QoNs PJC Friday, 5 September 2014

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Mr Price: I think there are a range of reasons, but prioritisation of reforms is always difficult. We have regular liaison meetings with Treasury. We have regular discussions with Treasury about potential areas for law reform. But there is always this question of priority and there is always the risk, whenever you make any sort of regulatory change, that there may be unintended consequences and costs that flow from that.

CHAIR: Can you take on notice to provide to the committee a list of those areas where you have provided advice, the depth of analysis that you have done on the cost and benefit and any risk areas you see around unintended consequences?

Answer:

Treasury is the government agency with primary responsibility for administering the *Corporations Act 2001*. When we identify scope for the Corporations Act to be amended, we forward our suggestions to Treasury for its information and assessment. Typically we also meet with Treasury formally to discuss these and other issues every 6 months.

Most recently, we have also raised publicly potential law reform options with a deregulatory focus in Report 391 *ASIC's deregulatory initiatives* (REP 391). These reform options seek to reduce compliance costs, while maintaining an appropriate level of regulation. The law reform options we raised in REP 391 are:

- simplifying wholly owned financial reporting relief;
- allowing market stabilisation activities in appropriate circumstances;
- enabling automatic registration for managed investment schemes under section 601EB of the Corporations Act;
- replacing the requirement for an unlisted disclosing entity to lodge continuous disclosures with ASIC with a requirement to instead publish disclosures on the entity's website; and
- amending the content of the forms to be lodged under section 671B (information about substantial holdings) to address market concerns.

More details on these law reform options can be found in REP 391: http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep391-published-7-May-2014.pdf/$file/rep391-published-7-May-2014.pdf.

We have not undertaken a detailed analysis on the costs and benefits associated with these law reform options to date. Typically that would not occur until a decision had been made by Treasury to progress specific law reform suggestions and would involve further public consultation.

Over a number of years, the Corporations Act has been extensively modified by regulations and ASIC Class Orders. These modifications can make it difficult to navigate the law. In the past, we have also suggested to Treasury that a legislative rationalisation project amending Chapter 7 of the Corporations Act to take into account modifying regulations would have merit. It would reduce the complexity of Chapter 7 and improve the transparency of the law and assist users of Chapter 7 to identify and understand the relevant regulatory requirements more easily. It may also improve compliance and reduce expenses on legal

services after an initial transition period, though we have not undertaken a detailed analysis of the financial costs associated with a rationalisation of Chapter 7.

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Mr TONY SMITH: Okay. I might go to Mr Kell on the issue I flagged just at the start. On 25 September 2012 you issued a release saying ASIC has banned Peter Raymond Holt of Balwyn North, Victoria, from providing financial services for three years. Now this has received a bit of coverage since that time on the ABC—I think on *7.30*—and in *The Age* and *The Sydney Morning Herald*. I have had some constituents who were clients ultimately how you went about determining the three years.
Mr Kell: We are obviously very much aware of the matter, but we would appreciate the opportunity, given that I do not have all the details with me, to provide a more detailed written response to that question. But I might ask Ms Macaulay, who heads up our financial advisers team, to talk a little about the banning process and the approach we took.
Mr TONY SMITH: I am more than happy with that.
Mr Kell: So you want me to take a written—
Mr TONY SMITH: **No, I would not mind hearing a bit about the process you go through, but on the specifics I am patient. I would rather you come back to us.**
Mr Kell: We would like that opportunity.

Answer:

ASIC's banning powers

ASIC's administrative powers to ban a person from providing financial services differ in procedure and purpose from proceedings before a court. ASIC exercises its administrative powers to protect the public, not to punish a person for past misconduct.

In most instances, an ASIC delegate can only make a banning order against a person after giving them an opportunity to appear or be represented at a hearing and to make submissions on the matter. Division 6 of Part 3 of the *Australian Securities and Investments Commission Act 2001* contains provisions relating to ASIC hearings for matters under the *Corporations Act 2001* (Corporations Act).

Banning hearings under section 920A of the Corporations Act must take place in private (subsection 920A(2)). Unlike a court proceeding, the affected person is not required to prove or disprove anything. Rather, he or she is given the opportunity to present information that may assist the ASIC delegate in making his or her decision.

