

Australian Securities and Investments Commission

Senate Estimates opening statement (tabling version)

13 February 2013

- Thank you Chairman.
- Pleased to appear before the Senate Economics Committee tonight
- With me is Deputy Chair Belinda Gibson, Commissioners Peter Kell, John Price, Greg Tanzer and Senior Executive Leader Warren Day
- I would like to update the Committee on some of our work since we last appeared in October and how we are delivering against our strategic framework.
- As a reminder, this framework is:
 - Confident and informed investors and financial consumers;
 - Fair and efficient financial markets; and
 - Efficient registration and licensing.

1. Confident and informed investors and financial consumers

Education
Gatekeepers
Consumer behaviour

Education

MoneySmart website

- 4.1m unique visitors to the site since it launched.
- 12,800 Facebook likes
- 2,500 Twitter followers
- MoneySmart's 200 videos have been viewed 88,000 times
- 160,000 downloads of MoneySmart's 3 apps
- From 200 investor protection sites ranked by IOSCO, MoneySmart was one of only 10 sites rated "outstanding" and given a 5/5 rating.
- During our Unclaimed Money campaign in November 2012 over 700,000 people visited the site, 4 million searches were conducted and 36,000 people found money that might belong to them

- ASIC's MoneySmart Teaching professional learning program has already seen over 5,000 teachers receive professional learning. The target is 6,000 teachers by June 2013.
- MoneySmart's Unclaimed Money campaign took place in November 2012. Over 2.6 million searches for unclaimed money were completed.

Gatekeepers

Product manufacturers - *Debentures*

- ASIC today released a consultation paper to reform the debentures issued to retail investors.
- Changes to market conditions since the GFC and a number of business failures in the sector have prompted ASIC to review the regulation of the debenture sector.
- ASIC is proposing to strengthen the regulation of 'bank-like' debenture issuers who raise funds from retail investors and on-lend those funds. This will be achieved by introducing minimum capital and liquidity requirements.
- For the sector more broadly, we are proposing to enhance the role of debenture trustees and give them broad powers to obtain information from issuers and auditors.
- We are also amending the information debenture issuers must provide to investors when they roll over their investments.

Financial advisers - *Macquarie*

- In January, ASIC accepted an enforceable undertaking from Macquarie Equities Limited (MEL) following a surveillance that found recurring compliance deficiencies by and in the supervision of MEL's advisers.
- The EU followed an ASIC surveillance started in December 2011, which reviewed MEL's compliance systems and a significant number of client files.
- ASIC found MEL had failed to address recurring compliance deficiencies that involved a significant number of its advisers
- The EU requires Macquarie to put in a place a plan to rectify the deficiencies, under the eye of ASIC and an external independent expert. It requires Macquarie to rethink significantly the way it monitors representatives and create a culture where compliance is central to giving advice.

Directors - *Whitehaven*

- On 7 January a hoax media release purporting to be from ANZ entitled "ANZ divests from Maules Creek Project" was disseminated to the media. The hoax media release included a false statement relating to ANZ involvement in lending funds to Whitehaven Coal and its Maules Creek Coal project.
- This affected the Whitehaven Coal share prices.
- The next day, ASIC formally commenced an investigation. We have formally engaged with Mr Jonathan Moylan from the Frontline Action on Coal and our investigation is continuing.
- We are unable to comment further because of potential prejudice to our investigation and the person of interest.

Directors - *James Hardie*

- Last November, the NSW Court of Appeal imposed penalties against James Hardie's former non-executive directors and former company secretary and general counsel.
- The decision follows ASIC's successful High Court appeal last year (2012).
- The matter reinforced the importance of companies providing the market with correct and accurate information and that directors must engage with the most important announcements.
- The widespread public analysis of the James Hardie matter had already resulted in improved board process.
- Since the original decision in James Hardie in 2009, ASIC has observed board engagement with disclosure had improved. The NSW Court of Appeal's decision is a timely reminder for directors of its importance.

Auditors

- In December ASIC released its audit firm inspection report for the 18 months to 30 June 2012.
- The ASIC report covered inspections of 20 Australian audit firms and found auditors did not perform all of the procedures necessary to obtain reasonable assurance that the audited financial report was not materially misstated in 18% of the 602 audit areas that we reviewed over 117 audit files. The figure for the previous 18 months was 14%.
- While the financial reports audited may not have been materially misstated, the auditor had not obtained reasonable assurance the financial report as a whole was free of material misstatement.

- The results disappoint and frustrate me. The audit sector should consider itself on notice.

