ASIC

Australian Securities & Investments Commission

Ensuring Capacity, Integrity and Accountability of the Regulator

by

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Ensuring Capacity, Integrity and Accountability of the Regulator

In this paper I propose to address five questions. These are:

- how does ASIC attract, maintain and strengthen qualified staff on competitive terms given recent administrative reforms;
- how is communication with market participants on regulations conducted;
- what is the possibility of out-of-court settlements and ASIC's authority in that respect?;
- how effective is stock exchange enforcement?; and
- what are the relations between ASIC and other self regulatory organisations, and what is the role of SROs in enforcement?

1. **How can the regulator attract, maintain and strengthen qualified staff on competitive terms given recent administrative reforms**

   It is unnecessary to say that we all value our staff. Our current challenge is to become more competitive to mitigate the risk of losing our staff to the market. Our staff are highly trained professionals, lawyers, economists and accountants who are highly sought after in the industry by private law firms, the Australian Stock Exchange and other organisations. ASIC recognises that it is in a race against these well-funded competitors in a dynamic and demanding employment market. We want to be an organisation that attracts and retains the right people, and provides them with the right environment to perform to the best of their ability, and to this end we are constantly striving to improve our wage levels and staff working conditions.

   Unlike international counterparts such as the UK Financial Services Authority, the Hong Kong Securities & Futures Commission and the Ontario Securities

Commission, ASIC is a budget-funded regulator, but with significant discretion as to how we spend our allocated funds. Over 50% of our budget is spent on salaries and this constitutes ASIC's largest financial outlay. For this financial year, our budget allocation is $205.9 million, translating to over $102.95 million spent on staff salaries.

We are currently seeking to improve the wage conditions of ASIC's lower level staff through negotiations. The wage levels of these positions are already extremely salary competitive with comparable positions in the private sector.

While we still have clear gaps between the remuneration of our senior staff and that of their private sector equivalents, we are pursuing a path of closing these gaps through higher base salaries and the introduction of expanded, higher performance pay possibilities for our high performing staff.[1] To this end, the Commission is now evaluating our current remuneration structure to consider the viability of an increased performance-based structure at ASIC. We believe that by better remunerating our staff for their expertise, experience and effectiveness, we can move towards parity with other government agencies and also attract and retain great talent in this organisation.

Because ASIC is a government funded regulator we are able to offer staff benefits not offered by private institutions. This includes flexibility, a unique culture and excellent training programs for our staff. I will address these in turn.

Flexibility

ASIC is a flexible employer. Being an Australian Public Service (APS) organisation, ASIC provides staff with flexible working hours, stipulating that the daily working period is 7.45 hours and hours worked after the set period

[1] ASIC 2003/04 Annual Report, page 8 at www.asic.gov.au

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will be accrued as "flex time" to be taken by the staff member at their discretion.

APS organisations, like ASIC, also offer favourable superannuation and pensions, especially for long term employees. In Australia, superannuation is compulsory for all staff. ASIC staff must be a member of one of two superannuation organizations – ComSuper or AGEST. These schemes offer low fees and a variety of superannuation options, such as the deferred benefit scheme (which is the pension option). Further, ASIC makes employer contributions for each of its employees at an extremely competitive rate. The rates are updated annually and vary from 3% of salary at the lower salary levels to 2% at the higher salary levels.

We also offer 12 weeks paid and 40 weeks unpaid maternity leave and up to 5 days of paid paternity leave following the birth of the child.

Culture and Diversity in Work

I believe a strong culture is extremely important to any workplace. Our employees value our good working culture, and for this reason many of our staff choose to work for ASIC for reasons other than on commercially competitive terms. Working for a government regulator provides our staff with the opportunity to influence and assist the community, both in Policy by shaping the law, Enforcement, through prosecuting breaches of the law, and regulation through ensuring compliance with the law. This is an attractive prospect for community-minded individuals.

