



ASIC
Australian Securities &
Investments Commission

Select Committee on Financial Technology and Regulatory Technology

Submission by the Australian Securities and Investments Commission

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A About this submission

Submission content

- 1 ASIC welcomes the Select Committee on Financial Technology and Regulatory Technology (Select Committee) and the opportunity this presents to reflect on Australia's financial technology (fintech) and regulatory technology (regtech) sectors, as well as consider opportunities for the Government to promote these sectors to enhance Australia's economic competitiveness.
- 2 In this submission, ASIC provides an overview of its approach to financial innovation and its experience with the fintech and regtech sectors as background and context for the Select Committee.
- 3 This submission provides information that is relevant to a range of issues surveyed by the Select Committee. In the appendices, ASIC provides more detailed information on some issues raised by the Select Committee (i.e. digital advice and international engagement).
- 4 ASIC looks forward to the opportunity to appear before the Select Committee in due course, including to answer any specific questions the Select Committee may have of ASIC.

ASIC's role

- 5 ASIC is Australia's corporate, markets, financial services and consumer credit regulator. ASIC's vision and mission reflect our role under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
- 6 Our statutory role under the ASIC Act is to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities in it
 - (b) promote confident and informed participation by investors and consumers in the financial system
 - (c) administer the law effectively and, with minimal procedural requirements, enforce and give effect to the law
 - (d) receive, process and store information that is given to us, efficiently and quickly
 - (e) make information about companies and other bodies available to the public as soon as practicable
 - (f) take whatever action we can, and which is necessary, to enforce and give effect to the law.

7 ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.

8 It also has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system, by promoting the adoption of approved industry standards and codes of practice, the protection of consumer interests, community awareness of payments system issues, and sound customer–banker relationships.

ASIC’s vision

9 ASIC’s vision is a fair, strong and efficient financial system for all Australians.

ASIC’s mission

10 ASIC’s regulatory mission is to support its vision through the use of all its regulatory tools to:

- (a) change behaviours to drive good consumer and investor outcomes
- (b) act against misconduct to maintain trust and integrity in the financial system
- (c) promote strong and innovative development of the financial system
- (d) help Australians to be in control of their financial lives.

11 ASIC’s registry mission is to support its vision by:

- (a) providing efficient and accessible business registers that make it easier to do business.

B ASIC's approach to financial innovation

- 12 Section B provides general information on ASIC's approach to financial innovation. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the fintech and regtech industries in Australia? (p.12)
 - (b) Do current regulatory settings support the growth of local fintech and regtech companies in Australia? (p.13)
 - (c) Is ASIC's fintech regulatory sandbox useful for start-ups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector? (p.14)
 - (d) How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia? (p.15)

ASIC's Innovation Hub

- 13 ASIC established its Innovation Hub in March 2015 to help fintech and regtech businesses navigate Australia's regulatory system in the financial services sector without compromising investor and financial consumer trust and confidence. In so doing, the Innovation Hub streamlines ASIC's engagement with the fintech and regtech sectors and removes red tape where possible.
- 14 New and enhanced technologies, combined with increased computing capabilities, are enabling the development of new products and services that meet the needs of financial consumers and market participants more efficiently and cost effectively. These advances have the potential to enhance financial inclusion, bridge financing gaps and develop financial capabilities.
- 15 The Innovation Hub's overarching objective is to promote the provision of fair and professional financial services and markets in a digital environment while balancing the benefits of innovation against the potential risks to consumers and market integrity. To achieve this, ASIC applies a 5-point approach to innovation. This involves:
- (a) **Engagement** with the fintech and regtech sectors to maintain and support effective information sharing. Engagement activities include industry events (conferences, summits, forums) and initiatives (TechSprints, webinars, presentations); regular meetings with fintech and regtech networks (roundtables, quarterly meetings); addresses and

- panel discussions; international roundtables and conferences; as well as a quarterly Regtech Liaison Forums (more information in section B.19).
- (b) **Streamlining** ASIC's assistance to entities with innovative business models through the provision of informal assistance (accelerating their licensing applications) (more information in section B.20) and access to the Regulatory Sandbox (more information in section B.25).
 - (c) **Enhanced communication**, including the establishment of a one-stop-shop Innovation Hub website that contains tailored resources and guidance (more information in section B.29).
 - (d) **Coordination** refers to ASIC's internal innovation approach through its centralised Innovation Hub and disseminating information via senior committees, internal working groups, staff onboarding, and external networking. In addition, ASIC has established a network of domestic agencies dealing with innovative businesses with a view to promote information sharing and a cross-agency coordinated approach (more information in section B.31).
 - (e) ASIC formed a **Digital Financial Advisory Panel** to help inform how it should focus its efforts within the fintech and regtech sectors. DFAP brings together fintech industry representatives (FinTech Australia, the RegTech Association, fintech service providers) with academics (University of New South Wales (UNSW), Australian National University (ANU)) as well as other national authorities and regulators (the Australian Treasury, Australian Prudential Regulation Authority (APRA), Australian Transaction Reports and Analysis Centre (AUSTRAC), Office of the Australian Information Commissioner (OAIC), Australian Competition and Consumer Commission (ACCC), Reserve Bank of Australia (RBA)) to discuss issues of the day in the fintech and regtech sectors. It also provides an opportunity for ASIC to receive feedback as well as communicate changes within the industry (more information in section B.32).

EY Fintech Australia Census 2019

- 16 ASIC notes that the [EY FinTech Australia Census 2019](#) identifies the most important subjects where government support would be most beneficial, in relation to promoting the fintech and regtech sectors, are open banking, accelerator and incubator support as well as government incentives, such as tax allowances (p.5).
- 17 Like previous years, the census identifies a range of areas of interest from fintech firms to promote the sector, including talent, capital, demand and the environment, in addition to policy (p.7).
- 18 On regulation and policy, the census identifies taxation issues and open banking as the highest priority topics. The regulatory framework

administered by ASIC has some references, but at a lower priority such as the operation of the sandbox (p.29).

