specific criteria or do they make judgment calls in terms of what they see? How flexible are they in how they approach a particular organisation? If you can answer that now, that would be great. If not, I am happy for you to take it on notice.

Mr D'Aloisio—I will take it on notice and give you a more specific answer, but the answer is that there is likely to be both a public answer and a confidential answer, because there are a number of processes we would want to protect.

Response

ASIC does not have a concept of specifically dedicated 'field officers', rather all our staff in the Financial Economy and Deterrence teams are available and will be engaged with the market on specific matters by way of surveillance with or without the referral of a complaint to ASIC. This flexibility in the allocation of ASIC

resources means that the number of staff an individual team will have engaged in surveillance activity is dependent upon the breadth and seriousness of a particular matter.

Sources of complaints and referrals will be directly through our Misconduct & Breach Reporting Team or via one of our Financial Economy or Deterrence teams. The stakeholder team will undertake its own assessment of the complaint and determine whether a reactive surveillance or firm visit is necessary.

ASIC is currently developing its methodology for conducting risk-based surveillance across all financial economy teams.

The steps involved in actioning a complaint and determining whether a reactive surveillance or firm visit is required will always depend on the circumstances of the complaint. Having said that, stakeholder teams will *generally* consider taking the following steps:

1. Review and initial scoping

The stakeholder team will undertake an initial review of the complaint and allocate the matter for further analysis. This initial review may involve:

a. assessing the alleged misconduct against established criteria regarding the specific issue or industry;
b. assessing whether the areas of concern are restricted to what is alleged in the complaint, or whether there are broader concerns;
c. considering whether and to what extent the issue is consistent with ASIC's priorities.

2. Research and intelligence gathering

The stakeholder team will undertake the necessary research and intelligence gathering, which may include:

a. undertaking compliance history checks on relevant subjects relating to the complaint including companies, directors, licensees and other persons of interest;
b. using ASIC's information gathering powers - under section 30 and 33 of the ASIC Act - to obtain relevant books and records from companies and other persons;
c. meeting with the subject, company, its directors and other relevant persons to discuss the matters that gave rise to the complaint.

3. On-site surveillance visit

It is often not necessary to conduct an on-site surveillance visit, as sufficient information can often be obtained by requesting information from the subject or via the issue of notices requiring the production of books.

However, an on-site surveillance visit may be appropriate in certain circumstances, such as where clarification of information is required from key people and ASIC needs to view how processes work in practice.

4. Compliance testing

Having assessed all of the available information and undertaken any necessary on-site surveillance visit, the stakeholder team will determine whether the subject has met their legal and professional obligations. Where a breach is identified, the stakeholder team will look closely at the extent and effect of that breach and consider whether further action should be taken.

5. Determination of outcome

There are a range of outcomes that could follow, depending on the severity and potential impact of the breach:

a. If there is no breach, no further action will be taken and all books obtained under notice will be returned to the subject;
b. The stakeholder team may request the issue to be rectified/ corrected voluntarily. In such cases the stakeholder team will continue to liaise with the subject to ensure rectification is prompt and appropriate;
c. The matter may become the subject of deterrence action, for further investigation exercising ASIC's power to compel production of information.

Question on Notice 11

ASIC 11 (Hansard p. 22) – communicating with complainants

CHAIRMAN—Be it one way or the other, in making a determination on the outcome, you are saying that there is a process and that it is understood, but often the breakdown of that communication is that people at the other end do not understand what will happen and when it will happen. Could you get back to me on that?

Mr D'Aloisio—We can do that. We will do some sampling to show you what happens and so on.

Response

All complaints received by ASIC are acknowledged (within three business days of receiving the complaint) and assessed by ASIC's misconduct and breach reporting unit.

In respect to consumers/investors understanding of ASIC's role and how ASIC will deal with their complaint, at acknowledgement (for all complaints) we send a copy of ASIC's 'How ASIC deals with your complaint'. This publication was introduced in mid December 2009 and explains in detail what ASIC does and does not do,

timeframes, the types of issues we consider, the types of issues we do not consider etc. The publication is available to anyone free of charge, whether they have lodged a complaint with us or not, from our call centre or our website.

Prior to ‘How ASIC deals with your complaint’ publication we sent a copy of ASIC’s 'Your Complaint Counts' brochure which provided a complainant with information about ASIC processes.. ASIC has also issued a brochure called 'You Can Complain' which provides tips and advice to investors/consumers about what to do at each stage of the process and includes sample letters of complaint as a guide for formulating their own complaints. The 'You Can Complain' brochure is available in three community languages: Arabic, Chinese and Vietnamese. The publication remains available and complements our ‘How ASIC deals with your complaint’ publication and is available, again free of charge, from our call centre or our website.

The right to complain to ASIC is open to anyone. This can be done on-line or in written form. If a person does not have access to the internet they can obtain a hard copy complaint form by contacting ASIC’s call centre for the cost of a local call (the complaint form is sent out free of charge). ASIC’s call centre routinely responds to questions about how to complain about a financial product or service, our role and how to lodge a complaint with ASIC.

In assessing complaints, it is common for ASIC to contact the complainant to seek further detail or clarification and explain our process (although we do not seek to contact every complainant as it is not required in every complaint).

