



CONFIDENTIAL

5 February 2018

The Commissioner the Honourable Kenneth Hayne AC QC
Royal Commission into Misconduct in the Banking,
Superannuation and Financial Services Industry

By email: FSRCSolicitor@royalcommission.gov.au

Dear Commissioner,

**Royal Commission into Misconduct in the Banking, Superannuation and
Financial Services Industry (Royal Commission)**

We refer to your letter to Peter Kell dated 15 December 2017 and ASIC's letters in reply, dated 19 December 2017 and 15 January 2018.

Please note that on 1 February 2018 James Shipton commenced as the new Chair of ASIC and Peter Kell resumed his role as Deputy Chair.

This letter encloses the additional information foreshadowed in ASIC's letter dated 15 January 2018. The information comprises:

1. a document that summarises, thematically, misconduct identified by ASIC, arranged by industry sector (that includes information contained in the spreadsheets below);
2. 4 spreadsheets in excel format containing details of:
 - 2.1. *inquiries* (including surveillance, reviews and statutory investigations) conducted into financial services entities during the period 1 January 2008 to 31 December 2017 and that resulted in a public outcome;
 - 2.2. *statutory investigations* by enforcement teams that were both commenced and finalised during the period 1 January 2008 to 31 December 2017, and for which there was no public outcome;
 - 2.3. ASIC's current *inquiries*; and
 - 2.4. some of the public reports published on the ASIC website that may be of assistance to the Royal Commission.

Unless otherwise stated, the information in the thematic summary document and in the spreadsheets is limited to information which falls within the Royal Commission's terms of reference. A glossary of terms used by ASIC is **Attachment A** to this letter. Further detail of the spreadsheets is provided below.

Level 5, 100 Market Street,
Sydney NSW 2000
GPO Box 9827, Sydney NSW 2001
DX 653 Sydney

Telephone: +61 2 9911 2000
Facsimile: +61 2 9911 2414
www.asic.gov.au

Please note that this information has been prepared within a short timeframe and involves inquiries made over a lengthy period during which ASIC's corporate structure and record-keeping processes have changed. While every effort has been made to ensure that the information in the spreadsheets is accurate and comprehensive, it is possible that certain inquiries have not been identified due to those constraints.

ASIC's corporate structure

ASIC has adopted a corporate and organisational structure that is consistent with its broad regulatory mandate and that allows it to effectively execute regulatory strategies involving all of the enforcement and non-enforcement regulatory tools available to it. **Attachment B** is a copy of ASIC's organisational chart.

Presentation of attached information

The information contained in the attached spreadsheets provides specified information about past and present inquiries, surveillance, investigations and other activities classified by industry sector.

ASIC has also prepared a document summarising the misconduct observed in industry sectors by theme, with examples of the range of public outcomes that ASIC has achieved in each area.

The thematic document supplements the spreadsheets, by drawing out and grouping relevant examples; however, it is not intended as a comprehensive summary of all inquiries recorded in the spreadsheets.

Spreadsheet 1: Inquiries for which there has been a public outcome

This spreadsheet contains information about:

1. reports of misconduct where ASIC has done work beyond the initial inquiries and assessments undertaken on all reports of misconduct;
2. surveillance and review work; and
3. enforcement activities

for which there has been a public outcome.

On the cover of the spreadsheet is a table that summarises the number of public outcomes for each industry sector by year. By clicking on a number, the user is taken to the relevant subset of results. There are hyperlinks to the relevant media releases in the body of the dataset. ASIC can provide further instruction on the use of this spreadsheet if necessary.

