



ASIC
Australian Securities &
Investments Commission



ASIC enforcement and regulatory update: January to March 2023

Report 764 | May 2023

About this report

This report provides an overview of ASIC's work and key matters between 1 January and 31 March 2023.

Contents

Executive summary	3
Strengthening market integrity	4
Acting against misconduct	8
Protecting consumers and investors	10
Fostering industry compliance	13

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents: consultation papers, regulatory guides, information sheets and reports.

Disclaimer

This report does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act 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.

Executive summary

Our activity in the first quarter of 2023 reflects our ongoing commitment to pursuing a fair, strong and efficient financial system for all Australians.

This report sets out the key enforcement and regulatory actions we have taken between January and March 2023. These include both court-based and other enforcement actions, and our work to strengthen market integrity, foster industry compliance and deliver against our strategic priorities.

[Previous reports](#) can be found on our website.

'ASIC remains deeply committed to enforcement. We have a broad enforcement toolkit, and we are committed to using the full suite of those powers. We consider a range of factors to ensure ASIC's finite resources are used to maximum effect and that any ASIC action taken is in the public interest.'

– Sarah Court, Deputy Chair, ASIC

Strengthening market integrity

We took a range of action against misconduct that damages the integrity of the financial markets, including disclosure breaches, insider trading and market manipulation. Our actions resulted in the largest ever penalty handed down against a company for breaching continuous disclosure laws.

In the international arena, we contributed to the International Organization of Securities Commissions' (IOSCO) report on retail market misconduct, in our capacity as Co-Chair of the IOSCO Retail Market Conduct Task Force.

Enforcement priorities

 **Misconduct damaging to market integrity**

 **Governance and directors' duties failures**

 **Misconduct in the superannuation sector**

Enforcing disclosure obligations

During the quarter, GetSwift Limited was ordered by the Federal Court to pay a penalty of \$15 million for breaching continuous disclosure laws.

Australian Mines Limited was penalised \$450,000 for breaching its continuous disclosure obligations on three occasions. The penalty was imposed after Australian Mines sought early resolution of ASIC's proceedings and admitted that it failed in its obligation to disclose material information to the market.

Separately, we commenced civil penalty proceedings in the Federal Court against Noumi Limited (formerly Freedom Foods Group Limited), its former managing director and CEO Rory Macleod and its former CFO Campbell Nicholas. We alleged continuous disclosure failures, breaches of company director and officer duties, and false or misleading conduct.

The Star Entertainment Group Ltd provided for \$150 million in fines and penalties in its financial report for the half-year ended 31 December 2022, after we raised concerns

that no provision had been made for likely fines and penalties for alleged non-compliance with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* in the company's financial report for the year ended 30 June 2022.

Read more

[23-029MR](#) *Federal Court sanctions Getswift with record continuous disclosure penalty* (17 February 2023)

[23-004MR](#) *Australian Mines fined \$450,000 for breaching continuous disclosure obligations* (16 January 2023)

[23-042MR](#) *ASIC sues former Freedom Foods Group and its former CEO and CFO alleging disclosure failures and breaches of director and officer duties* (27 February 2023)

[23-044MR](#) *Star provides \$150 million for fines and penalties after ASIC raises concerns* (28 February 2023)



Case study: Federal Court sanctions GetSwift with record continuous disclosure penalty

In February, the Federal Court handed down the largest ever penalty against a company for breaching continuous disclosure laws, ordering GetSwift to pay a penalty of \$15 million.

The company's former director, CEO and executive chairman, Bane Hunter, was ordered to pay a penalty of \$2 million and disqualified from managing corporations for 15 years. Former director Joel Macdonald was ordered to pay a penalty of \$1 million and disqualified for 12 years. These are two of the highest penalties ordered against directors for corporate misconduct. Former director Brett Eagle has been ordered to pay a penalty of \$75,000 and was disqualified from managing corporations for two years.

