



**ASIC**  
Australian Securities &  
Investments Commission



# ASIC Enforcement Update

January to June 2019

Report 625

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### Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the *Corporations Act 2001* and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this report are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

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ASIC Report 625

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# Foreword

Welcome to ASIC's Enforcement Update for January to June 2019.

In the last Enforcement Update, I mentioned we had begun the process of establishing ASIC's Office of Enforcement.

It is now in place and we are working to strengthen ASIC's enforcement effectiveness by accelerating court-based enforcement matters.

Between July 2018 and June 2019 we increased:

- › the number of ASIC enforcement investigations by 20%
- › enforcement investigations involving the big six (or their officers or subsidiary companies) by 51%
- › wealth management investigations by 216%.

The Office of Enforcement is responsible for carrying out ASIC's key enforcement activities and is functionally separate from ASIC's regulatory teams. It is comprised of ASIC's two specialist enforcement teams: Markets Enforcement and Financial Services Enforcement, as well as the Enforcement Oversight Committee. The Office of Enforcement is led by Sharon Concisom, Executive Director of Markets Enforcement and Tim Mullaly, Executive Director of Financial Services Enforcement. The analysts, investigators and lawyers within these teams are jointly responsible for carrying out ASIC's enforcement activities.

ASIC's enforcement work has a core focus on deterrence, public denunciation and punishment. We continue to pursue this work via our 'Why not litigate?' enforcement approach.

This approach does not suggest we take every matter to court but allows us to consider relevant factors to ensure we are doing what we should to punish past misconduct and to deter future misconduct.

The next year will see ASIC continue with its recruitment program to increase the number of analysts, investigators and lawyers in our ranks.

This will increase our capacity to investigate – and where necessary litigate against – market, corporate and financial sector misconduct.

This expansion is being funded by the \$404 million over four years provided to ASIC by the Australian Government following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission).

ASIC is responding to Commissioner Kenneth Hayne's 76 recommendations in the Royal Commission final report. Many of the tools are now in place to deliver a stronger legislative, enforcement and regulatory framework with tougher penalties. The government has proposed additional new laws to further strengthen ASIC's enforcement powers.

For example, Australian financial services licensees who fail to ensure their financial services are provided 'efficiently, honestly and fairly', as required by section 912A of the *Corporations Act 2001*, can expect the Office of Enforcement to pursue the harsher civil penalties now available to ASIC. These include financial penalties of up to \$525 million per contravention. When a person engages in dishonest conduct in carrying on a financial services business, they now face imprisonment of up to 15 years.

The Office of Enforcement is continuing its work on the 13 matters referred to ASIC by the Royal Commission as well as a significant number of matters that were examined as case studies in the Royal Commission hearings.

While we do not comment on actual or potential investigations, we are prioritising our work on these matters and a significant number of other investigations into Australia's major financial services institutions. We will continue to provide public updates on our enforcement actions when appropriate.

As I have said publicly over the past year, ASIC has a clear resolve. The Office of Enforcement is ready to deliver on the public's expectation to hold wrongdoers to account.



**Daniel Crennan QC**  
Deputy Chair

# About this report

This report is ASIC's overview of enforcement outcomes, priorities and cases during the period 1 January to 30 June 2019. Previous [ASIC enforcement outcomes reports](#) are available on our website.

## About ASIC

ASIC is Australia's corporate, markets, financial services and consumer credit regulator. Our vision is for a fair, strong and efficient financial system for all Australians.

To realise our vision we use all our regulatory tools to:

- › change behaviours to improve outcomes for consumers and investors
- › act against misconduct to maintain trust and integrity in the financial system
- › promote strong and innovative development of the financial system
- › help Australians to be in control of their financial lives.

## ASIC's strategic priorities and enforcement

ASIC's enforcement teams are committed to meeting the strategic priorities and addressing the focus areas outlined in our [Corporate Plan](#).

ASIC's Corporate Plan covers a four-year period and includes specific focus areas and actions for the year ahead. The Corporate Plan is updated each year and is published on the ASIC website by the end of August.