The delegate cannot act on matters of suspicion or prefer a particular conclusion to another if there is contradictory material. The delegate must consider the facts after taking into account the whole of the information before him or her available at the time and decide what the consequences of those facts are on a proper application of the law. Where the consequences to the person are grave and affect the person's reputation and livelihood, the delegate cannot reach a conclusion lightly. The decision must be based on rationally probative information.

In making a decision, the delegate is guided by ASIC policy. ASIC Regulatory Guide 98 *Licensing: Administrative action against financial services providers* (RG 98) provides guidance about the factors that ASIC considers in deciding to take administrative action and also sets out the factors and examples of conduct that would give rise to different periods of

banning. While each matter is considered on its particular circumstances, permanent bans are reserved for the most serious misconduct, usually involving fraud or dishonesty.

Under the law, ASIC is also required to give a statement of reasons to the banned person, which is not publicly released. ASIC does publish its decision to ban a person from providing financial services by notice in the *ASIC Gazette*. In addition, we promote our banning decisions in line with our approach outlined in ASIC Information Sheet 152 *Public comment*. This will generally be by media release published on our website. As a general principle, we consider that this approach ensures that investors and the broader community can be informed about regulatory action we take, while ensuring we comply with the confidentiality requirements in the law.

Although we are unable to publically release the statement of reasons for Mr Holt's banning, our media release about Mr Holt's banning outlines the matters considered in coming to a decision to ban Mr Holt, and confirms contraventions of section 945A of the Corporations Act which relates to the appropriateness of advice (having a reasonable basis), failing to meet his disclosure obligations to disclose the costs and benefits that may be lost in switching a client's superannuation and failing to ensure the business maintained professional indemnity insurance. His bankruptcy is of course a matter of public record.

In making the decision to ban Mr Holt, the delegate took into account the facts of the matter and the key factors set out in Table 1 of RG 98. In determining the period of banning, the factors in Table 2 of RG 98 were considered. The confidentiality constraints applied to ASIC under the law mean that further details about the specific relevant facts of the matter cannot be provided.

P30

Senator WILLIAMS: Following on from Senator O'Neill's and Mr Smith's questioning about Peter Holt, have any of you viewed the *7.30* report?
Mr Kell: Yes, the one where Mr Holt is mentioned.
Senator WILLIAMS: He is supposed to be bankrupt but is still driving a big Mercedes, still operates his business and is in partnership and still lives in his sprawling home. It is very concerning, isn't it?
Mr Kell: There are a couple of things there, just to come back to this issue. **We would still like the opportunity to provide a response in some more detail in writing, but I understand that one of the frustrations that some of the investors have is that Mr Holt is still practising as an accountant.** We can ban him from providing financial services, but if he wants to provide tax advice as an accountant we do not have the ability to ban him from that. My understanding is that the CPA and the Tax Practitioners Board considered the matter and decided that there was no reason to limit the way he operates. That is one issue. I am happy to cover a few of the other Peter Holt matters now quickly, along the lines of the questions asked this morning, if you wish.

Answer:

The operation of Mr Holt's bankruptcy is a matter for his trustee in Bankruptcy, not for ASIC. Similarly, his ability to continue practise as an accountant or a tax adviser are matters for the CPA and the Tax Practitioners Board.

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Senator O'NEILL: There is a variation or cancellation of banning orders, which could lead to a reduction or perhaps an increase. Do you know whether such variations, to seek an increase in the ban, have been lodged in this matter?
Ms Macaulay: No, I am not aware that any have been lodged to seek either a decrease or an increase.
Senator O'NEILL: What would the cost be of formally undertaking that in terms of a lodgement fee?
Ms Macaulay: I am not aware that there would be a lodgement fee.
Mr Medcraft: I do not think there is a fee to go to the AAT.
Mr Kell: The investigatory work would be the main cost.
Mr Medcraft: **With respect to the cost to the individual to lodge an appeal, I do not think there is a lodgement fee. We will come back to you on that.**

Answer:

A decision to ban or suspend a person from providing financial services is appealable by the person affected (ie the adviser) to the Administrative Appeals Tribunal for a review of the merits of the decision. AAT Application Fees are $861 or $100 (for the impecunious).