The orders came after the court's judgment in November 2021, where GetSwift was found to have made numerous misleading statements in its announcements on ASX and breached its continuous disclosure obligations on 22 occasions between February and December 2017.

The court found Mr Hunter, Mr Macdonald and Mr Eagle misled the market and were knowingly concerned in GetSwift's continuous disclosure breaches and therefore breached their duties as directors.

'Disclosure is critical to market integrity and consumer protection. The penalties imposed by the court demonstrate the extent and seriousness of the misconduct in this matter and the importance placed by the court on deterring others from engaging in similar behaviour. ASIC will continue to take action to hold companies and individuals to account for corporate misconduct of this kind.'

– Sarah Court, Deputy Chair, ASIC

Calling for improvement in disclosure

Our ongoing financial reporting surveillance program and subsequent inquiries into a selection of 2022 annual reports has led to an increasing number of listed entities disclosing material business risks in their financial reports.

The disclosures were in response to our concerns that the risks had not been sufficiently disclosed in the operating and financial review of the relevant directors' reports.

Read more

[23-018MR](#) ASIC calls for improved material business risk disclosure in annual reports (10 February 2023)

[23-058MR](#) ASIC continues its focus on improved material business risk disclosure in annual reports (10 March 2023)

Combating insider trading

In February, the former CEO of Big Un Limited, Richard Evans (also known as Richard Simon Evertz), was charged with insider trading. The charges follow our allegations that Mr Evans communicated inside information about Big Un to a shareholder on or around 10 January.

In March, former Tesla Motors Australia Pty Ltd director Kurt Schlosser was sentenced in the Sydney District Court following his guilty pleas to two insider trading offences. Mr Schlosser used confidential information he possessed in his role as country director of Tesla Australia to purchase shares in Piedmont Lithium Ltd in two transactions. He also communicated that inside information to a friend.

Mr Schlosser was sentenced to two years and six months imprisonment, to be released immediately on entering into a recognisance, on the condition that he be of good behaviour for two years and six months. As a result of his conviction, Mr Schlosser is also automatically disqualified from managing corporations for five years.

Read more

[23-025MR](#) Former CEO of Big Un Limited charged with insider trading (14 February 2023)

[23-071MR](#) Former Tesla Motors Australia director sentenced for insider trading (21 March 2023)

Acting against market manipulation

On 31 January, Don George Evans was sentenced to 12 months imprisonment for conspiring to push Quantum Resources Limited shares to a pre-determined price. Mr Evans conspired with former Quantum director Avrohom Kimelman and corporate consultant Benjamin Heath Cooper.

Mr Evans was released on paying a recognisance of \$5,000 and pledging to be of good behaviour for two years. As a result of his conviction, Mr Evans is automatically disqualified from managing corporations for five years.

Read more

[23-017MR](#) Don George Evans sentenced for conspiring to manipulate Quantum shares (7 February 2023)

Further response on ASX CHES replacement

In February, we took further action to ensure that ASX adequately responds to the findings and recommendations of the ASX CHES Replacement Application Delivery Review by Accenture. We also acted to ensure that ASX undertakes all necessary steps to fix identified gaps and deficiencies in ASX Group's portfolio, program and project management frameworks.

Read more

[23-035MR](#) Further ASIC regulatory response on CHES Replacement and ASX's program capabilities (22 February 2023)

Collaborating with international regulators

In March, IOSCO published a report on retail market misconduct, calling for greater international collaboration to combat cross-border scams, greenwashing, misconduct and fraud.

The report provides a global point-in-time view on the evolving retail trading environment, and outlines a suite of measures for regulators to consider. This analysis will inform ASIC's strategic priorities on retail investor harms concerning crypto-assets, sustainable finance, scams and Australia's design and distribution obligations.

'Scams, misconduct, and harmful practices targeting retail investors do not respect borders. ASIC co-chaired the task force that wrote the report and supports recommendations to strengthen international cooperation to mitigate cross-border misconduct and share surveillance data and intelligence.'

