



ASIC
Australian Securities &
Investments Commission

Inquiry into wealth management companies

Submission by the Australian Securities and Investments Commission

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Executive summary

- 1 'Wealth management company' is not a defined term in the legislation that ASIC administers. However, for the purposes of this inquiry, we understand it to refer to a range of entities involved in providing financial advice and issuing investment and superannuation products. Wealth management companies are varied and may have a range of registration and licencing requirements.
- 2 ASIC plays an important role in promoting confident and informed participation by investors and consumers in the financial system. We inform and educate consumers and investors through our [Moneysmart](#) tools and provide guidance to the regulated sector about their obligations and requirements. ASIC has a role in administering the relevant registration and licencing regimes, and we use a range of regulatory and enforcement tools to support consumer and investor protection, improve industry practices, and prevent and act on conduct that contravenes the law.
- 3 Noting the broad terms of reference for this inquiry, our submission focuses on:
 - (a) the regulatory obligations and requirements that apply to wealth management companies;
 - (b) ASIC's regulatory and enforcement role; and
 - (c) information about Dixon Advisory & Superannuation Services Pty Ltd (Dixon) as a case study.
- 4 We note that the factors in each case are complex and specific to the structure of the particular entity and the products offered.

A Wealth management in Australia

Key points

Wealth management companies are varied and may have a range of registration and licencing requirements.

- 5 ‘Wealth management company’ is not a defined term in the legislation that ASIC administers. However, for the purposes of this inquiry, we understand it to refer to a range of entities involved in providing financial advice and issuing investment and superannuation products.
- 6 To operate in these areas, wealth management companies and individuals must meet certain registration and licencing requirements. The following requirements may apply:
- (a) *Australian financial services (AFS) licence*—If an entity or individual provides financial services (including advice on or issue of investments, superannuation or other financial products), they must hold an AFS licence. More [information on AFS licensees](#) can be found on the ASIC website.
 - (b) *Financial adviser registration*—Financial advisers are required to be registered before providing personal advice to retail clients about relevant financial products. More [information on financial advice](#) can be found on the ASIC website.
 - (c) *Managed investment scheme registration*—A managed investment scheme that is available for investment by retail clients must be registered in certain circumstances (including if it has more than 20 members or is promoted by a person who is in the business of promoting managed investment schemes). More [information on registered schemes](#) can be found on the ASIC website.
 - (d) *Superannuation entity requirements*—Specific requirements apply in addition to holding an ASF licence, including registration with the Australian Prudential Regulation Authority (APRA). More [information on registering a superannuation entity](#) can be found on APRA’s website.
- 7 Some wealth management companies may provide other services that have separate requirements—for example, the provision of services in relation to self-managed superannuation funds (SMSFs) and tax.
- 8 Wealth management companies may be structured in different ways and offer different services and products. This affects the unique issues they face and the obligations that may apply to them.

B ASIC's role in protecting and informing consumers and taking regulatory action

Key points

We use a range of regulatory and enforcement tools to support consumer and investor protection, improve industry practices, and prevent and act on conduct that contravenes the law.

Supporting consumers and investors to make informed choices

- 9 Through the [Moneysmart](#) website, ASIC provides trusted tools and guidance to help Australians make everyday money decisions. While most investment decisions carry some element of risk, our financial literacy resources include a range of tools and information to consider when investing, as well as outlining the role of financial advice.
- 10 Moneysmart's [Investor Alert List](#) helps to inform consumers about investments that could be fraudulent, a scam, or unlicensed. The list includes domestic and international entities we are concerned are operating and offering services to Australians without appropriate licences, exemptions, authorisation or permission. It also includes 'impostor' entities, which are entities that impersonate or falsely claim to be associated with a legitimate business. Over the last financial year, the Investor Alert List warned Australians about more than 700 potentially fraudulent or unlicensed investment schemes and scams.
- 11 Where appropriate, we warn consumers about risky investments and concerning conduct. In some cases, we may issue a media release or report to warn consumers. For example, we recently issued a warning and launched a consumer awareness campaign after an ASIC review identified the [use of high-pressure sales tactics resulting in inappropriate superannuation switching](#). More information on our approach to public comment on our regulatory activities can be found in Information Sheet 152 *Public comment on ASIC's regulatory activities* ([INFO 152](#)).

