



**ASIC**  
Australian Securities &  
Investments Commission

<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation
<b>Question No.</b>	021
<b>Date</b>	23 February 2023
<b>Topic</b>	ASIC licence transfers
<b>Reference</b>	Written, 23 February 2023
<b>Committee member</b>	Senator Deborah O'Neill

## Question

1. In answers to questions on notice you provided the number of AFSLs transferred each year. Would you please also provide on notice transfer numbers for the same periods for other licence types (including credit, company auditor, SMSF auditor, market, benchmark and clearing and settlement licences).
2. How many instances are there in the last three years where an entity has acquired an ASIC licence through a transfer, where the entity previously had the same licence type application/assessment refused, withdrawn, rejected, cancelled, or suspended? Please provide numbers by licence type.
3. How much of the challenge for ASIC in assessing licence transfers arises from the resource constraints, versus the law as currently written?
4. As there are approximately 1000 new AFSL applications each year and 200 AFSL licence transfers, what extra resources would ASIC need to assess all AFSL transfers, i.e. would it be approximately a 20% increase in resource applied to AFSL licencing? Please provide similar answers on notice for other types of ASIC licences including credit, company auditor, SMSF auditor, market, benchmark and clearing and settlement licences.
5. An ASIC surveillance of licensees identified that 60 per cent of licensees had undergone a material change of control and, in 85 per cent of those cases, ASIC was not notified. Since the changes to the law to require ASIC to be notified, has ASIC undertaken any similar surveillance to check the effectiveness of the new law?
6. Please provide a summary of the different ways in which ASIC licences can be transferred or acquired.
7. Please provide any information that is available on the prices of ASIC licence transfers and whether ASIC gathers such information on a regular basis.
8. Do the time frames for acquiring an ASIC licence by application compared to a licence transfer mean that some entities prefer to purchase a licence, rather than apply for a new licence?
9. Is there any information on what portion of ASIC licence transfers occur because a transfer is quicker than a new application?
10. Is there any information on whether entities are acquiring licences to on-sell the licences and make a profit?
11. Would reducing the wait times for ASIC licences reduce the incentive for licence transfers or the price of licence transfers?

12. The FRAA indicated that a future review of ASIC's enforcement function, the FRAA will assess decisions relating to licence and registration variations, cancellations and conditions imposed. Will that review also cover licence transfers?

### Answer

1. Preparation of a response to this question in relation to credit licenses would cause an unreasonable diversion of ASIC's resources.

Change of control is not relevant to company and SMSF auditor registrations as these registrations are personal to the individual and are not transferrable.

The closest equivalent to a change of control for authorised audit companies (ACCs) would be a change in the chief executive officer (CEOs) of an ACC. There are currently 211 ACCs and as at 3 March 2022, there have been at least 118 changes in CEOs. There may be more changes in CEOs, but it would cause an unreasonable diversion of ASIC's resources to determine this.

Having regard to the above, the below table sets out the transfer numbers for the 'other licence types' referenced in your question:

	2019-2020	2020-2021	2021-2022	YTD 2022-2023
<b>Change in control of Australian Credit Licences and auditor registrations</b>	See comments above.			
<b>Change in control of Market Licences</b>	1	6	0	0
<b>Change in control of Benchmark Operators</b>	0	0	0	0
<b>Change in control of Clearing &amp; Settlement facilities licences</b>	0	0	0	0

2. Preparation of a complete response to this question would cause an unreasonable diversion of ASIC's resources for the reasons set out above.
3. A change in the law in this area to provide for more engagement with ASIC on a change of control in a licensee would require significant additional resources. Similarly, under the current law additional engagement by ASIC is possible, but would require even more significant additional resources.
4. ASIC anticipates that it would require 3-4 full time equivalent (FTE) staff if we were to assess an additional 200 AFSL changes in control as if they were new applicants. With respect to credit licenses, we would have to provide an estimate. On the assumption that we receive approximately 30% new credit licence applications compared to AFS licence applications, we would estimate an additional 1 FTE. As a change in CEO for ACC is in a different category, we expect this would require minimal additional FTE resources.
5. Following publication of [Report 482 Compliance review of the retail OTC derivatives sector](#) in June 2016, ASIC conducted a thematic review of retail OTC derivatives issuers in 2019, which included, among other things, a review of their reporting of changes of control. The 2019 review found that the derivative issuers had reported to ASIC all changes of control occurring between January 2016 and April 2019.

Legislative amendments in February 2020 had the effect of changing the time period for a licensee to notify ASIC of a change in control, from no later than 10 business days after the licensee became aware of the change to before the end of 30 business days after the change of control occurred. Further amendments in February 2020 require ASIC to consider whether

ASIC has no reason to believe a controller of an AFS licensee was not fit and proper when an application is made for an AFS licence, or to vary an AFS licence, and gave ASIC power to suspend or cancel an AFS licence if the fit and proper person test is not satisfied in relation to a licensee and the licence. In considering whether a person is fit and proper, ASIC must have regard to the matters set out in s913BB of the *Corporations Act 2001*, which include whether the person has had an AFS licence or Australian credit licence suspended or cancelled, whether a banning order has been made against the person, or whether the person has been convicted of an offence in the last 10 years (among other things).

Since the February 2020 amendments, ASIC has not conducted a similar thematic surveillance of compliance with the requirement to notify ASIC of a change of control.

However, where ASIC receives notification from a licensee of a change of control, ASIC may decide on a case-by-case basis whether to conduct risk-based surveillance to test whether the licensee is complying with its general licensee obligations. If ASIC finds that the licensee has not complied with its obligations, ASIC may take administrative action to suspend or cancel the AFS licence, or other regulatory action, as appropriate.

6. Most licences are held by body corporate entities, so transfer/acquisition occurs by a transfer of sufficient shares to a new controller. There are a small number of licences held by trustees, a change of control occurs where new trustees are appointed, and a small number are held by partnerships where control is held by the partners.
7. ASIC has heard of entities holding AFS licences being sold for over one hundred thousand dollars to millions of dollars. ASIC does not collect this information, as they are private commercial transactions.
8. ASIC's service charter is to assess 70% of licences within 150 days, and 90% within 240 days. As the purchase of a licence is a private commercial transaction, ASIC does not have the data to answer this question.
9. ASIC does not have the data to answer this question.
10. ASIC does not have access to this data. In one instance where ASIC uncovered an applicant agreeing to sell the licence applicant (being a body corporate entity) before the licence was granted, ASIC took action and cancelled the licence.\* ASIC does not know if the applicant made a profit on the sale.

[16-284MR ASIC cancels IMS FX Services Pty Ltd's Australian financial services licence | ASIC](#)

11. ASIC does not have data on the time it takes to acquire an entity that controls a licence. ASIC assesses approximately 50% of AFS licences within 90 days, so it would depend on an applicant's expectation as to the time it would take to acquire versus to apply for a licence.

Aside from the application fee, ASIC does not know what the quantum of other costs are with applying for a licence. As we also do not know the price of acquiring a licence, ASIC is unable to answer whether the price of acquiring a licence would fall if we reduced wait times.

12. This question should be directed to the Treasury.