

From: s 22
To: ASIC Litigation Practice
Subject: Publication of court documents with MR [SEC=OFFICIAL]
Date: Wednesday, 1 March 2023 11:14:00 AM
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20230215 - Letter to FCA Chief Justice.pdf

Hi all

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Regards

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From: s 22

Sent: Wednesday, 1 March 2023 10:54 AM

To: s 22 <s 22 @asic.gov.au>; s 22 <s 22 @asic.gov.au>

Cc: s 22 <s 22 @asic.gov.au>; s 22

<s 22 @asic.gov.au>

Subject: s 22

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Hi all

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Regards

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ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Office address (inc courier deliveries):
Level 5, 100 Market Street,
Sydney NSW 2000

Mail address for Sydney office:
GPO Box 9827,
Brisbane QLD 4001

Tel: +61 1300 935 075

www.asic.gov.au/

The Hon J L B Allsop AC, Chief Justice
Federal Court of Australia
Law Courts Building
Queens Square
Sydney NSW 2000

By email: EA.AllsopCJ@fedcourt.gov.au

15 February 2023

Dear Chief Justice

Amendment to Rule 2.32 of the Federal Court Rules

I refer to the amendment of Rule 2.32, which came into effect on 13 January 2023 and the Access To Documents and Transcripts Practice Note published on 13 February 2023 (**Practice Note**).

I also refer to the letter from the ACCC to you dated 7 February 2023, a copy of which has been provided to me.

Like the ACCC, ASIC's current practice is to ordinarily publish a media release and a copy of the relevant pleading or concise statement immediately after the commencement and service of any regulatory proceeding, unless the documents contain information which the respondent has asserted is confidential.

The public interest reasons for this approach are as follows.

1. The early publication of the court documents assists ASIC to fulfil its statutory charter as set out in sections 1(2) and 12A of the *Australian Securities and Investments Commission Act 2001* (Cth). The early and clear communication of the allegations made and the concerns that have led to the commencement of the proceedings provide guidance to businesses and consumers about the types of conduct of concern to ASIC, highlight ASIC's compliance and enforcement priorities, and encourage compliance with the law.
2. As you will be aware, ASIC's proceedings are closely monitored by the media, industry, consumer groups and members of the public. Accordingly, we consider it to be in the public interest that the relevant court documents be made publicly available at the time of the commencement of the proceedings to facilitate a proper

understanding – and, importantly, accurate reporting - of the allegations made by ASIC in any proceedings.

We recognise and understand the importance of ensuring that respondents have an opportunity to seek suppression orders in respect of confidential or sensitive information.

The process for approval of media releases, including the release of court documents via a link in the media release, involves input and/or approval being obtained from the relevant Senior Manager responsible for the investigation, the internal representative from ASIC's Chief Legal Office, the relevant Enforcement Executive Director as well as experienced strategic communications staff. The review process is intended to ensure that the media release is both fair and accurate, and that it does not disclose confidential information. As a general practice (although not in all cases) a draft of the relevant pleading or concise statement is provided to the proposed respondent prior to filing with the Court.

In light of the above, I would be grateful for clarification as to whether the change to Rule 2.32 and the publication of the Practice Note are intended to operate to prevent ASIC from continuing with its existing practice of publishing initiating court documents with these media releases.

Please do not hesitate to contact me if you would like further information in relation to the above.

Yours sincerely,

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General Counsel