Under s920D of the Corporations Act, ASIC may very or suspend a banning order, if it is satisfied that it is appropriate to do so because of a change in any of the circumstances on which ASIC made the order. ASIC may do so at the request of the person who was subject to the order (application fee - $38), or of its own volition. ASIC would only consider doing so of its own volition if there was additional relevant, probative evidence that was not available at the time of the banning order.

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Senator O'NEILL: I want to raise a concern about the transparency of that process. I think that is a huge concern. I understand that some Australian financial services licensees had to lodge a security bond with ASIC as part of their licence, and that is to help provide for compensation to a client that could demonstrate that they had suffered financially because of the failure of the licensee to act adequately or properly. I have a printout from your website about security bond claims, with a list of security bonds that you intend to discharge. No. 31 on that is actually Holt Norman & Co. The group that have met with me—the Holt, Norman, Ashman, Baker Action Group—have been in contact with ASIC since 14 March 2013 and they have written regularly since that time. The bond is for an amount of $20,000, I understand, and designed, from what I understand, to assist the group with prosecuting their case.
Mr Tanzer: No. The bond actually goes back to very original licensing arrangements where it was felt that that sort of bond might be an appropriate amount to compensate people. It clearly cannot perform that function anymore. That is why we now have processes around internal dispute resolution, external dispute resolution and a much broader licence condition around compensation arrangements, which does not always result in an appropriate outcome. But the bond is a very out-of-date mechanism which is working its way through the system.
Senator O'NEILL: So the bond needs to be in the order of how much?
Mr Tanzer: Over a series of reforms, the bond has been effectively overtaken by things like IDR, EDR and insurance and professional indemnity insurance.

Senator O'NEILL: So there is $20,000 sitting there somewhere, though?
Mr Medcraft: Perhaps someone can answer whether that security bond can be accessed by third parties?
Mr Tanzer: Yes, we will come back to you on that.
Senator O'NEILL: That is what the group is seeking—to be able to at least advocate their case.
Mr Medcraft: We will take that on notice and come back to you.
Senator O'NEILL: Yes, and on the progress of the claim.

Answer:

Claims over the Holt Norman & Co Pty Ltd security bond

ASIC holds a security bond for Holt Norman & Co Pty Ltd (ACN 050 195 616) (In Liquidation) worth $20,000. On 21 June 2013, ASIC indicated our intention to release this bond, pending any receipt of claims. ASIC subsequently received seven claims over the security bond, totalling around $2 million.

ASIC has a process for considering claims over the security bonds of AFS licensees. ASIC has not yet processed claims for the Holt Norman & Co Pty Ltd security bond. This has taken time as the claims raise a number of issues that we need to work through, including that:

- certain claimants' losses in part stem from margin loan products, which were not included in the financial product definition at the time, and therefore may not be covered by the security bond regime
- the information that certain claimants have provided to ASIC is not sufficient for ASIC to assess their claim at this time, and we may need to request additional information, and
- the quantum of claims far exceeds the amount of the bond held, meaning that, should claimants be successful, they may only receive a fraction of their claim.

ASIC is currently considering the best way forward to process the applications. ASIC intends to correspond with the claimants over the Holt Norman & Co Pty Ltd security bond shortly to discuss our proposed next steps.

Background information on Security bonds

Early in the Australian Financial Services licence (AFS licence) regime, security bonds were considered a useful compensation mechanism for customers who might suffer a loss as a result of the AFS licensee's failure to act adequately and properly. AFS licensees were required to hold a bond, generally worth $20,000, with ASIC or a financial institution.Customers of the AFS licensee who believed that they had suffered loss due to the failure of an AFS licensee to carry on their business adequately and properly, were able to lodge a claim with ASIC for compensation from the bond. On receipt of a claim, an ASIC delegate would decide on the validity of the claim, and determine the amount of funds to be disbursed to the claimant or claimants.

There is information on ASIC's website about how people can lodge a claim under a security bond. For a claim to be successful, customers must be able to show that:

- they suffered a financial loss, and
- the loss was a result of a failure on the part of the AFS licensee or its agents or employees to carry out business under the AFS licence 'adequately and properly'.