Setting expectations of the sectors we regulate through guidance

- 12 We provide guidance to industry about how we administer and enforce the law. Our regulatory resources:
 - (a) explain when and how we will exercise specific powers under legislation, primarily the *Corporations Act 2001* (Corporations Act);
 - (b) explain how we interpret the law;

- (c) describe the principles underlying our approach; and
 - (d) provide practical guidance—for example, by describing the steps of a process (such as applying for a licence) or giving practical examples of how regulated entities may decide to meet their obligations.
- 13 We have published a broad range of guidance and reports on issues relevant to this inquiry, including:
- (a) how certain conduct and disclosure obligations apply to the provision of financial product advice—see Regulatory Guide 175 *Licensing: Financial product advisers—Conduct and disclosure* ([RG 175](#));
 - (b) compliance with the statutory obligation to manage conflicts of interest—see Regulatory Guide 181 *Licensing: Managing conflicts of interest* ([RG 181](#));
 - (c) obligations relating to giving of information and advice—see Regulatory Guide 244 *Giving information, general advice and scaled advice* ([RG 244](#));
 - (d) how large banking and financial services institutions oversee their advisers—see Report 515 *Financial advice: Review of how large institutions oversee their advisers* ([REP 515](#)); and
 - (e) how large banking and financial services institutions manage conflicts of interest—see Report 562 *Financial advice: Vertically integrated institutions and conflicts of interest* ([REP 562](#)).

Supervision and surveillance—Identifying concerning conduct and supporting improved industry practices

- 14 Australia’s financial services sector is a multi-trillion dollar industry with thousands of providers and individuals operating in the sector.
- 15 ASIC’s legislative mandate and resources do not allow us to monitor all advice provided or products offered across this broad industry. ASIC’s role involves gathering information from many sources, across the range of entities that we regulate, and using it to make strategic, risk-based decisions about when to intervene and how to do so. Our supervision and surveillance activity is informed by intelligence from consumers and industry, as well as our own analysis seeking to identify and prevent harm.
- 16 We may undertake targeted activities directed at a particular entity, or broader surveillances focused on a particular theme or sub-set of entities in a sector. Our thematic surveillances are conducted to understand, assess and change industry practices or behaviour across our regulated population (including by identifying enforcement targets).

- 17 Through our surveillance work in the financial services sector, we look to identify misconduct resulting in consumer harm, improve behaviours and processes to drive good consumer and investor outcomes, and promote trust and confidence in Australian financial markets. We may look at whether the entities and individuals subject to the surveillance:
- (a) are adequately considering the interests of consumers and investors consistent with their legal obligations;
 - (b) have the resources, competence and systems to operate efficiently, honestly and fairly; and
 - (c) are complying with their licence permissions.
- 18 To influence behaviour and support improved practices, we regularly communicate the results of our thematic surveillances through media releases or reports highlighting findings or observations on industry practices. See, for example, Report 779 *Superannuation and choice products: What focus is there on performance?* ([REP 779](#)). We may also engage in follow-up activity of varying degrees of seriousness with the entities who were subject to our surveillance activity.

Example: ASIC review of performance in choice products

We collected information from 10 superannuation trustees about investment options from APRA's [Choice Heatmap](#) or investment options that trustees had identified as their worst performing. We focused our review on the practices and decision making of trustees, advisers and advice licensees in response to persistent failures of investment options to perform as anticipated.

Our review found that often there was insufficient emphasis on and a lack of transparency about choice investment options that failed to meet performance expectations. There was little evidence of trustees communicating to members about the performance of investment options in a targeted manner, and financial advisers were not always addressing underperformance where relevant. This included 11 files where we identified advice deficiencies revolving around failure to undertake reasonable assessment of the underperforming option or explain why retention was appropriate.

Where there was an indication that clients were at risk of detriment as a result of personal advice, we contacted advice licensees requesting review and remediation. In these cases, advisers had recommended clients retain between 38% and 100% of their superannuation balances in an underperforming option. We also referred the conduct of a small number of these advisers to the Financial Services and Credit Panel, for consideration of their conduct by other industry participants.

