

Australian Securities and Investment Commission - Opening Statement for Budget Estimates 4 June 2013

- Thank you Chairman.
- I am pleased to appear before the Committee this evening.
- With me are Commissioner John Price and Senior Executive Leaders Chris Savundra, Tim Mullaly and Katherine Morgan-Wicks.
- ASIC Chairman Greg Medcraft and Commissioner Greg Tanzer are abroad today and send their apologies.
- With the departure of Deputy Chairman Belinda Gibson, we have a new Commissioner Cathie Armour who commenced at ASIC yesterday. I look forward to her meeting the Committee at the next Estimates hearing.
- I would like to update the Committee on our work since we last appeared in February 2013 and on 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

On ASIC's MoneySmart website we have had:

- 5.47 million unique visitors to MoneySmart since it launched;
- 14,750 Facebook likes;
- 3,063 Twitter followers;
- 258 public videos on YouTube viewed over 106,674 times; and
- 327,000 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.

Over 6,000 teachers have received professional learning under the MoneySmart Teaching professional learning program.

Last month, we launched our multimedia resources on mobile phone use. This is very relevant because:

- Australia has one of the highest levels of smartphone penetration in the world; and
- Research undertaken by Australian Communications and Media Authority in 2011 found 43 percent of 18 – 24 year olds overspend on their mobile phone plan and this happens on average nearly three times a year. 15% of those surveyed said they over spent by \$200 - \$500.

Gatekeepers – guidance and holding them to account

- Annual reports (guidance)
 - In late March, we released a regulatory guide to improve disclosure in annual reports of listed entities.
 - Specifically, we are targeting the Operating and Financial Review (OFR) to:
 - Promote better communication of useful and meaningful information to shareholders; and

- Assist directors in understanding the OFR requirements.
 - This is not intended to add unnecessary length to annual reports, but rather is intended to promote more meaningful information and analysis for investors.
- SMSF Taskforce Report (guidance)
 - We established an SMSF taskforce in September 2012 in response to an increase in geared investment strategies, increasingly aggressive advertising and the collapse of Trio and the subsequent Parliamentary Joint Committee on Corporations and Financial Services' inquiry.
 - In April, we released a report which reviewed over 100 investor files relating to the establishment of an SMSF that was provided by financial planners and accountants.
 - While most advice provided was rated as adequate there were pockets of poor advice.
- Registered Liquidators Report
 - We released our annual report on registered liquidators for 2012. We conducted over 200 reviews examining issues such as practitioner independence, competence and remuneration.
 - Alarming, we found more than half of all declarations of independence were inadequate. This was a 10% increase from the previous year.
- Scams
 - We have shut down a number of scams including:
 - The China Environment Group share scam which was selling shares at grossly inflated prices;
 - Cold callers impersonating ASIC staff who pretend to help retrieve money lost in other scams; and

- Cold callers impersonating the Sydney Credit Union and offer recipients a significant compensation payment.
- **Cybercrime** - There is a growing trend for these scams to move online and become a lot more sophisticated in their deception. The development of the internet has enabled cyber crime to grow and often facilitates the use of offshore sites to target Australians.
- One tool we have is the ability to disrupt and block the websites of these criminal operators. Our results show that quick action can have a major impact on the amount of money being lost. ASIC can request telecom providers to block access to scam websites under s313 of the Telecommunications Act. Over the last 12 months, we have sought this help on 10 occasions.
- It was recently reported that in ASIC's attempt to block a scam investment website, a number of other sites that shared the same internet address were also blocked. In this case, the issue was that ASIC was unaware the IP address was also shared by other websites. This was the first time we became aware we had blocked other sites. We will continue to take action to prevent scammers defrauding Australians and we are reviewing our procedures to ensure this oversight does not happen again.
- **Actions against directors**
 - In March, Andrew Sigalla was charged with dishonestly using his position as a director by making more than \$6 million in payments to himself to pay off gambling debts and to make mortgage repayments.
 - In March, Craig Horsell, a former director of a South Australian insurance broker was sentenced to 3 years jail and fined \$75,000 for dishonestly using his position to authorise payments totalling over \$400,000 into his personal bank account.

- Third Enforcement Report and Cooperation policy
 - We have released our third Enforcement Report which details our enforcement outcomes in the last 6 months of 2012.
 - Alongside the report, we also released our policy on our approach to dealing with people who cooperate with ASIC's investigations.
 - We explain that cooperating with ASIC may benefit a person or company in many ways. For example, cooperation will be relevant to the type of enforcement action we pursue, or the remedy we seek. We will give due credit for cooperation in proceedings we commence.

- Storm
 - ASIC has settled legal proceedings arising out of its investigation into the collapse of Storm Financial Limited on behalf of two former Storm investors (Barry and Deanna Doyle). The proceedings were commenced against Bank of Queensland Limited (BoQ), Senrac Pty Limited (Senrac) and Macquarie Bank Limited (Macquarie).
 - Without admission, BOQ, Senrac and Macquarie have agreed to pay \$1,100,000, which will fully compensate Barry and Deanna Doyle for their financial loss arising from their Storm investments, as calculated by independent experts retained for the proceedings and as calculated by ASIC under the compensation model it has developed in connection with Storm.
 - ASIC has also appealed the recent decision of the Federal Court of Australia to approve the settlement between former Storm Financial clients and Macquarie Bank Limited following a class action brought against the bank by Sydney law firm Levitt Robinson.