In the six months between 1 January and 30 June 2019, ASIC enforced the law in the following areas that we have identified as having the potential to cause the most significant harms:

- › harm caused by corporate gatekeepers, including auditors and liquidators, who hold positions of responsibility and trust, and who must lawfully discharge the obligations their positions carry
- › dishonest, misleading and deceptive conduct by those providing financial advice or financial services
- › market misconduct that threatens to create uncertainty and erode investor confidence.

# Summary of enforcement outcomes

Figure 1 summarises all enforcement outcomes recorded between 1 January and 30 June 2019, including those that have not been reported in public announcements. For example, outcomes arising from summary prosecutions for strict liability offences, such as bannings, are not generally announced in ASIC media releases.

**Figure 1: Summary of enforcement outcomes (January to June 2019)**

PROSECUTIONS		
10	individuals charged in criminal proceedings	
70	criminal charges laid	
7	custodial sentences (6 people imprisoned)	
6	non-custodial sentences	
191	individuals charged in summary prosecutions for strict liability offences	
386	criminal charges laid in summary prosecutions for strict liability offences	
BANNINGS		
103	individuals removed or restricted from providing financial services or credit	
29	individuals disqualified or removed from directing companies	
INFRINGEMENT NOTICES, COMPENSATION AND COURT ENFORCEABLE UNDERTAKINGS		
5	infringement notices issued	
\$370,800	in infringement penalties paid	
\$19.2m	in compensation and remediation for consumers and investors	
1	court enforceable undertaking	
INVESTIGATIONS		
77	investigations commenced	
48	investigations completed	

**Note:** No civil penalties were imposed by the courts and no community benefit payments were made in this reporting period.

# Corporate governance

ASIC is responsible for regulating behaviour that influences company performance. We work to ensure that public companies are properly accountable to their investors by regulating the disclosure and conduct of corporations and their officers in Australia.

This includes ensuring public companies understand their obligations to:

- › treat investors and consumers fairly
- › be accountable to investors through accurate, timely and clear disclosure
- › adopt sound corporate governance practices.

## Corporate governance outcomes

In the six months between 1 January and 30 June 2019, ASIC recorded 14 corporate governance-related outcomes (see Table 1).

Additionally, as at 1 July 2019, ASIC had nine criminal and nine civil corporate governance-related matters underway (see Table 2) that had not attained a final result because:

- › the court/tribunal had determined liability but not decided the penalty or final order
- › a plea was entered but the court/tribunal had not yet made a decision on conviction or sentence, or
- › the court had not yet decided if a breach of law or an offence was committed.

**Table 1: Corporate governance enforcement outcomes by misconduct and remedy type (1 January to 30 June 2019)**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Negotiated outcome	Total (misconduct)
Action against auditors	0	0	8	0	0	8
Action against liquidators	1	1	1	0	0	3
Action against directors	1	0	0	0	0	1
Misconduct related to insolvency	0	0	2	0	0	2
<b>Total (remedy)</b>	<b>2</b>	<b>1</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>14</b>

**Note:** The outcomes in this table are those that have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, negotiated outcomes and acceptance of court enforceable undertakings.

**Table 2: Corporate governance enforcement matters awaiting a court decision as at 1 July 2019**

Misconduct type	Criminal	Civil
Action against liquidators	0	1
Action against directors	6	5
Misconduct related to insolvency	1	0
Other corporate governance misconduct	2	3
<b>Total</b>	<b>9</b>	<b>9</b>



**Case study:**  
**Seven years jail for fraud**

In May 2019, the Brisbane District Court sentenced David John Leigh, a former liquidator, to seven years imprisonment with a non-parole period of 22 months following an ASIC investigation. Mr Leigh was sentenced after pleading guilty to three counts of fraud under the Queensland Criminal Code.

In mid to late 2017, Mr Leigh dishonestly redirected to his own bank account \$800,000 of funds belonging to Neolido Holdings Pty Ltd, a South Brisbane-based property development company to which Mr Leigh had been appointed a liquidator by the Queensland Supreme Court.