Engagement

- 19 ASIC has established the following initiatives to engage with industry and promote information sharing:
- (a) Meet ups with fintech and regtech networks where senior ASIC staff meet with fintech and regtech representatives to provide updates on ASIC's work, as well as conducting Q&As and other discussions. Typically, ASIC strives to hold 3 or 4 of these meet ups a year. These occasionally include statements and updates from other regulators and authorities (e.g. Australian Taxation Office (ATO), ACCC, APRA, AUSTRAC, and the RBA).
 - (b) The ASIC Quarterly Regtech Liaison Forum – this event facilitates discussions surrounding developments and opportunities arising from the application of regtechs. This forum allows for Australian authorities and regulators (APRA, AUSTRAC) and industry networks (the RegTech Association) to present the latest developments within the regtech ecosystem.
 - (c) The ASIC Regtech Initiative series – ASIC has hosted a series of problem-solving demonstrations and symposiums in FY2018-19 focusing on key challenges regtech services have the potential to solve (more information in section D.51).

Streamlining

Informal Assistance and Licensing

- 20 Since March 2015, the Innovation Hub has met with over 514 organisations, 486 of which have received informal assistance to better understand their business models and ASIC's approach to fintech and regtech development more broadly.
- 21 In mid-2016, the Innovation Hub broadened its scope to include engagement with the regtech sector. Since then, ASIC has met with over 100 regtech service providers. A complete breakdown of all Innovation Hub engagements is available on figure B-1.
- 22 ASIC also engages in close collaboration and knowledge sharing with domestic and international regulators researching the sector (see section C.36 for more details on ASIC's international engagements).

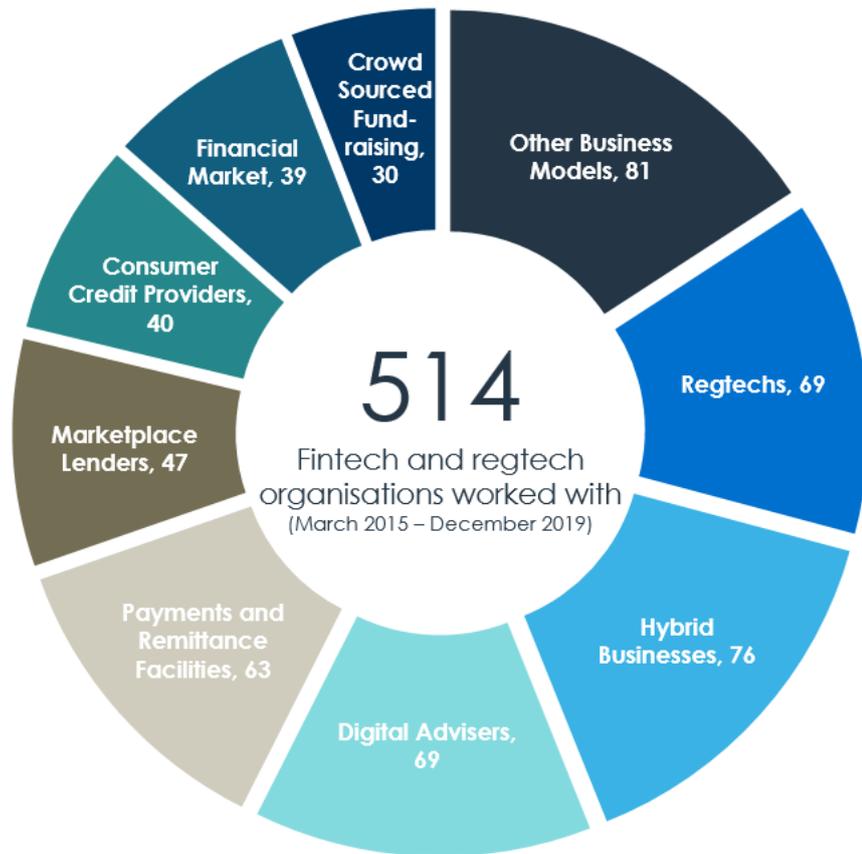


Figure B-1: Fintech and regtech organisations worked with from March 2015 to December 2019.

- 23 On average, fintech businesses that engage with the Innovation Hub prior to submitting their application for approval for an Australian financial services (AFS) or credit license receive approval 22% faster (111 days) than those seeking these licenses without assistance (135 days).
- 24 A total of 96 licence applications (full and variation) have been approved to 86 innovative fintech service providers (out of 145 license applications from 124 fintechs) since March 2015. These consist of 78 full licences to 73 entities and the approval of 18 variations to 13 entities. A full breakdown of these statistics can be found below:
- (a) ASIC received a total of 145 licence applications from 124 entities. Of these:
 - (i) 96 were granted applications;
 - (ii) 12 were rejected;
 - (iii) 28 were withdrawn by the applicant; and
 - (iv) 9 are still in progress.
 - (b) Of the 96 granted applications:
 - (i) 20 were granted to marketplace lenders;

- (ii) 14 were granted to digital advisers;
- (iii) 19 were granted to consumer credit providers;
- (iv) 43 were received from crowd source funding (CSF) intermediaries (40 of these applications were received following the crowd source funding legislation – see appendix 3.108);
- (v) 21 were granted to a non-cash payment facility (NCP);
- (vi) 3 were granted to neo-banks; and
- (vii) 16 were granted to various other entities.

Note: Some entities have been granted licence applications or variations that cover more than one level of business model.

