

**Senate Economics Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Additional Estimates

2015 - 2016

**Department/Agency: Australian Securities and Investment Commission**

**Question: AET 147-157**

**Topic: Wide Bay**

**Reference: written - 17 February 2016**

**Senator: Dastyari, Sam**

**Question:**

**BACKGROUND**

On Friday 4 July 2014 ASIC suspended the Australian Financial Service (AFS) licence of financial services company Financial Technology Securities (FTS) Pty Ltd for providing inappropriate advice, encouraging people to engage in the practice of 'Double Gearing', borrowing against the equity in their home, and using the money (a margin loan) to invest in the share market (ASIC media release 14-154MR).

At that time, WideBay Australia Building Society had a 25% equity stake in FTS.

On 3 February 2015, ASIC issued a statement confirming Wide Bay had failed to properly assess the suitability of customers for loans referred to it by FTS, resulting in a spike in housing repossessions from six in 2013, to 61 in 2014.

But, three weeks later, APRA approved Wide Bay for a banking license, allowing it to become Auswide Bank from 1 April 2015.

**Consequence of suspension**

147. What are the consequences of having an AFS licence suspended?

148. What are the consequences for victims of inappropriate advice when an AFS licence is suspended? Are there clawback or remedial provisions? Or is a licence suspension like getting slapped with wet lettuce?

149. What recourse do victims of inappropriate advice have?

150. What happened to the 67 people who lost their houses?

151. Does FTS have its AFS licence back?

**Inter-Agency Coordination**

152. What communications were there between ASIC and APRA about WideBay in February 2015 after it assessed its home lending concerns?

153. If yes, did APRA advise ASIC that it was granting a banking license to WideBay?

154. Did ASIC relay any concerns about this?

155. Does ASIC work with APRA on issues relating to links between financial institutions?

156. Does ASIC have a MOU with APRA relating to links between financial institutions?

157. Does ASIC continue to monitor Auswide home lending practices? Or has APRA taken on this responsibility?

**Answers:**

147.

The consequence of having an AFS licence suspended is that the holder of the licence is prohibited from providing financial services during the period of suspension. The definition of financial services includes the provision of financial product advice and dealing in a financial product. ASIC may suspend a licence to deter future misconduct or similar misconduct in other licensees and/or to enable a licensee to undertake action to remedy the causes or consequences of misconduct.

In the case of FTS, it and its representatives were unable to provide financial services for a six week period from 30 June 2014 until 10 August 2014. In reaching the decision to suspend the licence ASIC considered multiple factors including deterring financial services licensees from contravening the law. As a result of ASIC's investigations FTS had already ceased its 'one size fits all' approach in which clients were recommended double gearing strategies without adequate account of their personal circumstances.

148.

A license suspension is not remedial nor is it a compensation action, so any recourse clients have is not impacted by it. ASIC will take into account the availability of dispute resolution and/or compensation depending on the circumstances leading to the licensing action.

In the case of FTS, the suspension specified that FTS must maintain membership of an external dispute resolution scheme and must maintain arrangements for compensating clients (professional indemnity insurance), throughout the period of suspension.

In the case of FTS, ASIC wrote to clients of FTS and informed them of the concerns which led to the suspension of its AFS licence. In its letter ASIC informed FTS clients that FTS and its representatives were unable to provide advice during the period of suspension.

149.

There is an established dispute resolution framework in place for consumers who are concerned they have received inappropriate advice.

A client who is concerned that they have received inappropriate advice should in the first instance make a complaint to the AFS licence holder, who is obliged to have proper internal dispute resolution procedures in place. If the complaint is not satisfactorily resolved by the AFS licence holder, or remains unresolved, a client can lodge a dispute with the external dispute resolution scheme to which the AFS licence holder belongs, ie FOS or CIO.

Clients also have the choice to commence civil legal action against the providers of inappropriate advice.

Consumers may also report misconduct to ASIC. ASIC will generally refer individuals consumer disputes to FOS or CIO. If there is evidence of more systemic misconduct and consumer losses ASIC will consider a variety of enforcement actions, including imposing requirements on licensees to set up compensation programs if appropriate (eg through an enforceable undertaking).

150.

A figure of 61 repossessions for 2014 was quoted in the press in March 2015. Wide Bay publicly stated on 11 March 2015 that no repossessions related to FTS clients. ASIC is not aware of any house repossessions relating to FTS clients. ASIC does not as a matter of course enquire into the basis for repossession actions by banks.

151.

The suspension on the FTS AFS licence ceased on 10 August 2014.

152.

At a quarterly liaison meeting in August 2013, ASIC informed APRA that ASIC was investigating Wide Bay's responsible lending practices.

On 3 February 2015, pursuant to the Memorandum of Understanding (MOU) between ASIC and APRA, ASIC released to APRA a draft version of the media release in relation to ASIC's concerns regarding Wide Bay. ASIC also advised APRA that it intended to publish the media release in the afternoon of 3 February 2015. The media release was published on ASIC's website in the afternoon of 3 February 2015.

153.

On 1 April 2015, APRA advised ASIC that Wide Bay Australia Ltd had varied its classification from a building society to a bank (and changed its name to Auswide Bank Ltd).

154.

No. ASIC did not relay any concerns that were additional to those it had already raised about Wide Bay (see above).

155.

ASIC and APRA recognize that full and timely exchange of information is a crucial element in cooperation and coordination between the two agencies, especially in the context of dual-regulated entities such as banks, insurers and superannuation funds, where the two regulators share a common interest in regulating those entities within their respective mandates.

ASIC and APRA both regularly:

- consult with each other before taking regulatory action where relevant;
- notify each other of relevant supervisory and surveillance activities; and
- discuss which regulator is the most appropriate to investigate matters or take particular action.

Under the MOU, the agencies agree that, subject to legislative provisions, information available to one agency, which is relevant to the responsibilities of the other agency, will be shared as requested or on an unsolicited basis.

ASIC and APRA continue to effectively exchange information on relevant regulatory matters through quarterly liaison meetings and regular formal exchanges of information made pursuant to the MOU arrangements.

156.

ASIC has a Memorandum of Understanding (MOU) with APRA which set out the framework for cooperation between the two agencies in areas of common interest. The MOU covers the following key areas:

- regulatory and policy developments;
- mutual assistance and coordination;
- information sharing;
- unsolicited assistance; and
- international representation.

The MOU is complemented by the joint protocol which sets out an overview of the ASIC–APRA liaison structure, including frequency of the meetings and seniority of attendees. Both agencies meet quarterly for regulatory and enforcement liaison meetings:

- the regulatory liaison meetings cover regulatory and policy development matters, thematic or systemic issues, operational matters relating to dual regulated entities as well as developments and emerging risks relevant to both agencies
- the enforcement liaison meetings include discussions of current projects and enforcement actions relevant to both agencies.

157.

ASIC is the conduct regulator for consumer credit under the *National Consumer Credit Protection Act 2009* (National Credit Act). ASIC's responsibilities include monitoring industry compliance with the responsible lending obligations under the National Credit Act.

ASIC continues to have responsibility for regulating Auswide Bank Limited's home lending practices and compliance with the responsible lending obligations under the National Credit Act.

APRA is responsible for the prudential regulation of banks, credit unions and building societies.