While ASIC continues to hold security bonds obtained from AFS licensees during that time, the system has largely been replaced through better and more targeted mechanisms. Since

10 March 2008, the requirement for AFS licensees dealing with retail clients to have appropriate professional indemnity insurance or alternative compensation arrangements has replaced the security bond requirements. In addition, AFS licensees are required to establish an internal dispute resolution process and be a member of an ASIC-approved external dispute resolution scheme.

While these measures help protect consumers of financial services, ASIC's second submission to the Australian Government's Financial System Inquiry sets out our support for a limited last resort statutory compensation scheme as part of a suite of measures to improve standards in the financial advice industry. We consider that such a scheme would address concerns with the adequacy of professional indemnity insurance and provide investors and financial consumers with additional safe guards against loss to encourage their further participation in the financial services sector. Our position is discussed at paragraphs 183–198 of ASIC's second submission to the Australian Government's Financial System Inquiry.

When a current AFS licensee (without professional indemnity insurance) or former AFS licensee wishes to cancel its security bond, it must advertise the fact in the national press. This is to notify any clients that believe they may have a right to compensation so that they can make that claim before the bond is returned to the AFS licensee. In some limited circumstances, ASIC may also place such an advertisement.If no claim is notified or known to ASIC within three months after the notice is published, the AFS licensee can apply to ASIC for the bond to be returned.

On 21 June 2013, ASIC issued a notice advising of our intention to discharge wholly the security bonds lodged by a list of AFS licensees. Further information is available from our website.

P30

CHAIR: But perhaps I could refer you to paragraph 4.16 in the report, which identifies a couple of concerns, and you quite comprehensively addressed the first dot point in your last statement, but on the second two dot points perhaps you would like to come back to the committee on notice with some information about how you are looking to manage your risk based approach with the concerns that were highlighted there.
Mr Medcraft: Certainly.

Answer:

Generally, the challenges identified by Baldwin and Black that are quoted in the Senate Inquiry Report are based on assumptions that a regulator that adopts a risk-based approach will:

- focus on a fixed static set of risks identified internally without any process of review as circumstances change, and without outside challenge or input;
- focus its identification of risk solely at firm level so that broader risks across a market are not considered or addressed; and
- pursue a singular approach so that only issues identified as being of significant risk are addressed.[1]

While ASIC is mindful of these problems, we have designed a risk-based approach that guards against these characteristics.

[1] Julia Black and Robert Baldwin, *Really Responsive Regulation*, Modern Law Review 71:1 (2008).

Focus on dynamic approach to detect, understand and respond

Our risk-based approach focuses on a dynamic set of risks that we identify by analysing a range of internal and external inputs. We regularly review our risks and adjust them when necessary to reflect changes in the market.

We continuously seek to detect and understand emerging systemic, product/sector and firm issues early and, where appropriate, respond quickly and effectively.

Since the global financial crisis, we have implemented a number of initiatives to ensure we are positioned closer to the market with a view to better understanding the industries we regulate, and being better placed to proactively detect, and where appropriate, respond to emerging issues. These initiatives include:

- **outwardly focused stakeholder teams**: these teams are responsible for monitoring specific stakeholder groups in the market (e.g. credit, investment banks, financial advisers, corporations, stockbrokers) and engaging with industry and consumer representative stakeholders to identify and understand risks;
- an **Emerging Risk Committee** (ERC): the ERC facilitates a whole-of-ASIC approach to emerging risks, including:
  - systemic risks—possibility of an event causing an impairment of the financial system;
  - product/sector risks—risk that extends beyond an individual firm and may lead to an event or trend that jeopardises ASIC's strategic priorities; and/or
  - firm risks—risks faced by individual businesses that may cause them to engage in misconduct or non-compliance;
- an **External Advisory Panel, Director Advisory Panel, Market Supervision Advisory Panel, and a Consumer Advisory Panel**: these panels channel external senior level advice from consumer organisations, and the financial services, markets and corporate sectors so that ASIC can gain a deeper understanding of developments and systemic risks within the industry;
- a **Strategy Group**: this ASIC team supports our forward looking planning and capabilities to pursue ASIC's strategic priorities and address strategic risks. Our Strategy Group plays an important role in facilitating a whole-of-ASIC approach to risk identification and monitoring. ASIC's strategic risks are reassessed annually as part of our business planning processes, and are reviewed regularly throughout the year. The Strategy Group also provides ASIC with market research that promotes evidence-based decision-making across ASIC;
- a robust approach to **monitoring trends in reports of misconduct**—including breach notifications, reports of misconduct from the public and whistle blowers, and data about disputes before external dispute resolution schemes: this approach identifies the emergence of compliance issues within a specific firm, or broader compliance trends across an industry. For example, breach notifications and reports of misconduct can indicate areas where there may be substantial loss to a large number of investors or financial consumers;
- **engaging with other regulators**—both domestic and international, and in international cooperation forums (e.g. IOSCO): this engagement facilitates information sharing between regulators, including on emerging risks, to enable us to learn from our experiences; and
- **communicating with our stakeholders** about the key risks we are focusing on and our regulatory responses to those risks: in October 2014, we will publish ASIC's