ASIC Sandbox and other waivers

- 25 On 23 August 2017, ASIC released [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#) in response to the challenges faced by fintech start-up businesses to test the viability of their business model.
- 26 RG 257 contains information about Australia’s ‘regulatory sandbox’ framework. The sandbox is comprised of three mechanisms to support testing a new product or service without a licence:
- (a) existing flexibility in the regulatory framework (e.g. acting as a representative of a licensee), or exemptions already provided by the law or ASIC, which mean that a licence is not required;
 - (b) ASIC’s fintech licensing exemption, which allows eligible fintech businesses to test certain specified dealing or advising services without holding an AFS or credit licence for 12 months; and
 - (c) tailored, individual licensing exemptions from ASIC to facilitate product or service testing.
- 27 A total of seven entities have participated in the ASIC Sandbox. A further 44 entities have submitted preliminary notifications but do not meet the criteria necessary to qualify.
- 28 Separate from the ASIC sandbox, some of the other class waivers from licensing low value non-cash payment facilities further assist innovative businesses. In addition, some innovative businesses have applied for, and obtained from ASIC, individual exemptions from some provisions of the law – e.g. some marketplace lenders have received relief from aspects of the managed investment scheme laws not apt for their kind of business.

Enhanced Communications

- 29 ASIC maintains a dedicated user-friendly website as a single source of truth to assist entities participate in the streamlining approach (outlined in section B.20 and section B.25). The website provides supplementary information on ASIC engagement throughout the year (section B.19), international work (section C.36), and an overview of the Digital Finance Advisory Panel (section B.32).
- 30 The Innovation Hub's internal leadership committee has spearheaded the development of regulatory guidance to help entities in new areas, available on the Innovation Hub website. In response to the growth of financial technology, ASIC has both adapted existing regulations and issued new guidance. Examples include the following:
- (a) [Regulatory Guide 255 Providing digital financial product advice to retail clients \(RG 255\)](#)
 - (b) [Information Sheet 213 Marketplace lending \(peer-to-peer lending\) products \(INFO 213\)](#)
 - (c) [Information Sheet 219 Evaluating distributed ledger technology \(INFO 219\)](#)
 - (d) [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#)
 - (e) [Information Sheet 225 Initial Coin Offerings and Crypto-Assets \(INFO 225\)](#)

Coordination

- 31 The Innovation Hub serves as the central point-of-contact and support for innovation within ASIC. Requests and inquiries are directed to relevant teams depending on the specific needs of any requests. Regular senior committee meetings, internal working groups, staff onboarding, and external networking sessions are coordinated to keep the organisation up-to-date on developments.

Digital Finance Advisory Panel (DFAP) (and domestic regulator coordination)

- 32 The Digital Finance Advisory Panel (DFAP) was established by ASIC to assist in informing how ASIC should focus its efforts within the fintech and regtech sector. DFAP meets quarterly to advise on its engagement with the sector.
- 33 DFAP members are drawn from a cross-section of the fintech and regtech community (the RegTech Association, FinTech Australia, regtech service providers), as well as academia (UNSW, ANU) and representatives with

consumer backgrounds. Panel members change periodically to ensure that a variety of views are received and considered by ASIC.

- 34 DFAP also has active observer members from the Australian Treasury, APRA, RBA, ACCC, OAIC, Austrade and AUSTRAC. This creates dialogue between industry and the public sector. Through the establishment of DFAP, ASIC and the other agencies have fostered a network of domestic departments and agencies that deal with innovative businesses. This network has promoted an efficient cross-agency and coordinated domestic approach to financial innovation and regtech.

C ASIC's international engagement

- 35 Section C provides general information on ASIC's engagement with foreign regulators and agencies. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including (p.17):
- (a) What learnings and opportunities can Australia glean from international fintech and regtech industries?
 - (b) What innovations from other countries could have a positive impact on the Australian fintech industry?
 - (c) What measures can the Australia Government take to directly support fintech businesses to expand internationally?
 - (d) Should Australia seek more formal international fintech agreements? Are there particular countries that Australia should look to for partnership?

ASIC bi-lateral cooperation agreement

- 36 ASIC has entered into over 16 cooperation and referral agreements with international regulators, including: The Monetary Authority of Singapore (MAS); the Financial Conduct Authority (FCA); and Ontario Securities Commission (OSC). Quarterly information sharing conference calls are held with these regulators by members of ASIC's Innovation Hub and International teams.
- (a) The complete list of Co-operation Agreements is available on the [Innovation Hub website](#).
 - (b) For a detailed overview of the referral and information sharing mechanism, see *Appendix 1: ASIC's international engagement – further detail*.

Different mandates and frameworks of international regulators

- 37 ASIC notes that the approach of international regulators to financial innovation and regtech is formed by the mandates, powers and environmental drivers that they work within. This means international regulators vary in their approach to financial innovation given the context they operate in. For example:
- (a) Many regulators that have similar mandates to ASIC to promote good consumer, investor and market integrity outcomes focus their approach on the provision of informal assistance and information sharing (e.g. Canadian securities regulators; the Commodity Future Trading Commission (CFTC), USA; the US Securities and Exchange

Commission (SEC); European regulators like France’s Autorité des marchés financiers (AMF – “Financial Markets Regulator”) and Germany’s Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin – “Federal Financial Supervisory Authority”) and regulators from the Asian region such as Hong Kong’s Securities and Futures Commission (SFC)).

- (b) Some regulators have mandates and drivers to develop the financial services sector (e.g. the MAS and some regulators in the Middle East).
- (c) Some regulators have a mandate and powers to promote competition in financial services (e.g. the FCA in the UK has concurrent competition powers with the Competition and Markets Authority (CMA) of the UK).

