



ASIC
Australian Securities &
Investments Commission

OECD Asia-Pacific Academy for Tax and Financial Crime Investigation –

Participant Presentation Wednesday 25 May 2022

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Presentation will cover

1. ASIC's Regulatory Landscape
2. Brief facts relating to the case study – the fraudulent misappropriation (stealing) of \$60m of retirement savings
3. ASIC's Investigative Methodologies – reference to 10 Global Principles for fighting Tax Crime
4. AML Failures by the Bank and its 3rd party agent
5. Results from the Investigation



ASIC's Regulatory Landscape & Office of Enforcement

1. ASIC is Australia's integrated corporate, markets, financial services and consumer regulator.
2. Two of our Six Main functions are:
 - promote confident & informed participation by investors and consumers in the financial system
 - Take whatever action we can, and which if necessary, to enforce and give effect to the law
3. Office of Enforcement – 4 main areas (Financial Services; Markets; Corporations & Corporate Governance & Financial Reporting & Auditing)
4. Enforcement Officers & Support staff – investigators, lawyers, qualified accountants & auditors, forensic accountants, data analysts, evidence services staff (forensic analysts & data processing)
5. My background – 30+ years experience with specialisation in financial crime investigations
(14 years @ ASIC; 3 years @ Australian Taxation Office; 16 years @ Police Service).

Sherwin Financial Planners: \$60M Ponzi Scheme



- Mid-tier “one-stop” financial planning business in Australia – to establish & administer self-managed superannuation funds (retirement savings): **400 clients with \$86million FUM**
- **Complaint:** Company could not repay \$27m owed to investor clients via loans to property developers
- **Week 1:**
 - **manual review** of about 30 boxes of documents
 - **Analysis** of bank accounts
 - **Call clients** to see what they know / told
 - **Issue production notices** to banks to request information
- **Week 2:**
 - **Civil Court Orders** – freeze assets, passports, bank accounts
 - **Search Warrants Executed** – business & residence
- **Within 12 months:**
 - Criminal Investigation Completed
 - **Criminal Brief to Public Prosecutor re \$15m fraud charges**

Sherwin Financial Planners: What investors didn't know

Table 4: Summary of Funds under Management with Sherwin Financial Planners

Entity	\$
Reacraft	10,446,351
Blue Diamond	2,865,238
Astor Funds	18,756,905
Wickham Capital	2,500,000
SP Property Trust	752,200
Wickham Securities	25,200,150
DDH Graham CMA	5,727,002
External Unrelated Investments	19,611,750
Estimated Total Funds Under Management	85,859,596

Investments with related parties
60,520,844



ASIC's Investigative Methodologies – OECD's 10 Global Principles for Fighting Tax Crime

- **3: Grant Adequate Investigative Powers:**
 - powers to compel production of information & documents
 - Power to compel person attend for an examination
- **4: Powers to seize, freeze and confiscate**
 - Application to Court to freeze assets, access to bank accounts & passport
 - Application to Magistrate for search warrants
- **5: Provide Adequate Resources**
 - Investigation Team: lawyers, investigators & forensic accountant
 - ASIC support staff: Administrative Support, Chief Legal Office, Stakeholder Teams
 - External Support: Police, Forensic & advisory services firm, Company Liquidator



ASIC's Investigative Methodologies – OECD's 10 Global Principles for Fighting Tax Crime

- **7: Predicate Offences to Money Laundering (in addition to Tax Offences)**
 - Proceeds of Crime / Indictable Offences of the State, Commonwealth or Foreign Jurisdiction
 - 4 x Tiers of Offending (>\$50,000 >\$100,000 >\$1m; >\$10m;) – Maximum Penalty = Life Imprisonment (Intentional Money Laundering)
- **8: Interagency Co-operation**
 - Information sharing between ASIC & Australian Taxation Office (Legislation)
 - AUSTRAC: Australia's Financial Intelligence Unit. Access to transactions
 - Memorandum of Understanding – State & Federal law enforcement & regulatory agencies
- **9: International Co-operation with IOSCO member countries**
 - IOSCO Multilateral Memorandum of Understanding
- **10: Protect Suspect's Rights**
 - During Search Warrant – right to remain silent & occupier's rights
 - Compulsory Examination v Formal Record of Interview & Privilege against self-incrimination

Multiple AML Failures by the Bank

- Inquiries into Bank of Queensland and its agent DDH Graham Limited AML / CTF compliance arrangement and anti-fraud practices relating to the Money Market Deposit Account Product:
- AML Failures across 4 key areas, including transaction monitoring, relationship between Bank and its Agent, Customer Identification Procedures:
 - Third Party Account Access permitted by authorised signatories
 - Customer never contacted by Bank or DDH Graham to confirm transaction approval
 - Washing funds: client accounts → same corporate accounts → final destination client account → external client bank account
 - Requests to backdate transactions; insufficient account balances; early notification to agent that large amount of retirement funds being deposited in client account and then requesting multiple transfers to “wash funds”.
- No oversight of Agent by Bank – no AML training by Bank to Agent or by Agent to agency staff
- Failure of Employees of Agent and of Sherwin Financial Planners to report concerns to AUSTRAC or to ASIC.



Investigation Findings & Results

- **Administrative Action**
 - Immediate Protection = Bradley Sherwin banned for life from providing financial advice
 - Auditor = handed in his registration
- **Civil Court Proceedings**
 - Liquidators appointed to all Companies – to close down companies & realise assets for sale to creditors
 - Class Actions by victims – against Bank and Trustee
- **Criminal Proceedings:**
 - **Bradley Sherwin = Sentenced to 10 years imprisonment**
 - **Garth Robertson = Sentenced to 5 years imprisonment**
- **ASIC Media Release**
 - [Summary of ASIC's investigation & outcomes in relation to Sherwin Group of Companies, Bank of Queensland and DDH Graham Ltd](#)



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Thankyou – Any Questions?