



ASIC

Australian Securities & Investments Commission

Senate Estimates Opening Statement: ASIC achievements against its 6 priorities (last 12 months)

By Mr Tony D'Aloisio, Chairman
Australian Securities and Investments Commission

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Two Real Economy Priorities

In the real economy, ASIC is responsible for the legal 'infrastructure' that underpins the financial system and the wider economy. Examples of this infrastructure include company registration, registration of charges, issuing licenses and relief orders.

We said that ASIC's priorities would be (1) continue with business as usual but with the key objective of lifting our operational effectiveness and service levels for all stakeholders. And, (2) to use technology to reduce costs for small to medium business and contribute to cutting 'red tape'.

ASIC has sought to reduce costs and red tape for small to medium businesses. Our key achievements have been:

1 Simplified company registry reporting obligations and reduced compliance costs:

- (a) Updated ASIC systems and processes in response to legislative reform;
- (b) Supported a more flexible regime for payment of annual corporations fees; and
- (c) Removed duplication for companies operating in both New Zealand and Australia.

2 Enhanced electronic lodgement capabilities and reduced costs to business:

- (a) Developed (with APRA) an IT platform for APRA/ASIC dual regulated institutions to lodge breach reports online; and
- (b) Other electronic interface projects to be delivered on or around July 2008 (for financial accounts and voluntary deregistrations).

3 Reduced paperwork and costs for Australian business:

- (a) Introduced e-charges (i.e. electronic charges over company assets); and
- (b) Developed a web-based software application to further streamline common transactions. Last year, 80% of these e-enabled documents were lodged electronically.

4 Improved stakeholder services:

- (a) Introduced a cost-effective 1300 telephone number for all Client Contact Centres and improve service level (80% of calls to be answered within 60 seconds); and
- (b) Established a 'bank switching' information hotline in response to the Governments package of measures to assist consumers switch banks.

5 Made the regulatory system smoother and easier to work with:

- (a) Rationalised ASIC's regulatory documents, distilling 14 different types of policy documents into 5 documents;

- (b) Produced a Service Charter with 6-monthly updates
- (c) Introduced regular stakeholder engagement forums;
- (d) Introduced 3-yearly reporting of regulatory decisions; and
- (e) Established information sharing guidelines with the ATO.

We will continue to progress a range of other initiatives in our real economy work to make it easier to do business with ASIC and reduce compliance costs.

Three Financial Economy Priorities

Our Financial Economy priorities were three-pronged and can be boiled down into: (1) helping retail investors protect their wealth; (2) removing international barriers to capital flows; and (3) fighting market manipulation and insider trading.

Retail Investors

For retail investors (Jeremy Cooper will elaborate on the results of the taskforce we set up) but in terms of our key achievements:

1 We have made disclosure better targeted to the needs of retail investors in these areas:

- (a) Debentures (under the 3-point plan):
 - (i) A new disclosure regime on an 'if not, why not' basis is in place (RG69) – 31 October 2007;
 - (ii) A new advertising guide has been implemented (RG156) – December 2008; and
 - (iii) Reported results against the new disclosure regime – 23 April 2008;
- (b) Through our participation in the Government proposed 'Financial Services Working Group' which, with Treasury and the Department of Finance and Deregulation are working on projects to simplify financial product disclosure and to introduce a 4 page PDS for the Government's proposed first home saver accounts.
- (c) Mortgages (switching): reviewed mortgage exit and entry fees under the terms of the Government's package of measures – 5 April 2008;
- (d) Reverse mortgages: research report released – June 2007;

2 We have assisted retail investors to recover funds from illegal operations:

- (a) Implemented insurance and compensation arrangements for financial service providers November 2007;
- (b) Pursued increases in the monetary limits for compensation orders made by external dispute resolution schemes (e.g. the old FICS (now the Financial Ombudsman Service));
- (c) Acted against illegal managed investment schemes:
 - Financial year 06/07 – took action against 105 schemes, with 2550 investors, involving invested funds of \$202 million
 - Financial year 07/08 (to date) – took action against 35 schemes, with 800 investors involving \$91 million in invested funds.
- (d) Specific cases:
 - Westpoint: decisive action to obtain compensation under s50 ASIC Act powers;
 - Fincorp: ASIC obtained asset preservation orders in relation to former directors of Fincorp Investments Limited (Administrators Appointed);
 - ACR: ASIC is reviewing investigating a number of matters relating to advertising, disclosure and related party transactions. Investigations continue.

3 Worked to ensure investors are less likely to respond to misleading advertising for financial products:

- (a) Conducted investor research to devise ‘investor education’ programs for retail investors (including a report – April 2008);
- (b) Ongoing monitoring of advertising of retail financial services and internal reporting of sensitive issues that need to be addressed; and
- (c) Issued reports:
 - Guide on understanding debentures –April 2008.
 - Report on living with a reverse mortgage – April 2008;
 - Report on refinancing of consumer loans (equity stripping) –March 2008;
 - Released the ‘Super Decisions’ handbook – October 2007; and
 - Launch of staff speaker program to deliver key messages to consumers and investors.
 - Report on getting advice: a practical guide to personal financial advice – September 2007.
 - A review of mortgage switching fees as requested by the Treasurer under his package of measure to allow customers to switch between banks easier.

4 Promoted a better framework for advice for investors:

- (a) Worked on an industry standard for employee reference checking; and
- (b) Reviewed training requirements for financial advisers.