38 For a useful summary on the varying approaches of international regulators and authorities, please see: [UNSGSA FinTech Working Group and CCAF. \(2019\). Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech.](#)

UK-Australia FinTech Bridge

39 As part of the ASIC–FCA Fintech Cooperation Agreement, a commitment has been made to consider opportunities for quicker licensing as part of the UK-Australia FinTech Bridge (the FinTech Bridge) (see Appendix 1.74). The Licensing team and the Innovation Hub continue to hold discussions with the FCA on each other’s authorisation process to explore:

- (a) whether there are any opportunities to enable more efficient licensing of fintech businesses that are already licensed by the FCA; and
- (b) whether any recognition of elements of the licensing application could occur.

International Organization of Securities Commissions (IOSCO) Fintech Network

40 ASIC is a member of the steering committee for the International Organization of Securities Commissions (IOSCO) Fintech Network. The network is an exercise in members collaborating to determine areas of consistency across innovative sectors.

41 The IOSCO Fintech Network is chaired by the FCA. ASIC is represented in each of the four major streams:

- (a) distributed ledger technology (DLT) with a sub stream focused on stable coins;

- (b) regtech;
- (c) innovation engagement experience or innovation support functions; and
- (d) artificial intelligence (AI) and machine learning (ML).

Global Financial Innovation Network (GFIN)

- 42 The Global Financial Innovation Network (GFIN) was formally launched in January 2019 by an international group of financial regulators and related organisations. ASIC was a founding member of the GFIN and is a member of its steering committee. The GFIN commits to supporting financial innovation in the interests of consumers and is comprised of 43 members and 7 observers from 38 jurisdictions.
- 43 The GFIN seeks to provide a more efficient way for innovative firms to interact with regulators, helping them navigate between countries as they look to scale new ideas. This includes a pilot for firms wishing to test innovative products, services or business models (including regtech models) across more than one jurisdiction (cross-border trials).
- 44 The GFIN plans to issue an update early in 2020 on its experience with the first pilot inviting applicants for potential cross-border trials and how it can improve the processes for businesses and regulators in future initiatives for cross-border trial applicants.

D ASIC's approach to regulatory technology

- 45 Section D provides general information on ASIC's approach to regulatory technologies (regtech). It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the fintech and regtech industries in Australia? (p.12)
 - (b) Do current regulatory settings support the growth of local fintech and regtech companies in Australia? (p.13)
 - (c) How can public sector data be made more accessible and useful for fintech and regtech companies seeking to deliver innovative products and services? (p.14)
 - (d) How can public sector data be made more accessible and useful for fintech and regtech companies seeking to deliver innovative products and services? (p.14)
 - (e) How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia? (p.15)

ASIC general approach to regulatory technology

- 46 ASIC considers that the regtech sector has enormous potential to help organisations build a culture of compliance, identify learning opportunities, and save time and money relating to regulatory matters. ASIC notes that, in some use cases, regtech has already been making a valuable contribution in promoting regulatory compliance across consumer and market integrity outcomes (e.g. monitoring of trading and regulatory reporting).
- 47 Since being integrated into the Innovation Hub's remit in mid-2016, the Innovation Hub have met with over 150 regtech entities, more than 60 of which received informal assistance to better understand their business models and regtech development within the sector more widely (see section B.20). As part of this work, ASIC engaged in close collaboration and knowledge-sharing with domestic and international regulators (see section C.36).
- 48 In May 2017, ASIC released [Report 523 ASIC's Innovation Hub and our approach to regulatory technology \(REP523\)](#) on its current and future approach to regtech. In response (in part) to feedback received on the approach in the report, ASIC has taken a leading role in promoting networking and collaboration in the regtech sector.

- 49 ASIC's approach to regtech is guided by a set of basic principles that include:
- (a) working towards outcomes in regtech that align with our strategic priorities and approach to innovation;
 - (b) undertaking a number of focused initiatives that will deliver outcomes in the near term; and
 - (c) learning from industry input, good international case studies and our own experience from engaging with the regtech sector.
- 50 As part of ASIC's approach to regtech, and in response to the 2017 consultation, ASIC convenes quarterly Regtech Liaison Forums to promote networking, collaboration and information-sharing. To date, ASIC has hosted eight forums with attendance of approximately 200 people per session. APRA, AUSTRAC, ASIC, the RegTech Association and FinTech Australia regularly provide insights into their regtech initiatives and the state of the sector at these forums.

ASIC's Regtech Initiative Series

- 51 The Government announced on 7 August 2018 that ASIC would receive \$6 million of new policy proposal (NPP) funding over two financial years, 2019-20 and 2020-21 to promote Australia as a world leader in the development and adoption of regtech solutions for the financial services industry.
- 52 These initiatives build on the existing ASIC engagement with the regtech sector, including its quarterly Regtech Liaison Forum (section B.19(b)).
- 53 In response to this NPP funding, ASIC developed a series of four regtech initiatives for FY2019-20 with the aims to:
- (a) increase the awareness and understanding amongst industry of the current state and future potential of regtech as applied to the financial services and insurance industries;
 - (b) demonstrate how technology can be used to assist in the provision of compliance and monitoring; and
 - (c) identify the opportunities and challenges of using advanced technology and other regtech approaches to improving compliance and monitoring outcomes for consumers.
- 54 The initiatives included:
- (a) **Financial Promotions Demonstration and Symposium.** The inaugural event, 2 August 2019, was a problem-solving event focused on five demonstrators analysing financial promotional material (both

traditional and non-traditional media) to extract key features to identify potential risk and noncompliance characteristics.