ASIC is a national regulator with international recognition. We have six directorates: Enforcement, Regulation, Consumer Protection, Operations, Compliance and Finance. We are able to provide our staff with diversified work right across the corporate spectrum. We offer interesting work, and the opportunity to engage in issues that are the vanguard of corporate regulation in Australia.

We also offer a supportive, diversified workplace. As an APS organisation, we subscribe to the APS Code of Conduct and Values. These lists of rules stipulate our core values and govern our professional behaviour, and are aimed at providing for an equitable and ethical work culture.

Another aspect of ASIC's unique culture, and of personal interest to me is the establishment of an ASIC Women's Network to both foster internal networking and to promote networking opportunities for female employees of ASIC both within and outside the agency. It is one of a series of programs ASIC has established to provide strong support to our staff's personal development.

Programs and further education

ASIC has a Graduate Program, which is aimed specifically at attracting recent graduates to ASIC. Graduates are employed each year to be part of the 2-year program. During the program the graduates are offered 3 monthly rotations in the various ASIC directorates in the first year.

ASIC also offers a large number of internal and external programs to foster staff development. An example in Enforcement incorporates instruction on interviewing techniques, search warrant procedures and the like. We also offer training programs in Forensic Accounting, ASIC policies and Financial Services Regulations to name a few.

We also encourage our staff to undertake external education courses, providing access to courses at the Securities Institute, Australian Stock Exchange and the like. We offer up to $1500 per annum study allowance, which might increase to $5000 if the next Australian Workplace Agreement is approved in June. As part of the study allowance scheme, we also offer time off of up to 5 hours a week for study.

2. How is communication with market participants on regulations conducted?

Two-way communication is vital for effective regulation of the industry. If we do not know what is going on in the market, we will be ineffective as a regulator. To this end, we seek not only to impart information to our market participants, but also to receive information from participants, including publicly listed companies, investors, government and industry liaisons. I will address this question in two parts.

First I will talk about our numerous methods of communication with our market participants, both to inform and to educate them on ASIC's activities and regulatory requirements. Then I will describe ASIC's methods of and powers to gather information from our market participants. In fact, ASIC has a statutory obligation both to collect and to disseminate information.

Communication to Market Participants

As I stated above, ASIC has a variety of methods to communicate with our market participants. We regularly publish media releases, speeches, policy statements, practice notes, guidelines, policy proposal papers, reports, booklets, relief instruments and information sheets. We provide public statements on our policies and how we interpret our powers, and to offer guidance to market participants. These are all easily available to the public on the ASIC website.

We make extensive use of media releases to disclose and explain regulatory actions and the adoption of certain standards. A Commissioner or an Executive Director is usually responsible for the issue of these releases. Media and information releases relate to a range of topics including, but not limited to, enforcement outcomes, consumer protection messages, regulatory and compliance requirements and guidance, initiatives with our international counterparts, market regulation and corporate finance guidance and outcomes.

We never do "secret" deals when we take enforcement action – our outcomes are always published. Media releases, we believe, help:

- To inform consumers and investors and to teach them how to participate in the financial system;
- To notify the public of newly revised policies which are made available on the ASIC website;
- To educate business about meeting their legal requirements;
- To raise awareness about the penalties that flow from breaking the law; and
- To ensure that the public recognise that ASIC is an effective regulator that achieves good outcomes.

In 2004 ASIC issued 428 media releases and 79 information releases.

We are conscious that, with new disclosure requirements which I will talk about more below, our consumers, who we also classify as market participants, will be provided with increasing amounts of information about financial products. Disclosure as an investor protection tool will only serve its purpose if people are actually able to understand the information they are given. Our long-term goal, therefore, is the development of a financially literate community in Australia, where consumers can make informed decisions about financial products and services, and identify and avoid financial scams and rip-offs. ASIC is committed to working to raise standards of financial literacy. We do this through our strategic program of consumer information and education, which consists of both long-term policy work, and developing consumer resources for use now. We have produced numerous materials for consumers – and are working on many more – in a variety of formats which we distribute free through many different channels.

