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ASIC cooperation

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ASIC cooperates with peer regulators and agencies, industry and the public to support the work we do in the financial sector for the benefit of all Australians.

Our collaboration and engagement with APRA is set out in Chapter 1.

5.1 Regional and international engagement

ASIC engages closely with peer regulators and agencies overseas to develop international regulatory policy, enhance cooperation, and positively influence the operation and regulation of global financial markets.

We contribute to numerous international forums and multilateral or bilateral channels, including with domestic agencies, to ensure a coordinated and aligned approach.

We are committed to:

- › contributing to the global regulatory standard-setting agenda
- › promoting international cooperation and information sharing to act against misconduct
- › sharing regulatory best practice and capacity building
- › facilitating market innovation and economic development
- › responding to regulatory threats and harms.

In 2019–20, we actively advocated for:

- › global regulatory coordination and harmonisation in financial technology (fintech) and regulatory technology (regtech)
- › strengthened global information-sharing arrangements and enhanced cross-border supervisory and enforcement cooperation
- › deeper regional integration through initiatives such as the Asia Region Funds Passport and stronger regional supervisory cooperation, particularly on Trans-Tasman issues through closer collaboration with New Zealand regulators
- › greater focus on fairness and addressing misconduct, whether legal or not, particularly in the retail sector.

ASIC participates in a range of international forums:

- › ASIC is a member of the IOSCO Board and is represented on its policy committees and taskforces, including those examining issues around asset management, sustainable finance, crypto-assets, technology, market fragmentation, enforcement, and standards implementation. ASIC most recently took on a co-chairing role for the IOSCO Retail Market Conduct Task Force.
- › ASIC is chair of the Market Conduct Working Group of the International Association of Insurance Supervisors (IAIS)
- › ASIC serves on the board of the International Forum of Independent Audit Regulators (IFIAR) and contributes to the International Accounting Standards Board
- › ASIC vice-chairs the International Financial Consumer Protection Organisation (FinCoNet) and participates in G20/Organisation for Economic Co-operation and Development (OECD) Financial Consumer Protection Taskforce initiatives
- › ASIC participates in working groups established by the World Economic Forum on cyber risk and consumer data protection
- › ASIC contributes to the Asia–Pacific Economic Cooperation (APEC) Financial Regulators Training Initiative
- › ASIC is involved in international trade and policy investment discussions.

Promoting regional cooperation

Regional supervisory colleges

Supervisory colleges facilitate deeper dialogue and cooperation between regulators in the supervision of cross-border financial entities, enhance visibility of interdependencies, and promote better management of financial and non-financial risks.

ASIC and APRA will host the new Trans-Tasman Supervisory College, which, although deferred due to the COVID-19 pandemic, remains a priority.

ASIC continued to participate in existing supervisory colleges this year, including those it recently joined in the insurance sector.

Trans-Tasman cooperation

ASIC and the Reserve Bank of New Zealand signed an MOU in December 2019 to enhance information exchange and cooperation.

In addition to developing the Trans-Tasman Supervisory College, we maintain close ties with New Zealand agencies via bilateral dialogue and forums such as the Trans-Tasman Banking Council and the Trans-Tasman Emerging Risk Committee.

IOSCO Asia–Pacific Regional Committee

We focused on strengthening our ties with IOSCO’s Asia–Pacific Regional Committee (APRC) this year by participating in APRC meetings and co-chairing the APRC Working Group on Enhancing Supervisory Cooperation.

International cooperation requests

This year, we made 497 international cooperation requests (up from 331 requests in 2018–19) and received 528 requests in relation to activities such as surveillance, supervision, enforcement, policy and licensing.

This included 140 requests for assistance in enforcement matters, of which 40 requests sought ASIC’s assistance to compel material from third parties under the *Mutual Assistance in Business Regulation Act 1992*.

COVID-19 pandemic

Our commitment to strong cooperation and collaboration with our overseas and domestic counterparts was highlighted this year as we focused on joint initiatives and sharing information on market developments, regulatory approaches and consumer protection measures as part of the global COVID-19 pandemic response.

Key initiatives included:

- › engagement with international standard-setting bodies, including IOSCO, the IAIS, the IFIAR, the OECD and the Financial Stability Board and counterpart overseas agencies in a coordinated approach to international issues related to consumer protection, market integrity and financial stability
- › working on financial stability issues through IOSCO’s Financial Stability Engagement Group
- › working with IOSCO’s Asia–Pacific Regional Committee to bring emerging concerns to the regional level, including common COVID-19 pandemic themes and cross-border spillover effects
- › co-leading the newly established IOSCO Retail Market Conduct Task Force examining measures to address misconduct, as well as retail investor and consumer protection issues
- › coordinating and sharing information with the Council of Financial Regulators and the Trans-Tasman Banking Council on international developments.