This matter was prosecuted by the Commonwealth Director of Public Prosecutions (CDPP). For more information, see [ASIC media release 19-104MR](#).

The registration of Mr Leigh as a liquidator has been cancelled following a decision by a disciplinary committee. For more information, see [ASIC media release 19-044MR](#).



**Case study:**  
**Auditor's registration cancelled**

In December 2018, the Companies Auditors Disciplinary Board (the Board), upon an application by ASIC, decided to cancel the registration of Reginald Williams, a Queensland-based registered auditor. ASIC successfully contended before the Board that Mr Williams failed to carry out or perform adequately and properly the duties of an auditor in relation to his audit of the financial report of LM Managed Performance Fund for the year ended 30 June 2012.

Mr Williams applied to the Administrative Appeals Tribunal (AAT) for a review of the Board's decision, a stay of the operation and implementation of the Board's decision pending the AAT's review, an order for confidentiality against the disclosure of his name during the AAT's review process and the suppression of publication of any evidence.

In March 2019, the AAT refused Mr Williams' applications for a stay, confidentiality and suppression of evidence, with Mr Williams' application for a review of the Board's decision proceeding.

For more information, see [ASIC media release 19-084MR](#).



**Case study:**  
**Lawyer found guilty of giving false and misleading information to ASIC**

In June 2019, Mary-Anne Greaves was sentenced by the Brisbane Magistrates Court after pleading guilty to one count of giving false or misleading information to ASIC. Ms Greaves was discharged without proceeding to conviction upon entering into a recognisance of \$5,000, subject to good behaviour for two years.

The sentence of Ms Greaves, a lawyer, followed an ASIC investigation into a 2015 takeover bid by G8 Education Limited (G8 Education) for ASX-listed Affinity Education Group Limited (Affinity). In October 2015, the Takeovers Panel made a declaration of unacceptable circumstances, after finding that there was an undisclosed association between G8 Education and West Bridge Holdings Pty Ltd (West Bridge) for the acquisition of Affinity shares. ASIC's investigation included inquiries into alleged undisclosed arrangements between G8 Education and West Bridge.

Ms Greaves was found to have given false or misleading information to ASIC, during an examination under oath on 2 June 2016, that she had not been provided information relating to the acquisition by West Bridge of Affinity shares at the time of the takeover bid by G8 Education.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-141MR](#).



# Financial services

ASIC regulates the conduct of financial services and credit providers. Our work in financial services is focused on improving consumer outcomes. We do this by addressing practices that result in consumer harm or create a risk of harm, particularly for vulnerable consumers.

This includes ensuring that:

- › financial services and credit providers act in the best interests of consumers and investors
- › directors and officers of financial services companies are held to account as important gatekeepers who have a duty to ensure a company acts lawfully.

## Financial services outcomes

In the six months between 1 January and 30 June 2019, ASIC recorded 51 financial services-related outcomes (see Table 3).

Additionally, as at 1 July 2019, ASIC had 17 criminal and 29 civil financial services-related matters underway (see Table 4) that had not attained a final result because:

- › the court/tribunal had determined liability but not decided the penalty or final order
- › a plea was entered but the court/tribunal had not yet made a decision on conviction or sentence, or
- › the court had not yet decided if a breach of law or an offence was committed.

**Table 3: Financial services outcomes by misconduct and remedy type (1 January to 30 June 2019)**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Negotiated outcome	Total (misconduct)
Dishonest conduct, misleading statements	2	3	7	0	0	12
Misappropriation, theft, fraud	1	3	2	0	0	6
Unlicensed conduct	0	2	0	0	0	2
Other financial services misconduct	0	4	19	1	7	31
<b>Total (remedy)</b>	<b>3</b>	<b>12</b>	<b>28</b>	<b>1</b>	<b>7</b>	<b>51</b>

**Note 1:** The outcomes in this table are those that have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, negotiated outcomes and acceptance of court enforceable undertakings.

**Note 2:** One criminal outcome and one administrative outcome in the 'dishonest conduct, misleading statements' category were under appeal as at 1 July 2019.