Strategic Outlook and, in future years, we will publish a more detailed Risk Outlook and Strategic Plan. This transparent approach will facilitate stakeholder feedback on our views of risk and areas of focus, and allow for our assessments to be challenged more openly.

Risk identification across markets, products/sectors and firms

Our risk-based approach focuses on identifying and addressing broad systemic risks and product/sector risks, as well as firm risks in cases of particular conduct. This broad approach is supported by:

- our ERC: as outlined above, our ERC facilitates a whole-of-ASIC approach to identifying systemic and product/sector risks more broadly; and
- conducting thematic surveillances that monitor conduct of a cross section of firms, not only those that we consider to be high risk.

Example of thematic surveillance across an industry
Surveillance of the Australian term deposit market
We undertook a surveillance of the Australian term deposit market, looking at eight authorised deposit-taking institutions (ADIs), which held over 80% of Australia's total term deposits. The surveillance found that seven out of the eight ADIs reviewed promoted their term deposits by advertising only the highest term deposit rates, while maintaining lower rates for all other deposit periods. The periods on which the advertised higher rates were offered varied over time. This 'dual pricing', coupled with the potential for term deposits to roll over by default if the investor does not take action, creates a risk that a retail investor could inadvertently end up in a term deposit with a much lower interest rate. We made several recommendations designed to address this risk by maximising the disclosure to investors about what happens when a term deposit matures. We also conducted a follow-up surveillance to assess the implementation of the recommendations by ADIs. This review found improved industry practice and better outcomes for consumers affected by the automatic rollover of term deposits.

Multi-faceted approach to regulation

Our risk-based regulation is part of ASIC's broader regulatory approach. We also conduct periodic reviews, and conduct reactive surveillances—

- Where we have adequate resources, and it is appropriate to do so, we conduct periodic surveillances of entire regulated populations. For example, our:
  - Investment Banks team (23 ASIC FTE in 2012/13) conducts surveillance of 26 investment banks every year; and
  - Financial Markets Infrastructure team (28 ASIC FTE in 2012/13) conducts surveillance of 18 authorised financial markets every year.
- We conduct reactive surveillances in response to concerns we identify through reports of misconduct from the public or whistle blowers, breach reports and data about disputes before external dispute resolution schemes. Where these reactive surveillances are an indicator of broader trends across an industry, we can take a broader thematic approach, monitoring a cross section of firms, rather than just focusing on entities that are the subject of complaints.

Example of a reactive surveillance
We undertook reactive surveillance on tyre and rim insurance following the introduction of the National Credit Code, which allows the financing of premiums for only one year. Financing of car insurance premiums for more than one year can lead to customers paying undue interest on premiums and being unfairly locked into longer contracts with one insurer. In mid-2012, BMW Australia Finance Ltd notified us that it had breached the National Credit Code because it had financed insurance tyre and rim premiums for more than one year. BMW subsequently refunded a total of $1.4 million to 2,466 customers. Following this breach report, we conducted an industry-wide review and found that there had been improper financing of tyre and rim insurance premiums by some of Australia's largest car financiers. As part of the review, we asked car finance providers to examine their funding of tyre and rim insurance premiums and encouraged them to come forward if they identified breaches of the National Credit Code (and its predecessor, the Uniform Consumer Credit Code). Working with the Australian Finance Conference, we asked businesses to put in place a process for identifying and refunding affected consumers, and procedures and controls to ensure this conduct does not happen again. This work resulted in a number of major car financiers agreeing to pay back over $15 million to more than 30,000 car owners.