Spreadsheet 2: Enforcement investigations with no public outcome

Spreadsheet 2 contains information about statutory investigations commenced by an ASIC enforcement team – pursuant to s13 of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)* or s247 of the *National Consumer Credit Protection Act 2009 (NCCP Act)* – for which there is no public outcome. This information primarily relates to investigations that were finalised by "no further action" or "alternative regulatory outcome". Investigations are recorded by enforcement teams as finalised by "no further action" or "alternative regulatory outcome" in a number of circumstances including investigations in which there is insufficient

evidence to establish misconduct or the misconduct ceases upon contact between the enforcement team and the person or entity of interest and does not warrant further enforcement action.

Spreadsheet 3: Current activities

Spreadsheet 3 comprises a list of all current activities undertaken by ASIC that are within the Royal Commission's terms of reference.

Spreadsheet 3 comprises 2 tabs:

1. Tab 1 is a list of all current statutory investigations commenced by an ASIC enforcement team pursuant to s13 of the ASIC Act or s247 of the Credit Act; and
2. Tab 2 is a list of all current surveillances and reviews commenced by an ASIC stakeholder team.

Given the ongoing nature of ASIC's inquiries the information in this spreadsheet is highly confidential and potentially market sensitive. In some instances, the subject or person of interest may not have knowledge of ASIC's interest.

Spreadsheet 4: Public reports

This spreadsheet contains links to ASIC's annual reports, enforcement reports and market reports. Each link in the spreadsheet is to the relevant page of ASIC's website, which in turn lists, and links to, each report that is available.

Please note that while some of the thematic information in these reports may be of interest to the Royal Commission, the content of these reports extends beyond the terms of reference.

Further information

Please let us know if the Royal Commission would like specific information about any of the individual inquiries identified in the enclosed spreadsheets.

We observe that particular themes of misconduct extend beyond particular sectors and are broadly relevant to the industry as a whole. Deficiencies arising in the context of conflicted remuneration, the post-sale treatment of consumers and product design and sale and distribution practices are three examples. ASIC would be pleased to assist you to explore any of these industry-wide issues in greater detail, if that would be of assistance.

We refer to the letter from Simon Daley, Solicitor assisting the Royal Commission dated 23 January 2018 suggesting that information on reports of misconduct where ASIC did not undertake inquiries beyond an initial assessment may be of some assistance to the Royal Commission, and suggested a discussion about how this information is best provided to the Royal Commission. I confirm that ASIC would be happy to meet with representatives of the Royal Commission to discuss the form and presentation of this information at their convenience.

ASIC's release of information to the Royal Commission

The information contained in the enclosures to this letter is provided to the Royal Commission pursuant to subsection 127(2B) of the ASIC Act. Some information enclosed with this letter is confidential and ASIC has not accorded procedural fairness to relevantly affected parties before making available the enclosed information under s127. Additionally, some of the information enclosed with this letter is potentially market sensitive. We impose a condition in accordance with subsection 127(2C) of the ASIC Act that the information in the enclosures to this letter be kept confidential by the Royal Commission (including any lawyers assisting the Royal Commission).

In the event that the Royal Commission wishes to disclose or publish any of the information in the enclosures to this letter please contact ASIC so that we may consider your request.

Please let us know if you would like supporting documents relating to any specific inquiry listed in the enclosed spreadsheets.

If you have any questions about this letter, please contact Chris Savundra on [REDACTED] or by email at [REDACTED] or Andrew Tregear on [REDACTED] or by email at [REDACTED]

Yours sincerely,



**James Shipton, Chair
Australian Securities and
Investments Commission**

Telephone: [REDACTED]
Email: [REDACTED]



**Peter Kell, Deputy Chair
Australian Securities and
Investments Commission**

Telephone: [REDACTED]
Email: [REDACTED]