- (b) **Financial Advice Files Demonstration and Symposium.** ASIC's second event, 22 August 2019, set a challenge for 6 demonstrators to investigate how regtech can be used to improve compliance in Australia's financial industry and advice outcomes for consumers.
- (c) **Voice Analytics Symposium.** 24 September 2019, this event presented ASIC's findings from a tender run in April 2019 looking at how voice analytics, applied to over 1700 insurance calls, can assist in analysing selling behaviour falling short of community expectations.
- (d) **Technology-assisted Guidance (TAG) Tool.** ASIC set out to design, develop and implement a chatbot in prototype form to help businesses navigate the credit and financial services licensing regulatory framework. ASIC procured a technology and law firm to design a tool to provide user-friendly licensing guidance.

Report 653 ASIC's Regtech Initiative Series, 2018-19 (REP 653)

55 ASIC published [Report 653 ASIC's Regtech Initiatives, 2018-2019 \(REP 653\)](#) on 20 December 2019. This report covers:

- (a) ASIC's approach to regtech;
- (b) A summary of the regtech initiative event series; and
- (c) An outline of ASIC's next steps regarding regtech.

56 A summary of REP 653 can be found from D.57 to D.61.

57 In the report, ASIC outlines the following primary findings:

- (a) Regtech solutions demonstrated during the Financial Promotions Symposium and Financial Advice Files Symposium were capable of detecting potential breaches relating to mandatory disclosure requirements with high rates of accuracy.
- (b) Voice analytics and voice-to-text (VA&VT) displayed the future potential of using voice signalling to identify cases of poor sales practices in stored, non-compressed, life insurance phone call recordings.
- (c) ASIC developed a viable, proof-of-concept chatbot to provide guidance for whether a business needs an AFS or credit licence. The project was developed for ASIC by two procured regtech vendors.

58 The report also outlines some primary observations from the events, including:

- (a) The need for improved standards on data capture and storage. Data quality is critical and the principle of 'garbage in, garbage out' applied

to data quality at each event. Demonstrators and panellists stated a need for improving practices and setting standards around data capture and storage.

- (b) Regtech enables analysis of large, high data volumes at speed, and in real time. Related to the challenges of the growing size of data collected, regtech allows for real-time monitoring of vast expanses of information with greater efficiencies in evaluating sales practices, the provision of advice, promotions, and other business practices.
- (c) Australian firms are experimenting, but resourcing is a challenge. There is a great deal of activity within the regtech sector, but there are limits to how much resourcing flows from firms towards its development due to the experimental nature of new forms of regtech.
- (d) There will always be a role for humans. Regtech applications will not replace humans in risk management and compliance roles. However, regtech will instead augment the role of these professionals so that they can focus on more significant compliance matters identified from a larger, more complete sample size of financial services provided to consumers, rather than file reviews of small sample sizes.

59 ASIC intends to implement a range of further regtech initiatives during the remainder of FY2019–20. The design and implementation of these further initiatives have been informed by the initiatives undertaken during FY2018–19.

60 ASIC plans to have initiatives on the following topics in FY2019–20:

- (a) The use of regtech (such as machine learning) to monitor compliance with the responsible lending obligations by credit providers.
- (b) The state of play and potential future for digital record-keeping of financial services being the foundation for good regtech.
- (c) The potential benefits to markets and investors resulting from improved access to structured financial information of public companies.
- (d) A second phase of developing ASIC’s technology-assisted licensing guidance tool (building on the FY2019-20 initiative to develop a proof-of-concept chatbot).

61 ASIC is also considering other regtech initiatives in FY2019–20 depending on available resources and managing competing demands on scheduling the regtech initiatives set out in D.60.

E Government's Enhanced Sandbox

- 62 Section E provides general information on ASIC's approach to the Government's Enhanced Sandbox bill. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) What are the key reform priorities that will enable fintech and regtech innovations to flourish in Australia? (p.13)
 - (b) Is ASIC's fintech regulatory sandbox useful for start-ups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector? (p.14)
- 63 ASIC issued its regulatory sandbox exemption in December 2016, going as far as it can in balancing facilitation and consumer protection within our regulatory remit as set out in section B.25.
- 64 The enhanced regulatory sandbox put forward by the Government in October 2017 proposes to replace and extend the scope of the "ASIC Sandbox" in a number of key areas. For example, to cover a broader range of services by a broader range of providers, including licensees, over a longer two-year testing period. All of this would be subject to a similar condition as under the "ASIC Sandbox".
- 65 In February 2018, the Senate referred the [Treasury Laws Amendment \(2018 Measures No. 2\) Bill 2018](#) (the enhanced sandbox bill) to the Senate Economics Legislation Committee for inquiry and ASIC attended the Committee's public hearing. In March 2018 the Committee recommended the Bill should be passed. The details of how the enhanced regulatory sandbox is implemented will be largely contained in the associated regulations, that are to be finalised.
- 66 The Government has re-introduced the Sandbox related legislation in the new sittings (early July 2019). At present, the Bill is before the Senate.
- 67 ASIC's resourcing requirements for the new legislative sandbox will depend on the exact nature of the regulatory changes passed by Parliament (particularly any relevant regulations) and also the extent of supervisory intensity that is expected for the sector.

Appendix 1: ASIC's international engagement – further detail

- 68 ASIC has a total of 16 co-operation agreements with 13 jurisdictions. These agreements provide opportunities for authorities to share information on emerging market trends and regulatory issues pertaining to innovative businesses.
- 69 13 of these agreements include referral opportunities where Australian innovative businesses can receive assistance to enter new markets, as well as providing international scale-ups opportunities to enter Australia.

Referral mechanism

- 70 Agencies subject to the referral mechanisms can refer innovative businesses interested in operating in another eligible jurisdiction to each other.
- 71 The referrals can be made informally and in writing. A referral should demonstrate that the innovative business seeking to operate in the receiving authority's jurisdiction meets the referring authority's Criteria for Support.
- 72 The Criteria for Support for referrals include the following:
- (a) The innovative business should offer innovative financial products or services that benefit the financial consumer, investor and/or industry;
 - (b) The innovative business should demonstrate that they have conducted sufficient background research on regulations as they might apply to them;
 - (c) The innovative business is a start-up or an authorised financial services provider in its first year of operation since obtaining its authorisation.
- 73 Following referral, the receiving authority's innovation function should offer support to the innovative business.