One of these channels is our FIDO website. "FIDO" stands for "financial information delivered online", and it is also a reference to ASIC as a "watch dog". ASIC's activity in educating investors is reflected in the 1.2 million visits recorded on the FIDO consumer protection website in the 2003-2004

financial year, an increase of 37% from the previous year. The website provides education to investors by providing warnings on scams and swindlers; get rich quick schemes, investment seminars, cold calling & phone scams; as well as listing illegal schemes, share trading software and disqualified people. Investors may also make public complaints through the website as to financial, insurance, superannuation, investment or banking products or advice. In relation to ASIC's publications generally, 684,000 publications were distributed in 2003-2004 representing an increase of 153% in ASIC's determination to educate investors.

We also conduct a number of industry liaison campaigns where teams of people meet with industry representatives to foster better communication and to achieve a better understand of industry expectations and requirements. An example of this is our National Insolvency Coordination Unit (NICU) which is responsible for, among other things, maintaining ASIC's close links with registered liquidators and its awareness of current issues in the insolvency industry. We are also in constant communication with government and contribute to the law reform process in Australia.

Communication from Market participants

ASIC has extensive powers to require our market participants to furnish us with specific information. Corporate financial disclosure and continuous disclosure have been key priorities for ASIC, especially in light of the corporate collapses early this decade. We believe that disclosure by market participants is crucial for effective regulation of the industry, and to identify problem areas and non-compliance before companies get to the stages of extreme financial difficulty and insolvency.

ASIC has a variety of tools to compel disclosure from its market participants. The Corporations Act requires public companies to lodge with us disclosure documents that include prospectuses and other disclosure documents.[2] The

[2] Chapter 6D, *Corporations Act 2001* (Cth)

requirement for lodgement of these documents is to ensure that directors and promoters provide both ASIC and potential investors with information in fundraising documents to allow investors to make an informed decision about the merits of a particular offer. We require these disclosure documents to be lodged with us so that if there are concerns or complaints, we have immediate access to the information.

As with the prospectus disclosure, we are committed to our ongoing campaign, together with the ASX, to ensure that companies comply with their continuous disclosure obligations under the Corporations Act and the ASX Listing Rules. Continuous disclosure obligations include the lodgment of financial reports, audit reports and other documents.

We also have specific disclosure obligations for market participants who hold Australian Financial Service licenses. AFS licensees are licensed to provide financial services and as part of their licensing obligations are required to provide specific disclosure both to ASIC and to their clients. Disclosure to a client is to be encompassed in 3 documents, namely:

- Financial Services Guide (FSG);[3]
- Product Disclosure Statement (PDS)[4];
- Statement of Advice (SOA)[5].

As part of the enforcement of our powers to compel continuous disclosure, we have set up a Market Watch team which monitors news items for company specific information that may or may not need to be disclosed by the company to the marketplace. MarketWatch is basically an information gathering team that also pursues investigations into possible continuous disclosure breaches, possible insider trading cases, and other market anomalies that may be indicative of market manipulation.

[3] section 941A of the *Corporations Act*.
[4] section 1013D(1)(b) and 1013D(1)(c) of the *Corporations Act*, and Policy Statement 170.
[5] section 945A of the *Corporations Act*, and Policy Statement 175

I would also like to mention our Complaints Directorate. Complaints is a directorate of staff trained to receive and assess complaints received from the public. It is a crucial part of our information gathering system, as it communicates to us any issues of legislative non-compliance by our market participants.

We believe that it is because of our pervasive communication networks, which includes our Complaints system, our disclosure requirements of our market participants, our liaisons with industry, our own supervision of the market and our information dissemination practices, we are able to effectively regulate our market participants.