ASIC’s continued strategic participation in global regulatory developments informs and contributes to the way we address market vulnerabilities and consumer harms and how we support a domestic recovery in an interconnected global financial system.

Capacity building

Our capacity building initiatives are an important part of ASIC's international regulatory strategy. They provide a unique perspective on how financial markets are changing in emerging economies and the regulatory challenges this poses, while allowing ASIC to share expertise with our peers.

In 2019, we delivered an APEC technical workshop in Brunei on the Asia Region Funds Passport to delegates from Brunei, Vietnam and the Philippines.

We also continue to provide extensive assistance to the Indonesian Financial Services Authority, Otoritas Jasa Keuangan (OJK), on emerging regulatory issues.

The objective is to strengthen OJK's capacity to develop and implement global standards and practices and build a culture of responsive and skill-based surveillance and risk-focused supervision.

Before some of our face-to-face work was postponed due to the COVID-19 pandemic, we had provided workshops on data strategy, participated in a seminar on Islamic capital markets, and hosted an OJK delegation focused on retail equity investment trusts and digital advice.

Financial Sector Assessment Program

ASIC continues to contribute to the cross-agency CFR working group comprised of members from the Australian Treasury, APRA, the Reserve Bank of Australia (RBA) and ASIC to monitor progress against the 2018–19 Financial Sector Assessment Program review of Australia's financial sector, conducted by the International Monetary Fund.

5.2 Innovation Hub and regtech

ASIC's Innovation Hub helps innovative Australian businesses comply with regulatory requirements and provides a platform for international engagement on fintech and regtech ideas.

In 2019–20, the Innovation Hub team met with 103 innovative businesses, all of which received feedback and informal assistance to better understand how their business models could navigate Australia's regulatory framework. Since March 2015, ASIC has provided feedback and informal assistance to over 550 innovative businesses.

This year, ASIC granted eight new AFS licences or credit licences to fintech businesses. Fintech businesses that had received informal assistance from ASIC before submitting their licence application were approved materially faster than those that had not sought assistance.

ASIC and regtech

ASIC received \$6 million in funding over 2018–19 and 2019–20 to promote Australia as a world leader in the development and adoption of regtech solutions for the financial services industry.

ASIC applied the funding to a series of regtech initiatives in 2019–20, including:

- › **Financial Promotions Demonstration and Symposium** (2 August 2019)
Five selected demonstrators analysed financial promotional material (traditional and non-traditional media) to extract key features identifying potential risk and non-compliance characteristics.
- › **Financial Advice Files Demonstration and Symposium** (22 August 2019)
Six selected demonstrators investigated how regtech solutions can be used to improve compliance in Australia's financial advice industry, providing better outcomes for consumers.

› **Voice Analytics and Voice-to-Text Trial and Symposium** (24 September 2019)

Three procured regtech entities presented on findings from the ASIC Voice Analytics and Voice-to-Text trial held from April to July 2019, assessing how voice analytics, applied to over 1,700 life insurance sales calls, could analyse and identify selling behaviour that fell short of community expectations.

The results and findings of the first year's initiatives were set out in Report 653 *ASIC's regtech initiatives 2018–2019*, published on 20 December 2019.

We are further analysing the potential of regtech to assist in responsible lending and developing trials of supervisory technology (suptech) tools geared towards financial promotion monitoring and advanced text analysis of prospectuses.

Domestic and international engagement on innovation

ASIC and its Innovation Hub continue to collaborate with other regulators, government agencies and industry associations.

This year, the Innovation Hub team hosted quarterly Digital Finance Advisory Panel meetings and Regtech Liaison Forum events, bringing together industry leaders and regulatory representatives to discuss fintech- and regtech-related developments, issues and opportunities.

ASIC is one of 11 coordination group members of the Global Financial Innovation Network (GFIN), which consists of 50 national financial sector regulators and supervisors, as well as seven observers, across 21 jurisdictions.

The GFIN is committed to supporting financial innovation in the interests of consumers by creating a framework for cooperation between regulators to share experiences and approaches to innovation.