- 19 We may also issue consumer warnings following this type of work. For example, we recently issued a warning and launched a consumer awareness

campaign after an ASIC review identified the [use of high-pressure sales tactics resulting in inappropriate superannuation switching](#).

- 20 Where we identify conduct requiring further regulatory action (e.g. serious licence failures), we may take administrative or enforcement action. Less serious adviser misconduct may be referred to the Financial Services and Credit Panel.

The role of external administrators and liquidators in wealth management company collapses

- 21 Where external administrators or controllers are appointed following the collapse of a wealth management company, they are required to report to ASIC if it appears to them that a person may have committed an offence or engaged in misconduct in relation to the company.
- 22 As part of their duties and functions, an external administrator or controller will investigate the company's affairs to identify property that may be recovered to form part of the funds in the administration to be distributed in accordance with the law. As part of these investigations, information or evidence may be identified that enables them to form a view that it appears an offence has been committed or misconduct has occurred that must be reported.
- 23 The reporting obligations provide ASIC information about possible breaches of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) by persons involved with a company. If other breaches of the law are identified, we can also share this information with relevant agencies, as appropriate.
- 24 The Assetless Administration Fund is a grant scheme established by the Australian Government and administered by ASIC. It provides funding to registered liquidators to take action to recover assets or to report to ASIC about illegal phoenix activity or other serious misconduct.
- 25 In some cases we may already be investigating conduct by individuals or entities before the collapse happens. In other cases, we may investigate matters raised in reports lodged by external administrators and controllers.
- 26 We consider a range of factors when deciding whether to investigate or take enforcement action in relation to the reports lodged. We also use information from these reports for other regulatory, statistical and intelligence purposes, such as to identify systemic issues and risks or to enable us to publish aggregated information.

Enforcement

- 27 We use a suite of enforcement tools to respond to and deter misconduct in the financial services sector. The range of ASIC's administrative and enforcement powers is set out in Appendix 1.
- 28 Like any regulator, we have a finite set of resources to apply in our enforcement work. We do not, and cannot, conduct in-depth formal investigations into every report of alleged misconduct. We prioritise high-risk reports and misconduct with potentially widespread impact, relating to our strategic or enforcement priorities.
- 29 We may take a range of enforcement and consumer protective actions, many of which are primarily designed to protect investors and consumers. These actions may include:
- (a) seeking interim court orders while we investigate a matter to protect assets or prevent them from being moved or used, or prevent an individual or entity from continuing to act in contravention of the law;
 - (b) suspending, cancelling or varying conditions on an AFS licence or an Australian credit licence, including imposing additional licence conditions or removing licence authorisations;
 - (c) imposing stop orders, taking disciplinary action, or making referrals or applications to various disciplinary bodies or courts, including referring a matter to a Financial Services and Credit Panel or ASIC delegate;
 - (d) disqualifying an individual from managing a corporation for up to five years if that person has been involved in two or more failed companies within the last seven years in specified circumstances;
 - (e) filing civil penalty proceedings or other court action seeking declarations of contravention in relation to misconduct to achieve specific and general deterrence; and
 - (f) for the most serious misconduct, where there is evidence supporting the criminal evidential burden of proof, referring briefs of evidence to the Commonwealth Director of Public Prosecutions (CDPP) in relation to criminal charges.
- 30 When suspending or cancelling an AFS licence, we may specify that the licence continues in effect as though the suspension or cancellation had not happened for the purposes of certain provisions for a specified period. Such conditions can include that the licensee is required to maintain professional indemnity insurance and/or membership of the Australian Financial Complaints Authority (AFCA).

C Dixon Advisory & Superannuation Services: A case study

Key points

We were aware of investor concerns relating to Dixon's US Masters Residential Property Fund (URF) product from around 2014 and conducted a surveillance in 2015. We also considered concerns in relation to alleged misleading content on Dixon's website, issuing two infringement notices in 2015.

Following further reports of misconduct, we commenced another surveillance into Dixon and the URF on 4 May 2018. This surveillance identified concerning conduct, including conflicts of interest and the risk of investor losses. The surveillance led to the commencement of a formal investigation by an ASIC enforcement team in July 2019.

Our investigation considered the adequacy of Dixon's management of conflicts, as well as the appropriateness of advice provided by Dixon advisers. Our investigation resulted in filing of civil penalty proceedings against Dixon in September 2020.