- On 3 May 2013, Justice Logan in the Federal Court of Australia approved the settlement which will see Macquarie Bank pay \$82.5 million (inclusive of legal and administrative costs) in final settlement of the claims of 1050 Storm clients who took out margin loans with the bank.
- Around 315 investors who funded the class action will be reimbursed their legal costs and also compensated for approximately 42% of their losses (as estimated by Levitt Robinson) while around 735 Macquarie borrowers will get back only about 18% of their losses (as estimated by Levitt Robinson). ASIC has intervened to express concerns about matters affecting the fairness of the deal.
- Westpoint
 - ASIC had alleged Mr Norm Carey and Mr Graeme Rundle breached their duties as officers. During the course of the trial, ASIC located a document relevant to the charges. In accordance with ASIC's procedural fairness obligations, ASIC immediately disclosed the document and copies were given to Mr Carey and Mr Rundle, and the court. Following an assessment of the document in the context of the prosecution's case, the Commonwealth Director of Public Prosecutions today advised the District Court of Western Australia that the case should proceed no further and filed Notices of Discontinuance.

Consumer behaviour

- Advertising
 - We are continuing to focus on advertising.
 - In April, we issued an infringement notice to Foresters Community Finance Ltd (trading as Fair Finance Australia) for false or misleading advertising.

- Fair Finance advertised on its website the effective annual interest rate on certain loans was 19.95%, when the interest rate under the relevant credit contracts was in fact 35%.
- They paid a \$6,600 penalty.

2. Fair and efficient financial markets

HFT and Dark Liquidity

- After much work and with the cooperation of industry, ASIC has released its Report (331) and Consultation Paper (202) on HFT and Dark Liquidity in March. Overall, we did not find any fundamental deterioration of market quality, or systematic abuse which threatens the integrity of our market. Rather, we found the Australian market to be of high quality and integrity. Further:
 - Feedback has been generally positive;
 - We are getting the message out that some of the public perceptions about HFT in Australia appear to have been overstated, with no evidence of systemic manipulation by high frequency traders;
 - In terms of holding times, only 1.2% of high-frequency traders held positions for an average of less than two minutes. This is contrary to the perception that HFT holding times are measured in the seconds;
 - In terms of volatility, in most cases, we found that the movement in prices was driven by algorithms of long-term investors rather than HFT; and
- Insider trading
 - We are continuing to get convictions for insider trading and people are co-operating and pleading guilty to insider trading charges.

- In February, former Hanlong Mining executive Mr Calvin Zhu was sentenced to 15 months jail after pleading guilty last July.
 - In March, Mr Ulf Ronnie Lindskog pleaded guilty and was fined \$15,000 and sentenced to 12 months imprisonment wholly suspended due to his guilty plea.
 - In March, the former head of stockbroking firm Lonsec Norman John Graham was convicted and fined \$30,000.
 - In April, a former Citigroup broker, Mr Colin Edward George Hebbard, pleaded guilty and was convicted and fined \$20,000.
 - In April, a former director of Active Capital Management, Mr Jia Yao Mathew Tan, pleaded guilty and was fined \$40,000 and sentenced to 200 hours community service.
 - In May, a former analyst with Lincoln Crowne & Company Pty Limited Mr Jonathan Jin Yi Ang has pleaded guilty and will be committed for sentencing in the District Court.
- In May, ASIC released its annual assessment report of the ASX Group (ASX) licensees. The assessment covers 1 November 2011 to 30 June 2012 and pays attention to how ASX dealt with a number of specific issues including:
 - The sufficiency of ASX's technological resources, in particular following the outage to its market announcements platform on 9 October 2012;
 - Its approach to dealing with long-term suspended entities; and
 - Its processes for reviewing prospectuses.

3. Efficient registration and licensing

Business names register– one year anniversary in late May

- It has been a massive project for our registry team – one of the biggest to date.
- We have had 1.4 million names transferred to us from the States and Territories, and have added 260,000 new names over the year.
- We have handled 350,000 enquiries and issued over half a million renewal notices.
- Our online registers have been searched 14 million times in the past year.
- The sheer scale and size of the project has been challenging, but we have learned a lot and really benefitted from this experience.

SMSF Auditor register

- ASIC assumed responsibility for registering approved SMSF auditors on 31 January 2013 as part of the Australian Government's 'Stronger Super' reforms.
- Registration will be mandatory for anyone conducting an SMSF audit from 1 July 2013.
- To date, we have received 5,643 applications, an average of 75 a day.
 - So far, we have registered 4,281 SMSF auditors.
- Trustees are already beginning to take advantage of the fact that we have a register. It has been searched more than 30,000 times.