ASIC was a key participant in the GFIN's cross-border testing pilot, an initiative looking to allow firms to simultaneously trial and scale new technologies in multiple jurisdictions. Learnings from the pilot were published by the GFIN in January 2020.

ASIC is also a member of the steering committee for the IOSCO Fintech Network, established in mid-2018, which focuses on information sharing across regulators. ASIC is a member of each of the network's four workstreams on distributed ledger technology, artificial intelligence and ethics, regtech, and approaches to innovation.

5.3 Small business engagement and compliance

ASIC's Small Business Engagement and Compliance team focuses on and coordinates ASIC's initiatives to assist, engage and help protect small businesses to ensure a strong and healthy economy for all Australians.

Engaging with culturally and linguistically diverse small business communities

ASIC recognises that many small business owners in Australia speak languages other than English. This year, we undertook a pilot project in Victoria for culturally and linguistically diverse (CALD) small businesses to address the harm that may arise when small business owners do not understand or fulfil compliance obligations due to language or other barriers.

Focusing on small businesses in the Arabic, Chinese and Vietnamese communities, we worked with the Victorian Multicultural Commission and the Ethnic Communities' Council of Victoria to engage with CALD small businesses. We published ***Small business resources in other languages*** on our website and translated our ***Running a small business in Australia: What you need to know*** booklet into Arabic and Vietnamese, alongside the existing Chinese version. Together with the ATO and the Victorian Small Business Commission, we delivered small business workshops in community languages.

This initiative demonstrated how ASIC, other government agencies, and stakeholder groups effectively work with CALD business owners to understand the barriers to accessing information and how to overcome those barriers. We have seen increased engagement with our *Running a small business in Australia: What you need to know* content and more people using the Translating and Interpreting Service to communicate with us.

5.4 Office of the Whistleblower

ASIC's Office of the Whistleblower ensures that we record and assess the disclosures we receive from whistleblowers and that we communicate with whistleblowers as we undertake our inquiries. We also engage with stakeholders about implementing Australia's corporate sector whistleblower protection regime.

From 1 July 2019, the whistleblower protections in the Corporations Act were expanded to provide greater protections for whistleblowers. From 1 January 2020, public companies, large proprietary companies, and corporate trustees of APRA-regulated superannuation entities must have a whistleblower policy.

This year, we dealt with 644 disclosures by whistleblowers, a significant increase compared to previous years. Around 73% of these disclosures related to corporations and corporate governance, including internal company disputes. We also dealt with matters related to credit and financial services and the conduct of licensees (22%), markets (4%) and other issues (1%).

ASIC is unable to comment on our assessment of, or investigation into, whistleblower disclosures, considering the strong confidentiality protections for whistleblowers. Following our preliminary inquiries, we assessed approximately 93% of disclosures as requiring no further action by ASIC due to insufficient evidence, no actionable breach being disclosed, or the breach being in the jurisdiction or remit of other regulators. In a number of cases, we referred the matter to another agency, law enforcement body, or third party (such as a liquidator) that was better placed to deal with the issue or was already taking action.

Guidance on the whistleblower protection regime

Following commencement of the Government's reforms to the corporate sector whistleblower protection regime on 1 July 2019, ASIC's Office of the Whistleblower worked to promote the reforms and ensure compliance with the regime. We also engaged with stakeholders and delivered 12 presentations to the financial services, professional services, legal and resources sectors.

ASIC Regulatory Guide 270 *Whistleblower policies*, released on 13 November 2019, provides guidance on how companies can establish, implement and maintain a whistleblower policy. Our guidance was informed by responses to Consultation Paper 321 *Whistleblower policies* (CP 321), released on 7 August 2019. We received 40 submissions to CP 321. Respondents recognised the importance of a robust whistleblower protection regime to encourage disclosure of wrongdoing and improve corporate culture and governance. Report 635 *Response to submissions on CP 321 Whistleblower policies* highlights feedback from submissions.

ASIC's website contains updated information about the whistleblower protections, including Information Sheet 238 *Whistleblower rights and protections*, Information Sheet 239 *How ASIC handles whistleblower reports*, Information Sheet 246 *Company auditor obligations under the whistleblower protection provisions*, and Information Sheet 247 *Company officer obligations under the whistleblower protection provisions*.

Monitoring compliance with whistleblower policy

ASIC is monitoring compliance with the requirement for public companies, large proprietary companies, and corporate trustees of APRA-regulated superannuation entities to have a whistleblower policy, which commenced on 1 January 2020.