**Table 4: Financial services enforcement matters awaiting a court decision as at 1 July 2019**

Misconduct type	Criminal	Civil
Misconduct related to provision of credit	2	3
Dishonest conduct, misleading statements	9	8
Misappropriation, theft and fraud	4	2
Other financial services misconduct	2	16
<b>Total</b>	<b>17</b>	<b>29</b>





**Case study:**  
**AMP and Clayton Utz produce documents sought by ASIC**

In December 2018, ASIC commenced Federal Court proceedings against AMP and AMP's lawyers, Clayton Utz, seeking an order compelling Clayton Utz to produce documents that had been withheld from ASIC by AMP, who claimed that they were subject to legal professional privilege.

These documents were notes from interviews conducted by Clayton Utz with current and former employees and officers of AMP, who were interviewed as part of a report to AMP in October 2017 regarding AMP's fees-for-no-service conduct. The documents were responsive to a compulsory notice to produce that was issued in October 2018 under s33 of the *Australian Securities and Investments Commission Act 2001*. The Clayton Utz report was considered in the Royal Commission in April 2018. ASIC disputed the claim that the documents were subject to legal professional privilege.

In March 2019, Clayton Utz produced the interview notes prior to the Court hearing and agreed to pay ASIC's costs of the proceedings. For more information, see [ASIC media release 19-052MR](#).



**Case study:**  
**Jail sentence for former insurance broker**

In April 2019, a former Perth insurance broker was sentenced to two years and nine months imprisonment for dishonest conduct, with a non-parole period of 18 months.

Sergio Amaranti pleaded guilty to seven counts of dishonest conduct in the District Court of Western Australia, diverting 51 refunds totalling \$199,391 to personal accounts held in his name. These 51 refunds were owed to 35 clients of Phoenix Insurance Brokers Pty Ltd (Phoenix) for cancellations and adjustments of their insurance policies.

Mr Amaranti was employed as a Director of Phoenix from 25 January 2002 to 25 February 2016 and was a senior insurance broker with Phoenix from 2000 to 2015.

As a result of his conviction, he was automatically disqualified from managing companies for five years.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-090MR](#).



**Case study:**  
**Former financial adviser sentenced to 10 years jail**

In March 2019, former financial advisor Gabriel Nakhl was sentenced by the District Court of New South Wales to 10 years imprisonment for engaging in dishonest conduct. Mr Nakhl had earlier pleaded guilty to eight counts of engaging in dishonest conduct with approximately \$6.7 million in funds from 12 investors.

Mr Nakhl had advised clients to set up self-managed superannuation funds and to invest their superannuation and other funds in products such as shares, managed funds and high interest rate bank accounts. He lied to the investors, telling them that he had invested their funds in accordance with his advice and that their investments were performing well. Mr Nakhl lost approximately \$5.1 million of these invested funds.

In November 2013, ASIC accepted an enforceable undertaking from Mr Nakhl that permanently restricts him from providing financial services and restricts him from managing a corporation for 15 years.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-055MR](#).

# Markets

ASIC investigates market misconduct and acts to ensure Australia's financial markets are fair and efficient. This includes addressing issues related to:

- › **insider trading** – if prevalent, insider trading represents a failure of the market and damages trust in market fairness and transparency
- › **market manipulation** – this undermines fair, orderly and transparent markets, and can have the effect of creating an artificial price for trading in financial products on a financial market
- › **market integrity rules** – these rules impose obligations on market participants that are designed to ensure the fairness and efficiency of Australia's financial markets.

## Markets outcomes

In the six months between 1 January and 30 June 2019, ASIC recorded 11 markets-related outcomes (see Table 5).

Additionally, as at 1 July 2019 ASIC had eight criminal and 18 civil markets-related matters underway (see Table 6) that had not attained a final result because:

- › the court/tribunal had determined liability but not decided the penalty or final order
- › a plea was entered but the court/tribunal had not yet made a decision on conviction or sentence, or
- › the court had not yet decided if a breach of law or an offence was committed.