Following a court-ordered mediation, and during the course of the proceedings, Dixon entered voluntary administration. The court ultimately made orders in relation to liability and penalty on 19 September 2022, including that we not enforce the \$7.2 million penalty without first obtaining leave of the court.

We subsequently issued separate civil penalty proceedings against a director of Dixon. Our litigation concerning directors' duties in this matter is ongoing.

Overview of Dixon

- 31 Dixon operated from 11 November 2003 until 8 April 2022, and was part of a group that delivered financial advisory and investment management services (Group). The head entity of that group is now known as the E&P Financial Group Limited (ASX code EP1).
- 32 As part of the Group, Dixon provided services under an AFS licence to more than 4,500 clients. The services provided were primarily financial product and investment advice to the clients, often in relation to their SMSFs.
- 33 From 15 April 2011 until 22 June 2015, Dixon was the responsible entity for the ASX-listed URF, a unit trust and registered managed investment scheme under s601EB of the Corporations Act.
- 34 Dixon provided personal financial product advice in relation to, and dealt in, the URF. The URF's stated objective in its 2018 Product Disclosure

Statement was to provide a diversified portfolio of US residential property. The strategy sought to take advantage of the significant drop in home prices during the US housing collapse of 2006 to 2011 by investing in freestanding and multi-tenant houses in New York and New Jersey.

- 35 Prior to Dixon entering administration, the responsible entity of the URF changed over time. The subsequent responsible entities, appointed prior to administration, were related entities within the Group. Various entities within the Group received fees from the operation of the URF .
- 36 The URF was one of a number of integrated products within the Group that were on the approved product list for Dixon to recommend to clients. Dixon regularly recommended in-house products to their client base.
- 37 In the wealth management sector, this type of business model is referred to as vertical integration, as it combines activities at two (or more) different stages of production and distribution.
- 38 Our concerns were focused on:
- (a) the alignment of personal financial product advice with Dixon's obligation to manage conflicts; and
 - (b) best interests and other advice obligations under the Corporations Act.

Reports of misconduct and surveillance

- 39 Between May 2005 and our commencement of an investigation in July 2019, we received 28 reports of misconduct in relation to Dixon. At that time, we received an average of over 11,500 reports of misconduct each financial year.
- 40 The reports of misconduct regarding Dixon related to varying issues, including:
- (a) potentially misleading advertising;
 - (b) inappropriate advice; and
 - (c) corporate governance concerns.
- 41 Of the 28 reports of misconduct referred to above, 7 of these reports related to the URF. The first of these reports was received on 25 November 2014; concerns were raised about Dixon clients receiving inappropriate or conflicted advice in relation to acquiring interests in the URF, a related party investment.
- 42 On 27 January 2015, we commenced a surveillance to examine these concerns. Using our compulsory information gathering powers we obtained information from Dixon, including a sample of client files, and we engaged with Dixon in response to some of the concerns raised with us. For example,

in response to concerns that Dixon's website included potentially misleading statements about the costs and performance of SMSFs, we issued two infringement notices on Dixon in 2015: see Media Release ([15-207MR](#)) *Dixon Advisory Group pays an infringement notice for potentially misleading advertising* (4 August 2015).

ASIC conducts a further surveillance and investigates Dixon

Further surveillance in 2018

- 43 Following further reports of misconduct, we commenced another surveillance into Dixon and the URF on 4 May 2018. One of the concerns identified through this surveillance was that clients of Dixon had been advised to increase their exposure to the URF in their investment portfolios, by participating in additional capital and debt raisings by the URF in the period 2015 to 2018. The surveillance identified this as potentially not in the clients' best interests and that advice on the URF was driven by Dixon's business and advice model. We were also concerned about Dixon's management of its conflicts of interest. This surveillance led to the commencement of an ASIC enforcement team formal investigation in July 2019.