Unregistered MIS

- On 11 February 2013 Brian Wood, of Davistown, Jimmy Truong of St John's Park, and Con Koutsoukos of Wiley Park, sentenced to jail for operating a \$30 million Ponzi scheme called Integrity Plus Fund.
- 270 investors caught up in the scheme.
- Mr Wood was sentenced to 3 years 11 months jail, to serve a minimum term of 2 years 6 months. Mr Truong and Mr Koutsoukos were both sentenced to 2 years 8 months jail, to serve minimum terms of 2 years.
- All pleaded guilty last year (2012) to various offences related to operating the Integrity Plus Fund, including making false statements to investors. Mr Wood was also convicted of fraudulently misappropriating investors' funds.
- Prior to their jailing all three men entered into separate enforceable undertakings with ASIC not to provide financial services and to manage companies, for a combined total of 45 years.
- ASIC is also involved in related civil penalty proceedings against operators of more than a dozen offshore managed investment funds including the Integrity Plus Fund. Penalties will be handed down in the NSW Supreme Court on 21 February 2013.

2. Fair and efficient financial markets

Insider trading

- Last November, former BG Group executive Dr Stuart Alfred Fysh was found guilty of two insider trading charges brought by ASIC. Dr Fysh was sentenced to two years jail with a minimum sentence of at least 12 months in prison before being eligible for parole.
- Also in November, Mr Ulf Lindskog, pleaded guilty to four insider trading charges involving the Spotless Group, following an ASIC investigation.
- In December, John Khoo, and Jia Tan, pleaded guilty to insider trading charges brought by ASIC which involved takeovers of Macarthur Coal and Caledonian Resources.
- Also in December, Elisa Rietbergen and Joseph Levi, were each sentenced to 18 months jail, to be released immediately, for an insider trading scheme involving Valad property group.
- Last month, Oliver Peter Curtis was charged with conspiracy to commit insider trading relating to an alleged agreement between Mr Curtis and convicted insider trader and tipper John Hartman.

- This Friday, Calvin Zhu, former executive with Hanlong Mining will be sentenced, after pleading guilty last July to three insider trading charges relating to conduct from December 2006 to July 2011.

Financial markets infrastructure

- In November, ASIC released market integrity rules to address market structure risks including growth in automated trading and dark liquidity.
- The rule are about addressing developments in trading and market structure domestically and abroad are rapidly shifting the landscape of the Australian market, and we see a trend towards more frequent, smaller trades, away from public markets, with implications for the price formation process.
- The rules are the result of industry consultation dating back to 2010 and address issues ASIC considers necessary to maintain fair, orderly and transparent equity markets.

Dark liquidity and HFT taskforces

- ASIC has established two taskforces to consider dark liquidity and High Frequency Trading.
- Both taskforces promote market integrity by identifying and taking actions against possible misconduct in the dark and through HFT.
- Both taskforces are undertaking a thematic review and information gathering stage, which includes sending questionnaires to relevant participants and conducting meetings with industry.
- The analysis conducted on this intelligence, together with consideration of international developments, will inform ASIC on whether new rules, guidance, or law reform are required. Any changes ASIC proposes will not occur without industry consultation. ASIC expects to release the reports of these taskforces next month.

3. Registry and licensing

Focus on small business Efficient registration and licensing

Business names

ASIC implemented the new national business names register last May. This has replaced eight state and territory systems, simplifying business registration in Australia by offering a single online service.

- This allows customers to save time and money, and as at mid January over 185,000 new business name registrations have been received by ASIC via this new service.
- Well over 99% of business name registration applications are being submitted online, and close to 30% are submitted after business hours, with only a handful of paper registrations being facilitated.
- Business has embraced the system --- especially the new online check name availability search. Over 4.3M free searches have been conducted, and nearly 20% via a mobile device - making it quick and easy for new business start-ups to check if their new business name is 'available' to register.
- Existing business name holders are also starting to transition to the new online service. Since October 2012 and over the next 2 years, ASIC will contact close to 1.6m business name holders that had previously registered their business name with a State or Territory, and invite them to 'come online' and renew their business name using ASIC Connect. This is a very large transition from systems that traditionally have been paper-based, and whilst customers have experienced some delays in contacting ASIC, we are working to improve these response times and our information and support for customers.

BUT overall:

- **Easier** – because you can do it all online and only need to register a name once rather than separate state registers
- **Cheaper** – savings to business are significant
- **Quicker** – you can search and apply online.

Small business survey

- Recently completed an online survey of small business.
- 1573 responses – a statistically valid sample.
- Survey responses came from all 17 industries (industries listed in accordance with ANZSIC classification).
- Almost half of the respondents suggested the ASIC website could have more information for small businesses.
- More than 50% of small business owners regard the ASIC website as the easiest channel for obtaining information.
- ASIC will use this information to improve its engagement with small business.

ENDS