P32

Senator WILLIAMS: Just on another financial planner: Stuart Jamieson. When did you first get a complaint lodged against Stuart Jamieson?
Mr Kell: I have not the got detail in front of me. I am happy to take that on notice.
Senator WILLIAMS: I think you got it in September last year. Would that be about right, Ms Macaulay?
Ms Macaulay: That may well be right, but I would prefer to take it on notice so that we can check it and be accurate.

Answer:

ASIC first received a breach notification from Commonwealth Financial Planning Limited (CFPL) regarding Mr Jamieson in November 2006. This notification was in relation to an alleged failure by Mr Jamieson to provide statements of advice to a limited number of clients. CFPL advised ASIC that Mr Jamieson was, however, complying with his manager's instructions at that time and that remedial action had been taken. Mr Jamieson continued his employment with CFPL and ASIC took no further action.

ASIC received a further breach notification from CFPL in September 2013 regarding Mr Jamieson. It was noted in the breach report that a total of 6 client files had potential discrepancies and all clients had been contacted by CFPL for further enquiries. In addition three complaints had been received and resolved resulting in $65,000 compensation payable. CFPL advised that Mr Jamieson was no longer an authorised representative. In November 2013 ASIC was advised by a CFPL officer that the majority of clients had verified their signatures and CFPL considered the issues identified as housekeeping issues.

In July 2014, ASIC received an "update" on the previous breach report which indicated that CFPL had been making further inquiries regarding Mr Jamieson's conduct. As a result of these inquiries they held concerns relating to three client files. CFPL also advised ASIC that the Financial Planning Association was undertaking inquiries regarding Mr Jamieson. ASIC has an investigation underway in relation to the breach report, including the timeliness and adequacy of that report.

P35

Senator WILLIAMS: I am just concerned that fire sale values were put on assets way under the value of the assets and that put the whole equity of the business in jeopardy when those valuations were far beneath their actual value, and I can get you sales figures to prove exactly that.
Mr Price: **Yes. Again I will go away and have a look at the exact circumstances that GSI went into external administration and come back to you**. Now I reflect on it, there may have been some involvement of the courts in that process as well, so it was an externally supervised process in addition to that.

Answer:

Background to the GSI matter

On 15 Nov 2012, the Trustee had appointed Ernst & Young to undertake an extensive financial review. This review implemented a reporting protocol and commenced independent revaluations of impaired loans. These revaluations identified the need for impairments which resulted in a net asset deficiency of $3.8m.

On 25 July 2013, the Federal Court made orders imposing a freeze on redemptions to note holders. The Federal Court application heard submissions from various parties to consider whether the Trustees security should be declared immediately enforceable following the identification of the net tangible asset deficiency.

On 3 September 2013, Adam Nikitins and Simon Cathro, registered liquidators of Ernst & Young, were appointed joint and several Receivers and Managers of GSI. This appointment was made by Trust Company (Nominees) Limited as the Trustee for the GSI note holders which holds a security interest, following orders made by the Federal Court of Australia on 2 September 2013.

This Court assessment included a submission by GSI on 2 August 2013, including for a recapitalisation proposal involving a Rescue Group. Post appointment the Receivers and Trustee continued to assess the Rescue Group proposals. On 18 November 2013, the Rescue Group withdrew their proposal.

GSI owes approximately $143 million to some 3,087 note holders. GSI's assets included a loan book of 232 loans totalling $117 million (at book value), a significant proportion of which were either non performing or where the underlying assets were subject to mortgagee in possession appointments.

To date, the Receivers have paid three distributions to note holders totalling 80 cents in the dollar. In the most recent circular to note holders dated April 2014, the Receivers disclosed an estimate of total returns to Note Holders of between 87 and 92 cents in the dollar on conclusion of the receivership.

Receivers' realisation process

The Receivers called for expressions of interest for the sale of the GSI loan book seeking non-binding indicative offers by 18 December 2013. This involved an extensive advertising and marketing program and data room. The loan book was stratified into tranches:
• Tranche A – better quality credits, lowers LVRs, better servicing history

• Tranche B – poorer credit quality, MIPs, Receiverships, high LVRs, poor servicing history and possibly impaired.