Barriers to capital flows

The next priority in the financial economy has been our work to remove barriers to capital flows from and into Australia consistent with maintaining the integrity of our markets. Our objective is to use our connections with other regulators to see what we can do to assist with the 'freer flow' of capital. Clearly important for Australia which is part of the global financial markets. We have promoted this priority in two key jurisdictions (with Treasury):

- 1 **Prime Minister Kevin Rudd and Chairman Cox of the US Securities and Exchange Commission recently announced the start of discussions** which will lead to US and Australian securities exchanges and market participants operating in each other's markets. ASIC and Treasury has been working to bring this important initiative to fruition. This has the potential to provide Australian investors easier and cheaper access to a wider range of US securities through US brokers operating in Australia and Australian brokers operating in the US.
- 2 **We have made progress on implementing mutual recognition arrangements with New Zealand** for offer documents and company lodgments. This will broaden the scope of possible securities offerings made available by brokers to investors in either or both Australia and New Zealand, and reduce cost to companies registered in both countries.

Fighting market manipulation and insider trading

The third priority was the creation of a special Taskforce to determine what additional actions ASIC, in cooperation with the ASX, could take to foster disclosure and fight market manipulation and insider trading. Belinda Gibson will elaborate on the taskforce, but our achievements in this field have been:

- 1 **We have worked with the ASX to speed up the notification of referrals and to minimise the time gap between the alleged conduct and action.** We have set up a system under which we immediately review every referral from the ASX. Between January and May this year, the ASX referred 40 matters to us. We are investigating 11 of them for possible civil, criminal or administrative proceedings, 14 are under surveillance and 11 have been referred to our licensing unit for other possible action. Only four have been closed for insufficient evidence.

In addition, we have one insider trading matter before the courts and 6 with the Commonwealth Director of Public Prosecutions (CDPP), and two market manipulation matters the CDPP.

While all these have been going on, we have been successful in a number of prosecutions which have carried custodial sentences and fines.

- 2 **We have acted on market issues:**
 - (a) Covered short selling:

- Liaising with Treasury in order to amend s 1020B of the Corporations Act to require reporting of covered short selling activity.
- (b) Stock lending disclosure obligations:
- Published a market reminder about the disclosure requirements of stock lending arrangements – 6 March 2008.
- (c) Margin lending:
- Published a market reminder of directors obligation to disclose market sensitive information – 29 February 2008; and
 - Requested the ASX Corporate Governance Council consider adopting a recommendation that listed entities have a policy on when it is appropriate directors enter into margin loans.
- (d) Market rumours (allegations of market abuse):
- Published a market warning about the use of false or misleading rumours without properly investigating its truth – 6 March 2008; and
 - Established a team to investigate and pursue leads derived from interviews and documents obtained under compulsory powers.
 - We have extensive inquiries and investigations on foot relating to allegations of false rumours, which may have involved insider trading and market manipulation. To explain further, we have been and are speaking with company officers who have raised concerns about trading in their stock and acting on our surveillance;
 - (i) Obtaining and analysing information about those stocks received as a result of notices served on major broking firms;
 - (ii) Analysing scrip ledger information received from those broking firms and also ASX;
 - (iii) Obtaining data from the stock lending association and other sources about various short selling transactions; and
 - (iv) Interviewing a range of people. As part of our inquiries we have issued to market participants 70 first round notices, 32 second round notices and a further 21 notices under other provisions of the Corporations Act.
- 3 **Acted on Cole Inquiry into the AWB in relation to the UN Oil-For-Food Programme.** We have commenced civil penalty proceedings in the Supreme Court of Victoria against six former directors and officers of AWB Limited (AWB).
- 4 **Conducted a ‘stocktake’ on directors’ liability** – whether the balance was right between corporate liability (i.e. relying on the corporate veil) and directors liability. Paper delivered by Neil Young QC as ASIC Summer School – 18 February 2008.
- 5 **Competition for Trading Services:**

- Procured expert industry advice;
- Conducted two rounds of industry consultation for which reports were published; and
- Primary advice (confidential) has been given to the Government.

Strategic Review of ASIC (Sixth Priority)

We have conducted our Strategic Review. We drew heavily on our stakeholders to conduct this review (including an external survey, results of which have been published on our website), and the key benefits which will flow from the review will be for ASIC's external stakeholders. They will see an ASIC which:

- 1 better understands the markets it regulates
- 2 is more forward-looking in examining issues and assessing systemic risks
- 3 is much clearer in outlining to the market why it has chosen to intervene and the behavioral changes it is seeking
- 4 has a clearer set of priorities (principal priorities being retail investors and insider trading, market manipulation and disclosure).

The changes ASIC is making to deliver these benefits are:

- 1 additional investment in market research and analysis
- 2 appointment of an experienced External Advisory Panel drawn from sectors of the economy to advise ASIC's Commission on market developments and potential systemic issues
- 3 abolition of the 4 current 'silo' directorates of ASIC and replacement with 17 outward-focused stakeholder teams (e.g. for investment managers, investment banks, superannuation funds, financial advisors, retail investors consumers and others)
- 4 additional resources for the supervision of brokers and intermediaries and operators of exchange traded markets and for the surveillance of exchange-traded markets
- 5 a better balance between national and regional initiatives (for example more resources for the Perth and Western Australian markets)

ASIC will deliver these changes through greater investment in people, in the training and development and credential building of existing staff and leaders, and in the recruitment of senior people from the market.

Initiatives which will assist ASIC to develop skills and credentials include:

- 1 secondments
- 2 more senior-level recruitment from the markets
- 3 an ASIC Academy
- 4 greater on-the-job training (e.g. through mentoring and network leaders).

As part of the move to the stakeholder teams, ASIC will reduce two layers of management (Executive Directors and Directors) to one level called Senior Executive Leaders. The move to one level of senior management involves reducing 54 senior positions to 41. These Senior Executive Leader positions will be better paid and be filled in open competition, initially internally and then from internal and external applicants.

We think that these changes will lead to improvements and, with that, greater confidence in ASIC as an effective regulator.