We have contacted relevant companies to advise them of their obligations and request a copy of their whistleblower policy. We have communicated any concerns in respect of policies and sought amendments to ensure that they comply with legal requirements and reflect ASIC guidance where relevant.

5.5 Inter-agency collaboration on financial crime

ASIC collaborates with other Australian enforcement and regulatory agencies on serious and organised crime, including through the Serious Financial Crime Taskforce (SFCT), the Fintel Alliance and the Phoenix Taskforce.

This year, ASIC's Criminal Intelligence Unit released 159 intelligence products to partner agencies and received 272 intelligence reports.

We also provided to partner agencies our analysis of the potential exploitation avenues by serious and organised crime that may impact the Government's COVID-19 pandemic economic response package.

Serious Financial Crime Taskforce

The SFCT is a multi-agency initiative targeting offences related to serious fraud, cybercrime and defrauding the Commonwealth. In 2019–20, we continued our contributions to the priorities of the SFCT relating to international tax evasion, illegal phoenix activity, cyber crime affecting Australian taxation and superannuation, and a new priority of serious financial crime affecting the ATO-administered measures of the Commonwealth Coronavirus Economic Response Package.

From 2020 to 2023, we will continue to apply our increased taskforce funding to support our role in enforcement activities and criminal intelligence analysis.

Fintel Alliance

The Fintel Alliance is a public–private partnership between federal and state government intelligence and law enforcement agencies, private sector businesses, and the Australian Transaction Reports and Analysis Centre (AUSTRAC). During the year, ASIC accepted the invitation of AUSTRAC CEO Nicole Rose to become a member of the Fintel Alliance.

Phoenix Taskforce

In 2019–20, ASIC continued its collaboration with the federal, state and territory agencies in the ATO-led Phoenix Taskforce, which takes a whole-of-government approach to combating illegal phoenix activity, including undertaking joint operations.

Our work this year included presentations, panel discussions, and liaison with peer regulators, insolvency practitioners, professional bodies, small business and industry groups. Our ongoing work is focused on implementing recent law reforms, including developing regulatory guidance and sharing information between agencies to support further action. For more information about our work to combat illegal phoenix activity, see Chapter 3.

5.6 Misconduct reporting

Our analysis of reports of misconduct received from the public and of breach notifications from industry is critical in informing our regulatory work.

Misconduct reports from the public

ASIC encourages members of the public to report concerns about corporate and financial services to us. We use this information to direct our regulatory activities to identify and address harms to investors and consumers.

Disrupting scams

Investment and loan scams are common among the types of scams reported to ASIC, the police and the ACCC. Often the scammers create a fake investment company, impersonate a real credit provider, or use websites and documentation that look legitimate in order to lure victims. Initial contact can be unexpected, triggered by an unrelated online inquiry or by clicking on an advertisement on social media. The scams may promise high returns on investments, or cheap and easy loans. The perpetrators are often sophisticated criminal groups operating outside of Australia.

ASIC's work focuses on disrupting the activity, including warning the public and working with institutions to prevent further victims. Where possible, we alert Australian banks to specific accounts being used for scams, often triggering investigations by the bank.

ASIC publishes lists of 'Companies you should not deal with' and 'Fake regulators and exchanges' on Moneysmart to alert the public to these entities.

This year, we warned consumers not to deal with Loan Way, an unregistered entity without an Australian credit licence that was advertising fast, low-interest rate loans requiring limited documentation. After people had paid an 'application fee' of hundreds of dollars, Loan Way would stop responding and fail to provide the loan.

Dealing with high-volume reports of misconduct about offshore conduct

In June and July 2019, ASIC received and dealt with over 2,500 reports of misconduct. This equated to three months of reports received in one month.

A large number of the reports were from overseas-based investors about an entity called My Group Fintech Co Pty Ltd. An entity with that name was registered in Australia, Saint Vincent and the Grenadines. We published information on our website – ‘ASIC responds to investor concerns about My Group Fintech Co Pty Ltd’ – outlining ASIC’s role and the options for people impacted. We made inquiries of the Australian company and considered information received from foreign regulators, but the conduct was wholly offshore where ASIC had no jurisdiction; nor had the company likely carried on business in Australia.

Recording, assessing and responding to reports of misconduct is a key part of our regulatory work, as the reports provide valuable information about the entities we regulate. In this case ASIC was able to efficiently record and respond to these reports by implementing a combination of technology and traditional assessment techniques.