The stratification allowed the Receivers to assess the market value of the portfolio and have regard to selling a 'good book' and being stuck with the work out or run off of the 'bad book'. This enabled the Receivers to make an assessment of whether a sale of the poorer quality loans was in the best interests of note holders noting the prospect that the run-off and work out of Tranche B bad book could take a considerable time and be costly.

By 18 December 2013, the Receivers had shortlisted four bidders; Deutsche Bank, Nomura Australia Limited, Laminar Capital and National Australia Bank.

On 18 March 2014, the Trustee and Receivers finalised a deal with Deutsche Bank AG to purchase the remaining GSI loan book.

Excluded from this sale was the largest and most problematic borrower, Riviera Properties Limited Group, which owed $11.4m and was subject to Voluntary Administrators' appointment. The Receivers took possession of the Riviera secured properties, undertook an extensive marketing program and held a public auction on 9 February 2014. All 84 Riviera properties were sold at auction achieving reserves set in line with the Receivers independent valuations.

Duties of Trustee and Receivers

It appears to ASIC that the Trustee has undertaken a proper process when the financial distress became apparent including seeking independent expert advice and applying to Court seeking protective orders freezing redemptions and the appointment of Receivers.

The Receivers undertook an extensive marketing and realisation process and achieved distributions to date totalling 80 cents in the dollar with an estimate of a further 7 to 12 cents.

ASIC is not aware of any evidence to suggest that the Receivers have not adequately performed their duties to take all reasonable care to sell the assets and mortgaged properties for the best price that was reasonably obtainable having regard to the circumstances existing at the time as required under s420A of the Corporations Act.

The Trustee and Receivers reported to note holders regularly and consulted with the GSI Note Holder Committee, which was formed to represent note holder interests.

P35/36

Senator O'NEILL: I will cross over many of the areas that we have just discussed, just to get a little more information if I can. Firstly, just to clarify: the Macquarie Bank issue is obviously very alive, and people are communicating with us with a high level of concern, so I am very pleased that we are going into private session to get more detail for that. I just want to put on the record formally that there is great interest and concern.
With regard to the training and examination system that you were discussing before, Mr Kell: in the absence of a national test, did I hear you correctly—that Macquarie are still training and examining within their own system, or is there an independent employment of an examination agency to provide probity by Macquarie?
Ms Macaulay: As part of the enforceable undertaking, 11,000 hours of training was provided to Macquarie advisers. It was provided by an external training company and, after the training, there was a test that had to be sat. My understanding is—**and I can check this and come back to you—that that test was put together by the external training**

provider and was put together in such a way that past issues around continuous professional development could not arise in relation to this examination.

Answer:

Since the commencement of the EU, Macquarie Equities Limited (MEL) has run a number of training courses relating to both general compliance obligations of the Corporations Act as well as specific requirements of MEL's internal policies and procedures.

Some of these courses were delivered by external providers (eg relating to general compliance obligations) and others by internal MEL resources. Where examinations have been required, some have been unsupervised and others have been supervised by people approved by MEL's compliance team. In addition, MEL has taken other steps to reduce the chance of irregularities occurring (eg using a pool of questions for some exams so not all advisers answered the same questions, and some exams being sat largely simultaneously so advisers could not compare answers). The Independent Expert has oversight over these enhanced training processes and will report any concerns to ASIC. The evidence presented to ASIC thus far suggests this training has been robust.

P 36/37

Mr Kell: I do not think we have done a detailed analysis of which members of which organisations tend to generate the higher risk, and, for various reasons, there are people who may be a member of more than one organisation. There are organisations that have been established for a longer period of time and have had codes for a longer period of time, like the FPA, and have had better established educational qualifications in place, so they are certainly a group that we look to. There are quite well-developed educational programs run through SPAA as well. But we have not done that sort of analysis.
Senator O'NEILL: I think people would really like to know. So could you give us, on notice, a bit more information about that sector?
Mr Medcraft: We can take that on notice. What we have been saying for five years is that, frankly, wherever you are trained—it can be online or whatever—the beauty of a national exam is basically that it is a level playing field.
Senator O'NEILL: Exactly, and the standard is clear.

Answer:

ASIC does not collect or hold information about any professional association memberships that may be held by individuals against which it takes action in relation to the provision of financial advice.

A table setting out some basis details of relevant professional associations is attached.