– Joe Longo, Chair, ASIC

Read more

[23-085MR](#) ASIC and IOSCO report on combatting retail market misconduct (31 March 2023)

Addressing SMSF auditor failure

In January, we announced that we had cancelled the registration of 374 auditors of self-managed superannuation funds (SMSFs) who failed to lodge their annual statements.

As part of our current compliance program, we communicated to over 1,400 SMSF auditors that they had outstanding annual statements. Most of these auditors subsequently lodged their statements.

Read more

[23-012MR](#) ASIC cancels registration of 374 SMSF auditors (31 January 2023)

Acting against misconduct

We continued to protect financially vulnerable consumers by using our full suite of regulatory tools. We filed court proceedings alleging misleading conduct in insurance pricing, unlicensed credit activity and Ponzi schemes.

Enforcement priorities



Protecting financially vulnerable consumers



Failures by providers of general insurance

Addressing misleading statements

In February, we commenced civil penalty proceedings in the Federal Court against RACQ Insurance Limited. We allege that RACQ misled customers in its Product Disclosure Statements (PDSs) about the pricing discounts available for certain types of insurance cover.

ASIC alleges that between February 2017 and March 2022, RACQ included statements in PDSs for its motor, home, caravan and trailer, and unique vehicle insurance policies that it would apply certain discounts to customers' insurance premiums. ASIC alleges these statements were misleading because RACQ only applied the discounts to the base insurance premium, and not to additional premiums paid for certain optional extras.

The RACQ PDSs have since been updated and RACQ has committed to a remediation program for a range of pricing promise failures, not limited to those failures outlined in this report. Up to 500,000 members are expected to receive refunds, with RACQ reporting the total cost to RACQ could reach up to \$220 million.

RACQ reported the pricing failure after ASIC called on general insurers to review their pricing practices in October 2021. ASIC will deliver a report on its review of pricing practices in the insurance industry in the first

half of 2023. The first case management hearing occurred on 13 April 2023. A further case management hearing is scheduled for 11 July 2023.

Read more

[23-038MR](#) ASIC sues RACQ over alleged pricing discount failures, urges industry to improve pricing practices (24 February 2023)

'The failure by insurers to deliver on pricing promises is a key priority for ASIC and we will continue to take enforcement action to hold insurers to account in this regard.'

– Sarah Court, Deputy Chair, ASIC

Acting against unlicensed credit activity

In March, we took court action against Green County Pty Ltd and Max Funding Pty Ltd for alleged unlicensed credit activity and other breaches of the *National Consumer Credit Protection Act 2009* (National Credit Act).

We allege that Green County and Max Funding failed to make reasonable inquiries about the purpose of loans, which led to Green County providing personal loans to certain borrowers. We also allege that neither Green County nor Max Funding were licensed to provide personal loans or act as an intermediary. We allege that this resulted in those consumers not having the benefit of important protections under the National Credit Code (at Sch 1 to the National Credit Act) and being charged more for their loans than they lawfully should.

We are seeking declarations, pecuniary penalties, injunctions, disqualification orders and other orders from the court.

Read more

[23-055MR](#) ASIC commences court proceedings against Green County and others over alleged unlicensed credit activity (9 March 2023)

Deterring misconduct

In January, the Federal Court ordered home finance companies General Commercial Group Pty Ltd and Eden Capital (Australia) Pty Ltd to pay penalties of \$50,000 each for failing to cooperate with the Australian Financial Complaints Authority (AFCA). General Commercial was previously known as Urban Commercial Group, and Eden Capital as Southside Lending.

General Commercial director Dale Brendan Heremaia and his son, Eden Capital director Benjamin Eden Heremaia, were also ordered to pay \$30,000 and \$20,000, respectively, for their roles in the misconduct.

The court found that both companies repeatedly refused to provide documents and information to AFCA when requested, and harmed AFCA staff by subjecting them to inappropriate and unprofessional behaviour. The defendants made admissions regarding the misconduct, agreed the penalty amounts and agreed to pay ASIC's costs.