3. What is the possibility of out-of-court settlements and the authority of the regulator in that respect?

Many people may think that the only way ASIC enforces breaches of the law is to take people to court. This belief is propagated by media attention on large cases, such as those currently in the courts involving ASIC and former officers from collapsed companies like One.Tel and HIH. We recognise, however, that litigation is time intensive and costly, especially for a budget-funded regulator. Further, in many situations, the legal costs incurred from these protracted litigation matters are greater than the amounts recoverable. The uncertainty of outcome is also a factor in taking the out-of-court settlement option.

Court action is only one route ASIC takes to deal with breaches of the law. We have three other methods of enforcing breaches of the law. These are:

- Enforceable undertakings
- Infringement notices
- Negotiated settlements

Enforceable Undertakings

Since July 1998 we have had the power, under s 93AA of the ASIC Act, to accept enforceable undertakings as a way of dealing with issues under investigation, which would otherwise involve us taking legal action against those responsible.[6] For example, we may seek a court injunction or impose a condition on a licence. In appropriate cases, an enforceable undertaking can provide a quicker, more flexible alternative to court or administrative action, both for ASIC and the party offering the undertaking.

Basically, an enforceable undertaking is a promise made to us by a company or person who in our view has breached the law. They promise to take certain action, which, if not complied with, is enforceable in court.

We cannot compel anyone to offer us an enforceable undertaking. Similarly, we are not obliged to accept an undertaking. But if we do accept an undertaking, it is legally binding. Our practice is to make all undertakings publicly available to encourage a culture of compliance and to inform consumers.

Infringement Notices

Infringement notices constitute an additional remedy to address less serious breaches of the continuous disclosure obligations. They are designed to provide a fast and effective remedy so that redress is proportionate and proximate in time to the alleged breach. The matter will be dealt with in a timely and efficient way, while still providing significant protection to the disclosing entity. The infringement notice process is a ten-step process.[7] The process encompasses:

1. an investigation into the alleged breach;
2. a briefing of the matter to an ASIC delegate, an examination of that matter by the delegate;
3. the issue of a hearing notice (providing notice that a hearing will be conducted) a hearing is conducted;

[6] see Practise Note 69.
[7] See ASIC Guide GD 170.

4. an infringement notice is issued (if the delegate believes there are reasonable grounds for doing so);
5. the infringement notice is served;
6. a response by the disclosing entity (ie by complying, seeking withdrawal of the notice or non-compliance);
7. action following the response (ie commencement of civil action of the notice is not complied with); and
8. publication by ASIC of the notice.

This is a relatively new power, vested in ASIC only since mid-2004.[8]

Negotiated Settlement

In certain instances, ASIC seeks to settle with defendants when a matter is about to go, or has already gone, to trial. In this type of settlement, ASIC has the power under court rules like any other party to seek settlement of a matter or to agree to negotiate a settlement. It is important to note that where there is a settlement, the Court still needs to give its formal seal of approval. We do not, as a matter of practice, accept out-of-court settlements as a private party. All negotiated settlements we undertake have to have consent orders issued by the Court.

One example of a negotiated settlement is ASIC's settlements with two One.Tel defendants, John Greaves, its Chairman, and Bradley Keeling, a director.[9] One.Tel was a telecommunications provider that collapsed in late 2001 due to financial mismanagement and suspected director misconduct.

The terms of settlement with Greaves included:

- A prohibition from managing a corporation for a period 4 years;
- A finding of liability for the compensation of $20 million to One.Tel; and
- An order to pay ASIC's costs of $350,000.

[8] By virtue of s1317DAD of the *Corporations Act*.
[9] See ASIC Media Release 04-283.

As part of the terms of agreement, Mr Greaves admitted that during the period January 2001 to 30 March 2001, he failed to take the steps that he should have in order to ensure that he and the board of One.Tel properly monitored management and were aware of the true financial position of the company. This settlement was particularly interesting as it encompassed not only monetary considerations but also a banning order, which ASIC had the power to seek from the court if it had taken the matter to litigation.