In the event that a complainant is dissatisfied with ASIC’s decision about their complaint they may request a review of their complaint that is conducted by a separate team that sits within the misconduct and breach reporting unit. A second acknowledgement letter is sent providing the complainant with the contact details of the analyst who will conduct the review. A review involves conducting a fresh assessment of the original complaint in light of any new information available to ASIC. A review complaint recommendation is approved by a staff member of a higher level than the original analyst and team leader. If a recommendation changes upon review, feedback is provided to the original analyst and his or her supervisor in order to identify any training needs. The new decision will be communicated to the complainant. In the event that the recommendation is to confirm the original decision, this will also be communicated to the complainant, however further information will be provided about the reasons for ASIC's decision when it is possible to do so. In the review complaint finalisation letter, complainants are provided with the contact details of the Commonwealth Ombudsman in the event that they are still dissatisfied with ASIC's handling of their complaint.

Where a complaint is assessed and referred to ASIC’s deterrence (enforcement) unit or to one of the specialised teams (i.e. financial services/insolvency practitioners/markets) for surveillance, the complainant will be advised that their matter has been referred, and that they will be contacted in the future if ASIC requires anything further from them. In order to protect the integrity of our investigative processes, ASIC does not discuss the status of its investigations with complainants. Complainants may however seek information about whether the matter is ongoing or

has been finalised by contacting the analyst who assessed their complaint. They may also be able to obtain information about why ASIC has not taken action through contacting the analyst who assessed their complaint who can make internal inquiries on their behalf.

Question on Notice 12

ASIC 12 (Hansard p. 26) – phoenix companies

CHAIRMAN—I suppose the question I am asking is not around that. I accept what you are saying. My question around that is, (a) do you have a program which identifies individuals that fall into this category, and (b) do you increase surveillance on those particular individuals that reappear because they are much more likely perhaps to reappear, as statistics and research demonstrate? Also, although it is not an offence to fail, perhaps some of these individuals do deliberately carry too much with the intent of not carrying out their duties as directors. My concern is where there are individuals that reappear on the books time and time again because they specifically have intent to do these things.

Mr PEARCE—Mr D'Aloisio, ASIC were given extra funding by the previous government to implement a new program, weren't you? This pot of money was so that ASIC could go back and identify directors who had been down this line and who had deliberately structured their affairs to put a company into—

CHAIRMAN—That is what our concern is.

Mr D'Aloisio—There are a range of tools that we use through the Assetless Administration Fund. We identify people through the court proceedings I talked about earlier and through the disqualification where you have been involved in two or more companies that have failed. We do directors insolvent training programs and other surveillances. We use a range of tools to deal with those individuals that might have a propensity to fail more than once. Again, rather than stay with this general answer I am quite happy to take it back with us and give you the specifics of what we have actually done. It is an area, certainly at the commission level where we see the reports, where we think our people are doing a very good job in minimising that recurrence that you are concerned with through a range of initiatives. I think we will explain it to you in more detail.

Response

a) *Does ASIC have a program that identifies individuals with more than one failure*

ASIC has 2 programs in place that identify directors with more than one company failure:

- Assetless Administration Fund; and

- Project Phoenix.

Assetless Administration Fund

The Assetless Administration Fund (AA Fund) was announced by the Federal Government in October 2005. The fund was launched on 23 February 2006 and involves funding liquidators to investigate and prepare supplementary s533 reports when s206F director disqualification proceedings (banning proceedings) may be appropriate. A particular focus of the AA Fund is to curb fraudulent phoenix activity. Liquidators can apply for funding under the AA Fund for banning candidates if they satisfy certain funding criteria. The criteria includes but is not limited to:

- the director must have been involved with two or more companies which have gone into liquidation;
- the liquidator has concerns about the directors conduct in relation to the management, business or property of the company;
- the liquidator believes it is in the public interest for ASIC to take banning proceedings under section 206F of the Corporations Act.

Since the AA Fund commenced, ASIC has been involved in educating liquidators to utilise the AA Fund in order for directors with multiple failures to be banned from managing corporations.

Up to 30 June 2009, 436 banning applications from liquidators were approved by ASIC with $2.3m in funding approved for payment to those liquidators.

Since FY07 198 directors have been banned by ASIC for managing corporations and of those 128 were funded by the AA Fund.

Project Phoenix

Project Phoenix was launched on 1 July 2009 with the objective of increasing our focus on disqualification of directors with a history of corporate failure.

ASIC also launched on 1 July 2009, a new electronic sweeping tool to assist in better detecting director disqualification candidates under s206F. ASIC's systems can now more easily identify potential disqualification subjects using a variety of information held on our register as well as documents lodged with ASIC by insolvency practitioners.

b) does ASIC increase surveillance on individuals with more than one failure

Answer

Yes, ASIC runs a program called the National Insolvent Trading Program (NITP). The NITP is a proactive program that identifies and undertakes reviews of companies showing signs of financial distress. The program aims to help directors focus on their duties to prevent their companies from trading while insolvent.

The program encourages directors of 'at risk' companies to act promptly to give a better return to creditors and allow the business to continue to trade if viable, so as to avoid, where possible, a winding up of a company.

A number of sources of information are used to identify the companies selected under the program. This includes identifying previous history of failures; potential previous phoenix activity; credit ratings data; and industry intelligence.