**Table 5: Markets outcomes by misconduct and remedy type (1 January to 30 June 2019)**

Misconduct type	Criminal	Civil	Administrative	Court enforceable undertaking	Negotiated outcome	Total (misconduct)
Continuous disclosure	0	0	1	0	0	1
Insider trading	2	0	0	0	0	2
Market manipulation	0	0	1	0	0	1
Other market misconduct	1	1	5	0	0	7
<b>Total (remedy)</b>	<b>3</b>	<b>1</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>11</b>

**Note:** The outcomes in this table are those that have been reported in ASIC media releases and include court determinations (criminal and civil), administrative remedies, negotiated outcomes and acceptance of court enforceable undertakings.

**Table 6: Markets enforcement matters awaiting a court decision as at 1 July 2019**

Misconduct type	Criminal	Civil
Continuous disclosure	0	13
Insider trading	3	0
Market manipulation	2	2
Other market misconduct	3	3
<b>Total</b>	<b>8</b>	<b>18</b>



**Case study:  
Foster Stockbroking director  
banned for three years**

In February 2019, ASIC banned Mark Hinsley, a director of Foster Stockbroking Pty Ltd (FSB), from providing financial services for three years.

The banning followed an ASIC investigation into Mr Hinsley and FSB that raised concerns about conduct relating to the allocation of shares in the Initial Public Offering (IPO) of Reffind Ltd (RFN) and the publication by FSB of a research report in relation to RFN in September 2015 (RFN Research Report).

ASIC's investigation found Mr Hinsley had:

- › engaged in misleading or deceptive conduct by failing to disclose to RFN that a proportion of their shares in the RFN IPO had been allocated to nominee accounts controlled by Hinsley and his fellow FSB directors
- › authored the RFN Research Report, which contained assumptions and statements that had no reasonable grounds and as a result was misleading
- › been involved in FSB contravening its general obligations as a financial services licensee to act fairly and to have adequate arrangements to manage conflicts of interest in authoring the RFN Research Report.

For more information, see [ASIC media release 19-042MR](#).



**Case study:  
Federal Court delivers judgment against  
Vocation Limited and certain officers**

In May 2019, the Federal Court delivered judgment in ASIC's civil penalty proceedings against Vocation Limited (in Liquidation), Mark Hutchinson (former CEO), John Dawkins (former Chairman), and Manvinder Gréwal (former CFO).

The proceedings related to:

- › an announcement made by Vocation Limited (Vocation) to the Australian Securities Exchange (ASX) on 25 August 2014 about:
  - funding contracts with the Victorian Department of Education and Early Childhood Development (DEECD)
  - a review undertaken by DEECD into two of Vocation's main registered training organisations
- › a due diligence questionnaire (DDQ) provided to UBS AG Australia (UBS) in circumstances where UBS was considering underwriting a proposed offer of shares under a Placement
- › Vocation's continuous disclosure obligations.

The Court found that:

- › Vocation engaged in misleading and deceptive conduct by making the announcement to the ASX and by providing the DDQ to UBS, and failed to disclose information that it was required to disclose in accordance with ASX Listing Rule 3.1
- › Mr Hutchinson and Mr Dawkins breached their directors' duties by causing or permitting Vocation's failure to disclose the information
- › Mr Hutchinson breached his duties as a director by causing or permitting Vocation's misleading and deceptive conduct in relation to the 25 August ASX announcement and the DDQ
- › Mr Gréwal breached his duties as an officer by causing or permitting Vocation's misleading and deceptive conduct in relation to the DDQ.

For more information, see [ASIC media release 19-124MR](#).



**Case study:  
Macquarie Securities pays  
\$300,000 penalty**

In June 2019, Macquarie Securities (Australia) Limited (Macquarie) paid a penalty totalling \$300,000 to comply with an infringement notice given by the Markets Disciplinary Panel (MDP).

The MDP had reasonable grounds to believe that Macquarie contravened the market integrity rules that deal with the provision of regulatory data to ASX and Chi-X.

From July 2014 to July 2018, Macquarie transmitted approximately 42 million orders to ASX and Chi-X that included incorrect regulatory data or that omitted required regulatory data. Over the same period, Macquarie also submitted approximately 377,000 trade reports to ASX and Chi-X with the same deficiencies.