ASIC's investigation

- 44 Our investigation was scoped to consider conduct between January 2015 and July 2019. The scope included possible contraventions of s912A, 961B, 961G, 961J, 961K and 961L of the Corporations Act by Dixon and/or its officers, employees, representatives, and agents or related entities.
- 45 The focus of our investigation, and the underpinning of the subsequent civil penalty proceeding, were contraventions of the law associated with the business and advice model, and Dixon's responsibility for that model. Our investigation focused on Dixon as the 'provider' (within the meaning of the Corporations Act)—that is, the entity responsible for the advice being provided under its licence, as well as the entity responsible for the business structure within which poor advice was provided.
- 46 In this matter, the relevant individual advisers were acting in accordance with the guidance and procedures set by Dixon, their licensee. While our action relied on evidence of certain clients and instances of advice given to those clients (because each individual breach needed to be established to the court's satisfaction), the core regulatory concern was the structure of Dixon's operation and advice model, which we alleged led to advice failures across the business.

ASIC takes court action against Dixon

- 47 In September 2020, we commenced civil penalty court proceedings against Dixon. In those proceedings, we alleged that Dixon, as the licensee responsible for advice provided by its representatives, breached the best interests duty (s961B of the Corporations Act), the appropriate advice obligation (s961G of the Corporations Act) and the conflicts of interest obligation (s961J of the Corporations Act).
- 48 Following a court-ordered mediation, on 8 July 2021, ASIC and Dixon entered into a heads of agreement to resolve the proceedings. The heads of agreement proposed that Dixon pay a \$7.2 million penalty for breaches of the Corporations Act, as well as \$1 million to recover the costs of our investigation and legal proceedings. The in-principle resolution between the two parties was subject to approval from the court.
- 49 On 19 January 2022, Dixon was placed in voluntary administration.

The Federal Court imposes a \$7.2 million penalty on Dixon

- 50 On 19 September 2022, the Federal Court found Dixon had contravened s961K(2) of the Corporations Act 53 times arising from 29 individual instances of advice, during the period 6 October 2015 to 31 May 2019. This was as a result of being the responsible licensee of representatives who, in providing financial product advice that was personal advice within the meaning of s766B(3) of the Corporations Act, contravened:
- (a) s961B(1) of the Corporations Act, by not acting in the best interests of the client in relation to the advice; and/or
 - (b) s961G of the Corporations Act, by providing advice in circumstances where it was not reasonable to conclude that the advice was appropriate to the client, had the provider satisfied the duty under s961B of the Corporations Act to act in the best interests of the client.
- 51 Section 961J contraventions relating to conflicts of interest were also alleged in our filed proceeding but were not pressed following court-ordered mediation.
- 52 The court ordered that Dixon pay a \$7.2 million penalty. Those funds, if paid, are payable to the Commonwealth and are not available for payment of compensation to clients. The court orders provided that we not enforce that pecuniary penalty of \$7.2 million without first obtaining leave of the court to do so. We do not anticipate enforcing payment of the penalty at this stage, given that doing so would impact the funds available for payments to Dixon clients.

ASIC acted to inform Dixon investors of their complaint rights

- 53 On 19 April 2022, we suspended the AFS licence held by Dixon following the appointment of administrators on 19 January 2022. The terms of suspension included conditions that required the maintenance of dispute resolution arrangements including membership of AFCA until 8 April 2023: see Media Release ([22-094MR](#)) *ASIC suspends AFS licence of Dixon Advisory* (19 April 2022).
- 54 On 3 August 2022, we informed former clients of Dixon, by way of a media release and correspondence, to consider lodging complaints with AFCA: see Media Release ([22-205MR](#)) *Former Dixon Advisory clients should consider lodging complaints with AFCA* (3 August 2022). This was because once a firm's AFCA membership ceases, no further complaints can be accepted by AFCA.
- 55 Effective 5 April 2023, we cancelled the AFS licence held by Dixon and imposed a condition that required the maintenance of dispute resolution arrangements, including membership of AFCA, until 8 April 2024: see Editor's note to [22-094MR](#). It is not uncommon for ASIC to impose such a condition as a protective measure to ensure consumers continue to have access to AFCA processes.
- 56 Dixon was expelled from membership of AFCA on 30 June 2024.