UK-Australia FinTech Bridge

- 74 The United Kingdom and Australia established a UK-Australia FinTech Bridge ('the FinTech Bridge') on 22 March 2018. This builds on the existing co-operation agreements signed between ASIC and the FCA.
- 75 The FinTech Bridge establishes a framework for individual arrangements between relevant government and private sector parties from the UK and Australia to support further cooperation on fintech activities (these are described in this FinTech Bridge as 'Pillars').

- 76 **The FinTech Bridge:**
- (a) enables closer and stronger collaboration on fintech between governments, financial regulators and the industry; and
 - (b) encourages fintech firms to use the facilities and assistance available in the other jurisdiction to explore new business opportunities and reduce barriers to entry.
 - (c) Sets out the framework for the ongoing cooperation between the UK and Australia on fintech issues, covering four inter-related Pillars:
 - (i) Government-to-government
 - (ii) Regulator-to-regulator
 - (iii) Trade and investment
 - (iv) Business-to-business

Government-to-government

- 77 HM Treasury and the Australian Treasury commit to maintaining regular and ongoing dialogue on fintech policy developments and provide timely notification of relevant fintech related announcements. These discussions can include other relevant agencies from each jurisdiction, as well as facilitate dialogue between governments, regulators, and the industry to help identify emerging fintech trends and policy issues.

Regulator-to-regulator

- 78 Under the FinTech Bridge, the FCA and ASIC have committed to:
- (a) Facilitating the entry of fintech start-ups from each other's jurisdictions into their respective regulatory sandboxes.
 - (b) Exploring opportunities to enable quicker processing of licensing innovative businesses that are already licensed/authorised in the other jurisdiction, which would reduce the regulatory burden on these businesses looking to expand to the other jurisdiction.
 - (c) Consider developing shared approaches towards technologies that require research and testing. Outcomes would be published from the benefit of industry, regulators, and consumers (e.g. REP 653).

Trade and investment

- 79 Both the UK and Australian Governments will work to raise the profile of the FinTech Bridge, as well as its benefits to UK and Australian fintech firms.

- 80 The Department for International Trade (DIT) and the Australia Trade and Investment Commission (Austrade) (the Trade and Investment Implementing Authorities) also intend to support the success of this FinTech Bridge.

Business-to-business

- 81 Both the UK and Australian Governments will support active engagement between fintech industry bodies (such as Innovate Finance (UK) and FinTech Australia). This includes the curation of regular business-to-business summit discussions involving industry representative groups, co-chaired for the UK by the Prime Minister's envoy for FinTech and a FinTech Australia nominee.

Appendix 2: Options around digital financial product advice

- 82 Appendix 2 provides general information on the Australian digital financial product advice market. It also provides context on some of the questions from the Senate Select Committee’s Issues Paper, including:
- (a) Can Australian regulators do more to support fintech and regtech companies to develop digital advice services? How can the Australian digital advice sector be supported to grow? (p.14)

Digital advice

- 83 Digital advice (also known as 'robo-advice' or 'automated advice') is the provision of automated financial product advice (using algorithms and technology) without the direct involvement of a human adviser.
- 84 ASIC is supportive of digital advice and believes that digital advice could play a role in satisfying unmet demand for certain types of financial advice.
- 85 ASIC have met with industry to discuss on proposed models covering a range of advice topics, including:
- (a) risk profiling and investment advice;
 - (b) superannuation strategy, contributions, investments and projections;
 - (c) life insurance, including needs analysis;
 - (d) SMSF establishment and trustee compliance; and
 - (e) holistic advice, covering a range of topics at one time.
- 86 The speed at which these different models come to market has varied. Like the US, scaled investment digital advice has featured most prominently. As such, ASIC has focused much of its initial industry engagement in this area.
- 87 Different types of digital advice models face different challenges in meeting their obligations, and this is likely to affect the trends in digital advice in Australia.
- 88 The digital advice industry is constantly evolving, and ASIC will continue to engage with digital advice providers to better understand their businesses.
- 89 ASIC expects digital financial advice providers to comply with the law like any other advice provider. ASIC has pursued intervention action in relation to a digital financial advice provider after raising concerns “...about the quality of advice being generated by the online tools” as well as the organisation’s “...ability to monitor the advice”. For more information, see [19-286MR Lime FS Pty Ltd agrees to shut down digital advice tools](#).

Regulatory Guide 255 Providing digital financial product advice to retail clients (RG 255)

- 90 In response to the general interest in digital advice in Australia, ASIC published [Regulatory Guide 255 Providing digital financial product advice to retail clients \(RG 255\)](#) in August 2016.
- 91 Our guidance brings together some of the issues that digital advice providers need to consider when providing advice to retail clients in Australia – from the licensing stage (i.e. obtaining an AFS licence) through to the actual provision of advice.
- 92 RG 255 generally builds on existing ASIC guidance and does not introduce new regulatory concepts as Australian law is technology neutral and the obligations applying to the provision of traditional (i.e. non-digital) financial product advice and digital advice are the same.
- 93 There are, however, some issues that are unique to digital advice providers. These are discussed below.