For the next 12 months, both companies are restrained from engaging in credit activity and the Heremaia's are restrained from being involved in any business carrying on credit activity. Eden Capital will be allowed to collect payments on existing loans.

Read more

[23-009MR](#) Home finance companies and directors to pay \$150,000 for failing to cooperate with AFCA (24 January 2023)

Combating Ponzi schemes

In February, David Sipina was charged with criminal offences relating to alleged misconduct at the Courtenay House Capital Trading Group. Mr Sipina was engaged by Courtenay House to promote the business.

Mr Sipina is the third individual to face criminal charges in the matter, after Courtenay House's former director Tony Iervasi and former contractor Athan Papoulias were both charged and pleaded guilty.

Read more

[23-036MR](#) ASIC brings criminal charges against third individual in relation to Courtenay House (22 February 2023)

Protecting consumers and investors

We continued our efforts to ensure sustainability-related claims made by financial institutions were accurate. For the first time, we took court action against an Australian entity over alleged greenwashing conduct.

We also continued to deliver on our enforcement priority of reducing the risk of harm to consumers caused by poor design and distribution of financial products. We issued seven interim stop orders on financial products with deficient or non-compliant target market determinations (TMDs).

To help deliver positive financial outcomes for First Nations peoples, we published our Indigenous Financial Services Framework.

Enforcement priorities

 **Enforcement action targeting poor design, pricing and distribution of financial products**

 **Protecting financially vulnerable consumers**

 **Misleading conduct in relation to sustainable finance including greenwashing**

 **Combating and disrupting investment scams**

 **Misconduct impacting First Nations people**

Enforcing the design and distribution obligations

Between January and March 2023, we issued interim stop orders on a range of financial products due to deficient or non-compliant TMDs.

These products included:

- › Vasco Responsible Entity Services Limited's Pivotal Diversified Fund
- › One Card Credit Pty Ltd's Scorebuilder and Safetynet loan product
- › Interactive Brokers Australia Pty Ltd's Stock Yield Enhancement Program Derivatives
- › Advance Asset Management Limited's Advance Balanced Multi-Blend Fund, Advance International Shares Multi-Blend Fund, and Advance Property Securities Multi-Blend Fund.

The interim stop orders on the products related to Vasco Responsible Entity Services,

One Card Credit and Advance Asset Management were ultimately revoked following the entities taking steps to address ASIC's concerns.

Read more

[23-002MR](#) *Interim stop order placed on the Pivotal Diversified Fund (9 January 2023)*

[23-031MR](#) *ASIC places interim stop order on credit for rent product (17 February 2023)*

[23-056MR](#) *ASIC places interim stop orders on TMD and PDS for a securities lending product (9 March 2023)*

[23-068MR](#) *ASIC issues interim stop orders on three BT Advance Asset Management Funds (16 March 2023)*

'The design and distribution obligations have turned a new page in the regulation of financial products in Australia. The regime is intended to deliver better consumer outcomes and, ultimately, we want to see the long-term benefits of the obligations being realised.'

– Karen Chester, Deputy Chair, ASIC

Delivering positive financial outcomes for First Nations peoples

In February, we published our Indigenous Financial Services Framework as part of our role in supporting positive financial outcomes for First Nations peoples.

The framework highlights key learnings developed following extensive consultations with First Nations peoples, financial services industry representatives, as well as fellow government departments, agencies, and regulators. We will use the key learnings detailed in our framework to inform our work with First Nations consumers, and encourage all stakeholders to consider these learnings in their respective roles.

Read more

[23-024MR](#) ASIC publishes Framework to help deliver positive financial outcomes for First Nations people (14 February 2023)

Disrupting scams

In March, we published a scam alert to warn investors about a suspicious 'investment opportunity' offered by an entity named 'United Solar Investment'. The entity is not licensed to provide financial services in Australia and the scheme it promotes shows signs of a classic pyramid scheme.