Southcorp Limited is another example of a successful out-of-court settlement. ASIC investigated Southcorp for breach of the continuous disclosure rules. On 18 April 2002 Southcorp's then Executive General Manager of Corporate Affairs, Mr Glen Cunningham, sent an email to selected analysts containing information about the likely impact of the poor 2000 vintage for premium wines on Southcorp's 2003 gross profit. ASIC argued that this was information of a type that was required to be disclosed under legislation. Under the settlement, Southcorp consented to a declaration being made that it has contravened the market disclosure provisions of the Corporations Act. Southcorp was also required to pay a pecuniary penalty of $100,000 plus ASIC's costs.[10]

Enforceable Undertakings, Negotiated Settlement and Infringement Notice Powers – which option when?

Enforceable undertakings are probably the most versatile option of the three. They may be used to achieve outcomes that are not available by those other means, and can be more focused (for example, where a party agrees to adopt a compliance regime). Generally, ASIC will look at the circumstances of each individual matter when deciding whether to pursue a negotiated settlement or an enforceable undertaking. Relevant issues will include whether litigation has commenced, what the breach was, the amount of compensation in issue and whether any other penalties such as banning orders are pursued. If litigation has commenced, generally a negotiated settlement is pursued.

[10] See ASIC Media Release 03-376.

Similarly, and as mentioned above, the circumstances of each case will determine if an infringement notice is the appropriate remedy. Enforceable undertakings and negotiated settlements are generally sought for serious breaches whereas infringements notices are sought to address less serious breaches of the continuous disclosure obligations.

4. How effective is stock exchange enforcement?

Fundamentally, "front-line" supervisory responsibilities of the Australian securities markets sit with the leading market operator, the Australian Stock Exchange (ASX). Our enforcement structure is underpinned by the view that there are real advantages to having a market operator with public regulatory responsibilities that is able to use its proximity to the market to monitor broker activity and intervene quickly as required.

Most of my remarks today will be about our relationship with the ASX although it is important to note that there are other stock exchanges in Australia (namely the Bendigo Stock Exchange and the Newcastle Stock Exchange).

On 30 June 2004, ASIC and the ASX entered into a Memorandum of Understanding that recognised the complementary roles played by the two organisations in relation to the oversight of the market licensing, and clearing and settlement facilities offered by the ASX, as well as the conduct of brokers and listed entities.[11]

Under the terms of the MOU, ASX works closely with ASIC. One point of some controversy however is that the ASX is itself a corporation, listed on its

[11] See ASIC Media Release 04-211

own exchange, with an Australian Markets Licence. Therefore, under both the MOU and as an AML holder, the ASX is obliged to assist ASIC in its investigations, and to notify ASIC of certain matters.[12] These include:

- Suspected significant contraventions of the market, clearing or settlement rules or the Corporations Act, such as allegations of insider trading and market manipulation;
- Matters that may adversely affect the ability of a market participant to meet its obligations as a financial services licensee;
- Specific matters prescribed by law; and
- The taking of any kind of disciplinary action against a market or clearing and settlement participant.

The ASX relies on its Surveillance of Market Activity (***SOMA***) computer system to undertake real time monitoring of all trading information. This monitoring is to identify any unusual price or volume movements and to issue a surveillance alert to the ASX. The ASX also relies on another computer system, SEATScan, that enables its analysts to review trading in a stock over a period, at the analyst's own pace. In the event that the irregular trading is not explainable (eg: it is not due to market conditions), then the information may indicate possible market abuse. In addition to undertaking its own inquiries, the ASX may refer the matter to ASIC for further investigation into possible breaches of the Corporations Act.

In the financial year ending 30 June 2004, the ASX made 69 notifications of possible unlawful conduct to ASIC.