The MDP found that while Macquarie intended to comply with the market integrity rules, there were weaknesses in the configuration and integration of Macquarie's systems, its processes for on-boarding new clients and its control framework. It was noted by the MDP that Macquarie reported the issues to ASIC and subsequently undertook a comprehensive review to identify the causes, and promptly implemented remedial measures.

For more information, see [ASIC media release 19-125MR](#).



**Case study:  
Computer hacker jailed for  
unauthorised access and insider trading**

On 25 June 2019, the County Court of Victoria sentenced IT consultant Steven Oakes to three years imprisonment, and ordered that he be released after 18 months on his own recognisance to be of good behaviour for 18 months. Mr Oakes had earlier pleaded guilty to a total of 11 charges for insider trading, unauthorised access to data with the intention to commit a serious offence (insider trading) and the alteration of electronic devices required by ASIC.

An ASIC investigation found that between January 2012 and February 2016, Mr Oakes hacked into the private computer network of Melbourne-based financial publisher Port Phillip Publishing (PPP) to obtain the network login credentials of PPP staff. He did this with the intention of accessing inside information – buy recommendations for ASX companies in unpublished reports – in order to engage in insider trading.

Mr Oakes used this inside information on 70 occasions to buy shares in 52 different companies, before the reports with the buy recommendations were published. He made profits from selling the shares soon after PPP's publication of the reports.

Mr Oakes had also altered devices by deleting data relevant to ASIC's investigation before providing the devices to ASIC.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-153MR](#).

# Small business

ASIC focuses on helping small businesses understand and comply with their legal obligations under the *Corporations Act 2001*, and conducts surveillance, enforcement and policy work. When necessary, ASIC takes administrative, civil or criminal action against companies, directors and other officeholders who fail in their duties. By doing so, ASIC helps to ensure that all market participants can benefit from a level playing field.

## Small business outcomes

In the six months between 1 January and 30 June 2019, ASIC recorded 278 small business-related outcomes (see Table 7).

Additionally, as at 1 July 2019, ASIC had 161 small business-related criminal matters underway (see Table 8) that had not attained a final result because:

- › the court/tribunal had determined liability but not decided the penalty or final order
- › a plea was entered but the court/tribunal had not yet made a decision on conviction or sentence, or
- › the court had not yet decided if a breach of law or offence was committed.

**Table 7: Small business criminal outcomes by misconduct and remedy type (1 January to 30 June 2019)**

Misconduct type	Criminal	Administrative	Total (misconduct)
Action against persons or companies	196	81	277
Efficient registration and licensing	1	0	1
<b>Total (remedy)</b>	<b>197</b>	<b>81</b>	<b>278</b>

**Note:** The outcomes from our Small Business Compliance and Deterrence team are not generally announced in ASIC media releases.

**Table 8: Small business criminal matters awaiting a court decision as at 1 July 2019**

Misconduct type	Criminal
Action against persons or companies	154
Misconduct related to registration and licensing	7
<b>Total</b>	<b>161</b>



### Case study: Christopher Skelly jailed on fraud charges

On 17 April 2019, Christopher Skelly, a former Queensland company director, was sentenced to three years and six months imprisonment on one charge of fraud. A jury had earlier found Mr Skelly guilty of gaining a benefit of \$529,380 with intent to defraud by deceit.

Mr Skelly will be eligible for parole after serving 21 months and following his release will be automatically disqualified from managing companies for a further five years.

Mr Skelly was a former director of C&G Group Industries Pty Ltd (C&G), which provided crushing and screening services.

The company was placed into administration in April 2015 and liquidators were subsequently appointed in May 2015. C&G owed \$4,089,386 to 54 creditors.

An ASIC investigation found that between 11 December 2014 and 12 January 2015, Mr Skelly deceived a factoring agency by emailing them an invoice and other documents that created the false impression that monies were owed to C&G by debtors. Relying on those documents, the factoring agency paid C&G a total of \$529,380.

The matter was prosecuted by the CDPP. For more information, see [ASIC media release 19-102MR](#).

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