Best interests duty

- 94 One of the issues that ASIC has considered is how digital advice providers can comply with the best interests duty. In RG 255, ASIC outlines its minimum expectations for digital advice providers offering scaled advice.
- 95 For instance, digital advice providers should, at a minimum:
- (a) explain to the client what advice is being offered and what is not being offered (i.e. the scope of the advice);
 - (b) require the client to demonstrate that they understand that the advice they are seeking is within the scope of what is being offered by the digital advice model;
 - (c) inform the client about the limitations and potential consequences of the scope of advice; and
 - (d) filter out clients for whom the offered advice is not suitable, or who seek advice on a topic outside the scope of advice being offered;
 - (e) at key points in the advice process, inform the client about the limitations and potential consequences of the scope of advice;
 - (f) throughout the advice process, inform the client of key concepts and the relevant risks and benefits associated with the advice being provided;
 - (g) inform the client about the upfront and ongoing costs of the advice before the advice is given or implemented;
 - (h) inform the client about how they can withdraw from the advice being provided, and any associated costs, before the advice is implemented;

- (i) explain what dispute resolution processes are available to the client if they wish to make a complaint; and
- (j) explain why the client is likely to be in a better position if they follow the advice.

Training and competence

96 RG 255 also explains how digital advice providers can meet the minimum training and competence standards for advisers.

97 Natural persons who provide financial product advice to retail clients are required to meet the minimum training and competence standards for advisers in Australia.

98 In a digital advice context, the financial product advice is often generated by algorithms. Therefore, a natural person is often not directly involved in the provision of the advice.

99 For digital advice licensees to meet the organisational competence obligation in [RG 105 Licensing: Organisational competence \(RG 105\)](#), ASIC requires that a licensee has at least one responsible manager who meets the training and competence standards. This will ensure that at least one responsible person within a digital advice licensee holds this level of competence.

Monitoring and testing

100 In addition, RG 255 discusses the importance of digital advice providers having adequate processes in place to monitor and test the algorithms underpinning the advice being provided.

101 ASIC expects digital advice providers to regularly monitor and test their algorithms and to conduct advice reviews and record result, especially when changes are made

102 When a problem with an algorithm are detected, digital advice licensees should take immediate steps to rectify the problem and, in some cases, where the error may result in client loss, suspend provision of advice.

103 ASIC is does not presently require digital advice licensees to self-certify or engage an independent third-party to monitor and test their algorithms.

104 ASIC believes self-certification is likely to result in an additional burden on industry without necessarily providing a corresponding regulatory benefit. ASIC also believes requiring digital advice licensees to engage an independent third party to monitor and test their algorithms would not be practical and would hinder start-up businesses from being competitive.

Appendix 3: Capital raising

- 105 Appendix 3 provides general information on capital raising options available to fintech and regtech businesses in Australia. It provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Are there measures that can be taken to support the fintech sector's ability to raise capital from other types of institutional investors (e.g. superannuation funds)? (p.14)

Raising funds at early stages

- 106 The *Corporations Act* 2001 (Cth) (Act) regulates fundraising activity, including all financial products that are offered in Australia.
- 107 Many early stage fintech and regtech companies commence operations as a proprietary (Pty) company. Proprietary companies are generally prohibited from having more than 50 non-employee shareholders and commonly raise funds from founders. However, proprietary companies can also raise funds from other investors if the fundraising is exempt from the requirement for a disclosure document or by equity-based crowd-sourced funding. The main types of offers that a tech company can make without a disclosure document are:
- (a) personal offers accepted by less than 20 investors, which raise no more than A\$2 million in aggregate in any rolling 12-month period (s708(1));
 - (b) offers where the amount paid (or topped up) results in a total investment by a person of at least A\$500,000 in the class of securities;
 - (c) offers to sophisticated investors (who have a certificate from a qualified accountant saying that the investor has net assets of at least A\$2.5 million or gross income of at least A\$250,000 per year for each of the last 2 financial years) (s708(12));
 - (d) offers to a senior manager (or their family) (s708(8)); and
 - (e) offers to professional investors (such as superannuation funds, ASX listed entities, persons controlling gross assets of at least A\$10 million or ASX listed entities or their related bodies corporate).

Crowd source equity fundraising

- 108 Since September 2017, Australia has maintained an equity-based crowd-sourced funding (CSF) regime which aims to facilitate access to capital for small to medium sized unlisted Australian public companies (and since October 2018, Australian proprietary companies) by reducing the regulatory

and disclosure requirements for making public offers of shares, while seeking to ensuring adequate protections for retail investors.

109 CSF offers provide an avenue for early-stage growth as shares issued under a CSF offer do not count towards the 50 shareholder limit for non-listed entities.

110 The CSF regime allows Australian eligible companies (those with less than A\$25 million of consolidated gross assets and less than \$A25 million of annual revenue) to raise up to A\$5 million in a 12-month period. One example is the ridesharing company Shebah Pty Ltd, which recently raised \$3 million via a CSF offer and maintained its proprietary status whilst expanding its register to include more than 2,000 individuals.

111 Figure A3-1 provides the last reported statistics into CSF offers (complete and incomplete), the amounts raised, and the investor breakdown of these offers. More information can be found in [ASIC Report 616 Survey of crowd-sourced funding intermediaries 2017-18 \(REP 616\)](#), 12 April 2019. At the time of writing the report, ASIC is compiling up-to-date figures subject to their collection and availability.

ASIC guidance on crowd source equity fundraising

112 As the regulator responsible for fundraising activities and financial services, ASIC has engaged with Treasury and Government in the development of the CSF regime.

113 To further assist with the development of a CSF industry, ASIC has published updated regulatory guidance for intermediaries seeking to provide CSF services and for companies seeking to raise funds on a platform of a CSF intermediary.

114 [Regulatory Guide 261 Crowd-sourced funding: Guide for companies \(RG 261\)](#) will assist companies seeking to raise funds through crowd-sourced funding to understand and comply with their obligations in the new regime, particularly as many of these companies will not have experience in making public offers of their shares. ASIC has also published a template CSF offer document to help companies prepare their CSF offers.