In terms of enforcement of the stock exchange, both ASIC and the ASX have different obligations. The ASX has the power to enforce the ASX listing rules and the ASX market rules. The ASX has the power to remedy any breach of its listing and market rules through a variety of means. These include:

- Moral suasion
- Public and private enquiries of listed entities

[12] s792B of the *Corporations Act.*

- The issue of press releases;
- Suspensions;
- Delisting

ASIC conducts annual reviews of the ASX, and publishes a report on the outcomes of that review by virtue of the ASX's position as an AML holder. The assessment report must be given by us to the responsible Government Minister.[13]

One example of a referral by ASX to ASIC, and subsequent investigation and prosecution by ASIC of a market contravention, is the Astron matter.[14] The ASX reported that during the relevant period (17/8/01 to 31/12/01), the price of Astron Limited ("ATR") increased from $0.34 to $1.00, an increase of $0.66 or 194%. A total of 248,952 ATR shares were traded during the relevant period. Querion Pty Ltd ("Querion") purchased, through two brokers, a total of 227,452 ATR shares, representing 91% of the total volume traded during the relevant period. Mr Gavin Brown ("Brown"), who is a director of Querion and a former director of ATR, placed all the buy orders for Querion. As a consequence, the ASX assessed that Brown's actions may have amounted to market manipulation with respect to the price of ATR in contravention of section 998 of the Corporations Act. The ASX referred the matter to ASIC in January 2002. ASIC then undertook an investigation into the matter. The ASX assisted ASIC in the investigation, by providing market data and details of market announcements. ASX officers also provided witness testimony in ensuing litigation. Brown was convicted and sentenced on four charges of market manipulation on 17 March this year.

The ASX/ASIC relationship is one method of stock exchange enforcement. ASIC can also act independently of the market operator monitoring and enforcing breaches of the law.

[13] s794C of the *Corporations Act*.
[14] See ASIC Media Release 05-40

The other tools ASIC has at its disposal to monitor the market and ensure compliance with the regulations includes Market Watch, to which I have referred above. ASIC's MarketWatch team performs a market trading surveillance function within ASIC. MarketWatch uses a system called IRESS. IRESS provides a range of information about Australian and New Zealand equities and equity derivative markets including:

- Real time ASX, options market and SFE quotes
- Full market depth information
- News and company reports
- Market summary information (top movers, market capitalisation, index contribution)
- Broker market share
- Comprehensive historical time series database
- Historical and real-time charting capabilities
- Options analysis

The MarketWatch team also monitors news items on a daily basis for specific company information that may or may not need to be disclosed by the company to the marketplace under the continuous disclosure laws. This information is used by MarketWatch to hone in on items that require further investigation. MarketWatch pursues investigations into possible continuous disclosure breaches, possible insider trading cases, and other market anomalies that may be indicative of market manipulation. MarketWatch shares applicable information with other directorates within ASIC. The ultimate goal of MarketWatch is the detection of continuous disclosure or market manipulation cases that can be referred to the Enforcement Directorate in ASIC.

ASIC, through a partnership with the ASX, and through its own methods, tightly regulates the Australian Stock Exchange and its listed entities. And through these methods of supervision, ASIC is able to effectively identify breaches of the law, and to refer such breaches to Enforcement for investigation and prosecution if required.

5. What are the relations between the regulator and other self-regulatory organisations? What is the role of SROs in enforcement?

Self-regulatory organisations (SROs) are organisations that have been given the power or responsibility to regulate any part of the securities market or industry. Australia does not have SROs in the true definition of the term. In fact, there has been significant debate over the precise definitions of terms such as "self regulation", "co-regulation" and "quasi-regulation". The expression "self-regulation" is used by me today to refer to entities within the market that have self-regulatory powers, although they do not have formal SRO status under the law. These are organisations that form the Australian Stock Exchange, to which I referred briefly in question 4. These organisations include market licensees and CS facility licensees. Market licensees, and clearing and settlement facility licensees have the power to establish rules of eligibility for market participants, and in this way, they have self-regulatory qualities. They can:

a) enforce binding rules of trading for participants; and

b) establish disciplinary rules with the possibility for the imposition of sanctions.