Attachment A – Glossary of Terms

Term	Definition
AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
ACL	Either "Australian Credit Licence" or "Australian Consumer Law"
ADI	Authorised Deposit-taking Institution
AFSL	Australian Financial Services Licence
AOP	Automated Order Processing
APCHL	Australian Property Custodian Holdings Ltd
APRA	Australian Prudential Regulation Authority
AR	Authorised Representative
ASBFEO	Australian Small Business and Family Enterprise Ombudsman
ASIC Act or ASICAC	<i>ASIC Act 2001 (Cth)</i>
ASX	Australian Securities Exchange
ATM	Automated teller machine
ATO	Australian Taxation Office
COBA	Customer Owned Banking Association
ABA	Australian Bankers' Association
BANKAC	<i>Banking Act 1959 (Cth)</i>
BBSW	Bank Bill Swap Rate
CA 2001	<i>Corporations Act 2001 (Cth)</i>
CAR	Corporate Authorised Representative
CAV	<i>Crimes Act 1958 (Vic)</i>
CCAETH	<i>Criminal Code Act 1995 (Cth)</i>
CCI	Consumer credit insurance
CDPP	Commonwealth Director of Public Prosecutions
CFR	Council of Financial Regulators
CFTC	Commodity Futures Trading Commission (US)
CGC	Code Governance Committee
CLCA 1935 (SA)	<i>Criminal Law Consolidation Act 1935 (SA)</i>
CLO	Chief Legal Office
COSL	Credit Ombudsman Service Limited, now Credit and Investments Ombudsman
CAREG2	Corporations Regulations 2001, Schedule 2
CP	Consultation Paper
CRSCH6	Corporations Regulations 2001, Schedule 6
DCI	Deposit Takers, Credit and Insurers
E&Y	Ernst and Young
EDR	External dispute resolution
EFT Code	Electronic Funds Transfer Code of Conduct
EFTPOS	Electronic funds transfer at point of sale
EIF	Equititrust Income Fund
EPCIF	Equititrust Priority Class Income Fund
ETFs	Exchange Traded Fund
EU	Enforceable Undertaking
ETOs	Exchange traded options
FA	Financial Advisors
FAR	Financial Advisers Register

Term	Definition
FDS	Fee disclosure statement
FOFA	Future of Financial Advice
FOS	Financial Ombudsman Service
FPA	Financial Planning Association
FRLC report	Financial Rights Legal Centre report
FSE	Financial Services Enforcement
FSG	Financial Services Guide
FSR	Financial Services Regulation
FSR Prov	Financial Services Regulation Provisions
FX	Foreign exchange
FY	Financial year
GFC	Global financial crisis
ICO	Intensive Correction Order
IMA	Individually Managed Account
IOSCO	International Organization of Securities Commissions
LIE	loan impairment expense
MDA	Managed discretionary account
MINI	A type of derivative product traded on the ASX.
MIR	Market Integrity Rules.
MIRASX	Market Integrity Rules - ASX
MIRCEM	Market Integrity Rules - Competition
MIRCHI	Market Integrity Rules - CHI-X
MIRSFE	Market Integrity Rules - ASX24 (SFE)
MIS	Managed investment scheme
MR	Media Release
NATCCC	National Credit Code
NATCCP NCCP Act	<i>National Consumer Credit Protection Act 2009 (Cth)</i>
NATCT2	<i>National Consumer Credit Protection (Transitional and Consequential Provisions) Act - Schedule 2</i>
NSX	National Stock Exchange of Australia
NTA	Net tangible asset
OTC	Over-the-Counter
PDS	Product Disclosure Statement
PI Insurance	Professional Indemnity Insurance
PWC	Price Waterhouse Cooper
RBA	Reserve Bank of Australia
REP	Report
REs	Responsible entities
RG	Regulatory Guide
SFE	Sydney Futures Exchange Limited
SIS Act	<i>Superannuation Industry Supervision Act 1993 (Cth)</i>
SMSF	Self-managed superannuation fund
SoA	Statement of Advice
TOR	Terms of reference
TPB	Tax Practitioners Board
TRs and CCPs	Trade Repositories and Central Counterparties
UCT	Unfair contracts terms

Attachment B – Corporate structure

ASIC's corporate structure

Last updated: 1 February 2018