Dixon clients elected to transfer to Evans & Partners

- 57 The Dixon administrators' report dated 29 November 2022 states that the administrators completed an assessment as to whether the client list owned by Dixon could be sold, and determined it was likely to be uncommercial to pursue. The administrators also obtained an independent opinion on this matter from an insolvency practitioner (FTI Consulting), who concurred with the administrators' opinion. At the time, we engaged with the administrators to understand the steps being taken to properly consider the value of the clients to Dixon.
- 58 Dixon clients had been given a choice to exit from the Group or move from Dixon to Evans & Partners Pty Ltd (E&P), another AFS licence holder in the Group. Some chose to leave and the majority decided to stay within the Group. By May 2022, approximately 3,280 of 4,100 clients had moved from Dixon to E&P.
- 59 Most Dixon clients already had a standing relationship with other entities within the Group. For instance, clients may have received investment advice from Dixon, but the administration of their SMSF was conducted by other entities, or they received broking services from another of the AFS licensees within the Group. The agreements Dixon clients entered were generally not

exclusive to Dixon, with clients authorising services being provided across various entities within the Group.

- 60 Between 1 January 2021 and 10 May 2022, E&P appointed 39 advisers who were Dixon representatives. Of those, 27 were appointed to an E&P role that involved the provision of financial advice.
- 61 Some of the advisers were appointed to E&P before Dixon entered administration on 19 January 2022.

ASIC took supervisory steps in relation to the transfer of clients and advisers to E&P

- 62 E&P lodged an AFS licence variation application in December 2021. Following this, we engaged with E&P in respect of a number of matters relevant to the licence variation application, including:
- (a) the transfer of clients and financial advisers from Dixon to E&P;
 - (b) E&P's adviser monitoring and supervision framework; and
 - (c) our concerns around Dixon's advice model and adequacy of conflict control arrangements.
- 63 In response, E&P voluntarily appointed an external consultant to conduct a review of E&P's advice model, including a sample of advice files of E&P advisers who had previously been appointed by Dixon and training arrangements.
- 64 We were provided with reports in February and March 2023 outlining the results of the external consultant's review. The external consultant observed that E&P's frameworks, policies and procedures were designed to effectively support E&P in maintaining compliance with its obligations and in providing compliant advice.

ASIC has taken court action against a Dixon director

- 65 After Dixon was placed into voluntary administration, we commenced a new, second investigation in March 2022 into potential contraventions of directors' duties by officers of Dixon, E&P and related entities, concerning decisions surrounding Dixon being placed into voluntary administration.
- 66 This investigation resulted in ASIC commencing civil penalty proceedings against one of those directors, Paul Ryan, on 3 August 2023. Mr Ryan was also a director of Dixon's holding company, E&P Operations Pty Ltd (E&P Operations).

- 67 We allege Mr Ryan breached his duties as a director by his involvement in decisions we say were to the advantage of E&P Operations, and by failing to properly consider the interests of Dixon’s creditors.
- 68 We allege that Mr Ryan was involved in:
- (a) amending the constitution of Dixon on 22 December 2021 to expressly authorise its directors to act in the interest of E&P Operations; and
 - (b) executing a deed of acknowledgement of debt on 24 December 2021 between Dixon and E&P Operations to the advantage of E&P Operations and to the detriment of Dixon.
- 69 We further allege that at the time the deed of acknowledgement of debt was entered:
- (a) E&P Operations owed Dixon over \$19 million;
 - (b) Dixon was approaching insolvency and therefore its directors were obligated to consider the interests of creditors; and
 - (c) the deed imposed conditions that adversely affected Dixon’s right to recover this \$19 million debt.
- 70 The matter is currently before the court, awaiting a decision on liability. If we are successful in establishing liability, a hearing on whether any relief should be granted will then be held.
- 71 Our investigation of the Dixon related conduct is otherwise concluded.