For simplicity, I will refer to these organisations as SROs, keeping in mind that there is no legal definition of the term in Australian law.

Our SROs operate within a legal framework oversighted by ASIC as regulator. In turn, they have certain obligations to ASIC under the Corporations Act. They can be summarised as follows:

(i) SROs are under an obligation to render assistance to ASIC in relation to the performance of their functions, which may include giving ASIC access to books or other information or facilities.[15]

[15] s792D, 792E, 821C and 821D of the Corporations Act.

(ii) ASIC must do a periodic assessment of how well an SRO is complying with its obligations as a licensee at least once a year for SROs that are market licensees.[16]

(iii) An SRO that is a market licensee is also under an obligation to give notice to ASIC if it becomes aware of a matter that adversely affects a financial services licensee's ability to meet its obligations as a participant of the market or a matter concerning the dealing with client's money or other property or the financial records of the licensee.[17]

(iv) SROs are obliged to give ASIC an annual report and any required audit report on the extent to which it has complied with its obligations as a licensee.[18]

(v) SROs are under an obligation to give notice to ASIC if they become aware that they may no longer be able to meet, or have breached, their general obligations as set out in the Corporations Act.[19]

(vi) ASIC has the power to give a direction to a market licensee if it is of the opinion that it is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products.[20]

SROs play a "risk identification" role within the overall regulatory framework. The information generated under such a model can help identify problem areas within industry practice and government or regulator policies within industry practice before they become bigger problems. Further, SROs are under a general obligation to undertake adequate supervision of a market or facility, which includes enforcing compliance with the rules. However, if, for example, an SRO takes any kind of disciplinary action against a participant in the market or facility or there is reason to suspect that a person has committed,

[16] s794C and s 823C of the Corporations Act
[17] s792B and 821B of the Corporations Act
[18] s792F and 821E of the Corporations Act
[19] s792B and 821B of the Corporations Act
[20] s794D of the Corporations Act

is committing, or is about to commit a significant contravention of the operating rules or the Corporations Act, the SRO must inform ASIC.[21]

Market licensees and settlement and clearing facilities are not the only organisations with SRO qualities. Industry external dispute resolution schemes ("EDR schemes") such as the Australian Banking Industry Ombudsman play a role in regulating particular industries in the event of disputes between consumers and market participants.

EDR schemes are vested by their members with specific powers to regulate and enforce industry standards. The benefits of schemes of this nature include:

- they utilise the expertise of the regulated;
- the consent of the regulated is more likely to be secured as the EDR scheme has the ability to enlist the support and input of stakeholders within the industry;
- the model is particularly flexible and adaptable, therefore being most suited to monitor and deal with market and technical innovations. We have experienced this particularly in the e-commerce area where new developments, such as electronic payment systems and aggregation services, are evolving rapidly and the only people who can constructively specify the parameters of effective regulation are the industry members themselves; and
- they offer consumers the benefits of economies of scale, which can be derived from collective monitoring by a self-regulatory scheme. A collective interest within the regulated industry is likely to ensure that minimum standards as well as public confidence are maintained, and that the potentially less scrupulous do not gain a "free-rider" advantage based upon the public's image of the regulated industry.

[21] s792B and 821B of the Corporations Act.

ASIC relies on self-regulatory schemes to cover many day-to-day complaints and industry issues that we would otherwise not have the capacity to deal with. The three biggest external dispute resolution schemes in the finance sector handle many thousands of queries and complaints each year. We work with these schemes to understand systemic problems which may exist and to ensure that the schemes do not work in isolation. In this way, we work towards ensuring that the system as a whole is effective.