



ASIC
Australian Securities &
Investments Commission

Committee	Senate Economics Legislation Committee
Inquiry	Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions]
Question No.	002
Reference	Spoken, 27 January 2022, Hansard Page 55
Committee member	Senator Pratt

QUESTION

Senator PRATT: Okay. Have you got any breakdown of ASIC's enforcement operations against managed investment scheme operators and financial advisers? How much effort does ASIC apply to the regulation of managed investment schemes?

Mr Kirk: I certainly don't have that with me now, but we could provide something to you on notice.

ANSWER

Have you got any breakdown of ASIC's enforcement operations against managed investment scheme operators and financial advisers?

Managed investment scheme (MIS) operators

For FY20/21, the cost of ASIC's relevant enforcement activities concerning MIS operators was approximately \$5.880m, across more than 40 enforcement matters (some of which also concern other industry sectors, for example financial advice).

The above costs figure is the FY20/21 industry funding enforcement costs amount for the responsible entities subsector, which includes the cost of ASIC's enforcement activities concerning operators of both registered MISs and unregistered MISs that should be registered.

This figure does not include the cost of ASIC's enforcement activities in relation to operators of wholesale MISs and MISs which are investor-directed portfolio services or managed discretionary accounts, and also does not include indirect costs arising from the work of support function teams within ASIC which are attributable to enforcement activities.

In FY20/21, ASIC's major enforcement actions concerning MIS operators included:

- winding-up court action and investigation work in respect of an unregistered MIS operated by Mr Chris Marco and associated entities;
- civil penalty court action, administrative banning action, and investigation work relating to the operators of the Sterling Income Trust, a registered MIS; and
- civil penalty court action and investigation work in respect of two MISs called the Investport Income Opportunity Fund, operated by Linchpin Capital Group Ltd and Endeavour Securities (Australia) Ltd.

Financial advisers

For FY20/21, the cost of ASIC's enforcement activities concerning financial advisers was approximately \$10.448m, across more than 140 enforcement matters (some of which also concern other industry sectors, for example responsible entities and superannuation).

The above costs figure is the FY20/21 industry funding enforcement costs amount for the financial advice sector, which includes the cost of ASIC's enforcement activities concerning both licensed and unlicensed financial advice.

This figure does not include the cost of ASIC's enforcement activities in relation to providers of personal advice to wholesale clients only, and also does not include indirect costs arising from the work of support function teams within ASIC which are attributable to enforcement activities.

In FY20/21, ASIC's major enforcement actions concerning financial advisers included:

- civil penalty court action against National Australia Bank for financial advice fee disclosure statement failures and other breaches;
- civil penalty court action against Dixon Advisory concerning alleged failures to act in clients' best interests and the provision of inappropriate advice; and
- court action against Maliver Pty Ltd and its director, Melissa Caddick, concerning the provision of financial advice and other financial services without holding an Australian financial services (AFS) licence.

ASIC's enforcement activities in this area also included a number of matters that specifically targeted financial advice in relation to MISs, for example:

- court action against Monica Kaur and associated persons and entities concerning the alleged operation of an unregistered MIS and the alleged provision of unlicensed financial advice, including to invest funds in the unregistered MIS;
- investigation and subsequent court action against Ultiqa Lifestyle Promotions Ltd for alleged failures to act in clients' best interests and the alleged provision of inappropriate advice in relation to interests in the Ultiqa Lifestyle timesharing scheme, a registered MIS; and
- the criminal prosecution of John Bigatton, who faces charges including operating an unregistered MIS and providing unlicensed financial advice in relation to interests in online cryptocurrency platform BitConnect prior to its collapse.

How much effort does ASIC apply to the regulation of managed investment schemes?

ASIC undertakes a range of regulatory work in respect of MISs, including:

- assessing AFS licence applications submitted by entities seeking to be operators of registered and unregistered MISs;
- assessing applications for registration of MISs;
- exercising ASIC's administrative powers in relation to AFS licences and disclosure;
- providing guidance to industry and policy advice to the Australian Government;
- providing relief from provisions of the Corporations Act where necessary and appropriate;

- undertaking proactive and reactive supervision and surveillance activities into MIS operators' conduct and disclosure obligations; and
- taking enforcement action in response to non-compliance with the laws administered by ASIC.

For FY20/21, the cost of ASIC's regulatory activities (including enforcement action) directly applicable to MIS operators was approximately \$14.677m.

This is the FY20/21 industry funding costs amount charged to leviable entities within the responsible entities subsector, excluding indirect costs and allowances. As noted previously above, this figure does not include costs in relation to operators of wholesale MISs, or MISs which are investor-directed portfolio services or managed discretionary accounts.