Appendix 1: Summary of relevant ASIC administrative and enforcement powers

| Enforcement option | Description |
|-----------------------------------|--|
| Criminal proceedings | <p>The laws that ASIC administers permit the courts to impose criminal sanctions for conduct ranging from minor regulatory offences to serious offences involving dishonesty. Examples of the sanctions that may be imposed are prison terms, criminal fines and court orders (e.g. community service orders).</p> <p>We pursue criminal proceedings for the most serious and harmful wrongdoing to deter similar misconduct in the future. We will generally consider criminal proceedings for offences involving serious misconduct that is dishonest, intentional or highly reckless, even when civil action is also available.</p> <p>If we consider that we have gathered sufficient evidence to prove that a criminal offence has been committed, we will usually refer the matter to the CDPP for assessment. However, we are authorised to prosecute some minor regulatory offences on our own behalf.</p> |
| Civil proceedings | <p>Civil penalty proceedings</p> <p>We may commence proceedings to pursue civil penalties for certain contraventions of the law. If a court makes a declaration that a civil penalty has been contravened, it may order the wrongdoer to pay the Commonwealth a civil pecuniary penalty up to the maximum amount for the relevant provision.</p> <p>The court is often empowered to make a range of other penalty orders. For example, orders to disqualify the wrongdoer from managing corporations for a period or orders to compensate investors or consumers who have suffered loss as a result of the contravention.</p> <p>Other civil proceedings</p> <p>We may seek interim orders while we investigate a matter. For example, freezing orders to protect assets or prevent them being moved or used or orders to restrain an individual who is connected to an investigation from leaving Australia while we investigate a matter.</p> <p>We may seek other court orders as a result of our investigation. For example, orders to appoint an external administrator to a company, a scheme or assets, or orders compelling an individual or entity to make a corrective disclosure about misleading or deceptive public statements.</p> |
| Restrictions on licensed activity | <p>If consumer protective thresholds are reached, ASIC delegates may suspend, cancel or vary an AFS licence. They may also temporarily or permanently ban an individual from providing financial services, or performing any functions involved in carrying on a financial services business.</p> |
| Director disqualifications | <p>ASIC delegates may disqualify an individual from managing a corporation for up to five years if that person has been involved in two or more failed companies within the last seven years in specified circumstances. These circumstances are outlined under 'Disqualification from managing corporations' in Information Sheet 42 <i>Insolvency for directors</i> (INFO 42).</p> |

| Enforcement option | Description |
|--------------------------------|---|
| Disciplinary action | <p>In some circumstances, we may take disciplinary action or make referrals or applications to various disciplinary bodies or courts. For example, we may:</p> <ul style="list-style-type: none"> refer a registered liquidator to a disciplinary committee to determine if their registration should be suspended or cancelled, or apply to the court for an inquiry into the conduct of a registered liquidator; apply to the Companies Auditors Disciplinary Board to suspend or cancel the registration of an auditor. <p>We also may (and in some circumstances must):</p> <ul style="list-style-type: none"> refer a matter to a Financial Services and Credit Panel; and issue a financial adviser with a warning or reprimand. <p>Note: The Financial Services and Credit Panel can only exercise its powers, and we can only issue warnings and reprimands, in relation to misconduct that occurred from 1 January 2022 onwards.</p> |
| Product intervention orders | <p>ASIC's product intervention power and the requirement for issuers and distributors of financial products to comply with the design and distribution obligations commenced in April 2019 and October 2021 respectively.</p> <p>These powers enable ASIC to permanently stop or temporarily intervene in relation to a financial or credit product if we are satisfied that the product (or a class of those products) has resulted, will result, or is likely to result in significant detriment to consumers and investors. For example, we may make orders to:</p> <ul style="list-style-type: none"> ban financial or credit products, or a feature of those products, or halt distribution of a product until product issuers provide improved information to consumers and investors in relation to those products. |
| Stop orders | <p>We may issue stop orders to prohibit individuals or entities from engaging in specific conduct if we are satisfied that there has been a contravention of an applicable law.</p> <p>For example, we may issue stop orders to prohibit entities from engaging in specified conduct when there has been a relevant contravention of the product design and distribution obligations.</p> |
| Infringement notices | <p>ASIC administers a number of different infringement notice regimes under the ASIC Act, the Corporations Act, the <i>National Consumer Credit Protection Act 2009</i> (National Credit Act) and the <i>Insurance Contracts Act 1984</i>.</p> <p>We can issue an infringement notice, or refer a matter to an authorised delegate to consider the issue of an infringement notice, as an alternative to court-based action in relation to specific contraventions for which infringement notices may be imposed.</p> |
| Court enforceable undertakings | <p>Court enforceable undertakings are a flexible remedy that contain a set of undertakings from parties who contravene the legislation that ASIC administers, that we may accept and that are enforceable in a court. We may accept court enforceable undertakings as an alternative to, or in conjunction with, other enforcement action.</p> |