115 [Regulatory Guide 262 Crowd-sourced funding: Guide for intermediaries \(RG 262\)](#) will assist intermediaries seeking to provide CSF services, particularly as this is a new type of financial service and there are unique gatekeeper obligations for operating platforms for CSF offers.

116 ASIC has also provided relief for intermediaries and eligible public companies from certain requirements under the Corporations Act to help facilitate crowd-sourced funding.

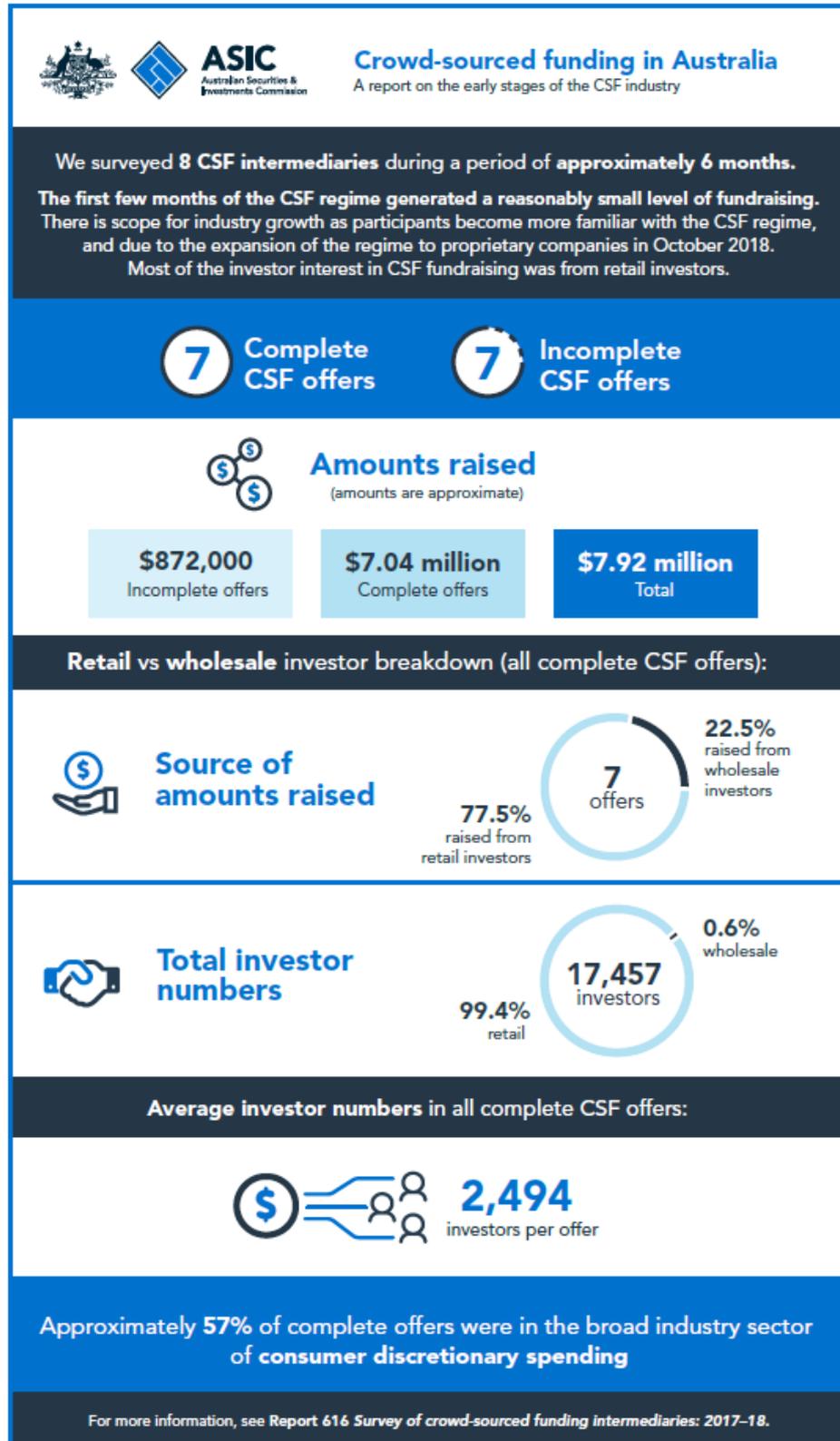


Figure A3-1: Crowd-sourced funding in Australia, A report on the early stages of the CSF industry. (Source: [REP 616](#)) Statistics reflect the period between 29 September 2017 till 30 June 2018.

Growing the business

- 117 A start-up business transitioning into a public company may raise funds from the public through disclosure documents. These documents contain certain key pieces of information that allow prospective investors to judge the merits of a particular offer.
- 118 If the company has audited accounts for at least a 12-month period, it can use an ‘offer information statement’ to raise up to \$10million.
- 119 Another option is using an initial public offer with a prospectus. A start-up company can raise funds using a prospectus and list on ASX.

Capital raising once listed

- 120 Once a company is listed, it can take advantage of a number of fundraising opportunities, including secondary raisings from existing investors (including pro rata offers under s708AA and offers up to \$30,000 per investor under ASIC’s exemption for Share and Interest Purchase Plans in LI 2019/547). These secondary raisings are an important source of revenue for start-ups that are still commercialising their technology or seeking to expand their work in related areas.

Employee incentive schemes

- 121 ASIC has issued class waivers for employee incentive schemes (LI 14/1000 and LI 14/1001) that enable companies to incentivise employees with equity-based remuneration. This is popular among tech companies that require highly skilled staff but are unable to offer competitive salaries.
- 122 Treasury recently consulted on law reform that will make it easier for companies, particularly unlisted companies, to raise funds from employees.