Breach reports from licensees and auditors

ASIC uses breach reports from licensees and auditors to identify and respond to misconduct.

The Corporations Act requires AFS licensees to tell us in writing, within 10 business days, about any significant breach (or likely breach) of their obligations. Failure to report a significant breach is an offence and may result in penalties.

From 30 March 2020, AFS licensees must submit breach reports via the ASIC Regulatory Portal.

Breach reporting – ASIC Regulatory Portal

From 30 March 2020, AFS licensees and auditors were able to lodge notifications of breaches of the law using ASIC's Regulatory Portal. The portal enables online lodgement in one place of breaches, updates and communication with ASIC.

We also introduced enhanced report content and increased digitisation, allowing for improved data capture and analysis.

We communicated with lodgers throughout the change in process, explaining the concept and the information needed in their future reports, and considered feedback from lodgers during a series of usability testing sessions. We updated relevant guidance (RG 34 and RG 78), kept lodgers informed via our website and email, and met with licensees and auditors to discuss issues before the portal was launched. We have a dedicated ASIC email address for lodger queries and feedback.

A transition period, in which lodgers could continue to use previous lodgement methods up to 30 May 2020, allowed time to adapt to the new portal.

The portal is now being used to lodge hundreds of digitised notifications to ASIC each month.

Statutory reports from liquidators, administrators and receivers

We received 8,040 initial reports from external administrators this year. Of these, 7,163 reported suspected offences by company officers, with the remainder lodged because the return to unsecured creditors may be less than 50 cents in the dollar.

Of the 7,163 that reported misconduct, we requested supplementary reports from the external administrators in 1,070 cases. These supplementary reports typically set out the results of the external administrator's inquiries and the evidence to support the alleged offences.

We referred 23% of supplementary reports assessed in 2019–20 for compliance, investigation or surveillance action, compared to 24% in 2018–19.

5.7 Australian Financial Complaints Authority

Financial firms must have a dispute resolution system that consists of internal dispute resolution (IDR) procedures that meet the standards or requirements made or approved by ASIC, as well as membership of AFCA.

AFCA commenced operations on 1 November 2018. It deals with financial services, credit and superannuation complaints made by consumers, small businesses and primary producers. AFCA replaced two ASIC-approved industry-based schemes, the Financial Ombudsman Service and the Credit and Investments Ombudsman, as well as the statutory Superannuation Complaints Tribunal. AFCA retains many key features of the previous schemes but has an expanded small business and monetary jurisdiction.

In 2019–20, AFCA's first full financial year of operations, it received 80,546 complaints, a 13.7% increase from 2018–19. It secured \$258.6 million in compensation to consumers and small businesses.¹

Like other participants in the financial system, AFCA pivoted its operations to respond to the COVID-19 pandemic. It received 4,773 complaints relating to the pandemic, with the majority of these involving general insurance, particularly travel insurance.

As an authorised EDR scheme, AFCA is governed by an independent board responsible for ensuring the scheme's ongoing compliance with the authorisation requirements, ministerial conditions and ASIC regulatory requirements.

The Corporations Act gives ASIC a range of powers in relation to AFCA, including requiring that ASIC approve material changes to the scheme.

This year, ASIC approved material changes to the AFCA Rules to:

- › enable AFCA to name firms in published decisions
- › temporarily extend the timeframes for financial firms to respond to complaints that have already been through IDR in response to the COVID-19 pandemic
- › give effect to an additional condition on the AFCA scheme authorisation, introduced by the Government under its COVID-19 pandemic relief measures, which limits how AFCA deals with certain small business complaints.

¹ This includes matters previously received by AFCA's predecessor, the Financial Ombudsman Service, and resolved by AFCA since 1 November 2018.

In accordance with legislative requirements, AFCA reported 92 systemic issues to ASIC in 2019–20. AFCA also reported possible serious contraventions and shared information with ASIC under applicable statutory requirements and provisions of the AFCA scheme Rules.

Other issues affecting AFCA include the Government’s consultation on implementing the Royal Commission measure to establish a compensation scheme of last resort, and ASIC’s updated requirements about how financial firms deal with consumer and small business complaints under their IDR procedures, in Regulatory Guide 271 *Internal dispute resolution* (RG 271). Our updated standards and requirements will come into effect on 5 October 2021 and will drive fair and timely complaint outcomes for consumers and sharpen industry’s focus on systemic issues.

For more information about ASIC’s monitoring of remediation programs, see Chapter 2.