Read more

[Scam alert: Do not deal with, or transfer money to United Solar Investment](#) (15 March 2023)

Addressing breaches of National Credit Act

In March, the Federal Court ordered a \$10 million penalty against Australia and New Zealand Banking Group Ltd (ANZ) over its Home Loan Introducer Program.

The court found that between March 2017 and March 2018, ANZ contravened the National Credit Act by accepting information and documents in support of 50 home loan applications from third parties who were not licensed to engage in credit activity. The court also found that, between November 2015 and March 2018, ANZ did not have adequate processes in place in its Home Loan Introducer Program to ensure compliance, and failed to take reasonable steps to ensure ANZ's representatives complied with the National Credit Act.

ANZ admitted the contraventions and has agreed to conduct a review of its policies and procedures around its Introducer Program to ensure ongoing compliance with credit legislation.

In February, the Federal Court ordered Membo Finance Pty Ltd and its sole credit representative, Richmond Group Financial Services Pty Ltd (trading as ClearLoans), to pay over \$6 million in penalties after finding the companies breached the National Credit Act. The Court made orders for Membo and RGFS to discontinue a number of enforcement proceedings against borrowers and guarantors. Membo and RFGS made admissions regarding the misconduct, agreed to injunctions, the penalty amounts and to pay ASIC's costs.

Read more

[23-059MR](#) ANZ penalised \$10 million over non-compliant Home Loan Introducer Program (10 March 2023)

[23-037MR](#) ClearLoans penalised \$6 million for financial hardship misconduct and other Credit Act breaches during COVID-19 (23 February 2023)



Case study: ASIC actions against greenwashing

In February, we launched our first court action against alleged greenwashing conduct. We commenced civil penalty proceedings in the Federal Court against Mercer Superannuation (Australia) Limited for allegedly making misleading statements about the sustainable nature and characteristics of some of its superannuation investment options.

We allege Mercer made statements on its website about seven 'Sustainable Plus' investment options offered by the Mercer Super Trust, of which Mercer is the trustee. These statements marketed the Sustainable Plus options as suitable for members who 'are deeply committed to sustainability' because they excluded investments in companies involved in carbon-intensive fossil fuels, alcohol production and gambling. ASIC alleges that the Sustainable Plus options caused members to invest in companies involved in industries that were said to be excluded.

Separately, we issued three infringement notices in December 2022 to listed energy company Black Mountain Energy Limited (BME). We issued the notices because of concerns about alleged false or misleading sustainability-related statements made to ASX between 23 December 2021 and 8 September 2022. In January 2023, BME paid \$39,960 to comply with the infringement notices.

Read more

[23-043MR](#) ASIC launches first Court proceedings alleging greenwashing (28 February 2023)




[23-001MR](#) ASIC issues infringement notices to energy company for greenwashing (5 January 2023)

Fostering industry compliance

We implemented a range of initiatives to help industry comply with the law. These included providing life insurers with conditional relief from the design and distribution obligations, as well as reviewing the progress superannuation trustees have made on improving the life insurance they provide to their members.

To help foster a healthy whistleblowing culture in the corporate environment, we released a report that gives entities guidance on what we consider good practice for handling whistleblower disclosures. We also took action against governance and directors' duties failures in a court proceeding over alleged breaches of the whistleblower provisions.

Enforcement priorities

-  Governance and directors' duties failures
-  Misconduct in the superannuation sector
-  Systemic compliance failures by large financial institutions

Promoting good practices for handling whistleblower disclosures

In March, we published [Report 758](#) *Good practices for handling whistleblower disclosures* (REP 758). The report aims to help entities improve their arrangements for handling whistleblower disclosures, and ensure the arrangements are effective and encourage people to speak up.

REP 758 sets out the good practices we observed in our review of seven entities' whistleblower programs from a cross-section of industries. We found that programs with thoughtful and well-publicised arrangements for protecting whistleblowers and handling disclosures received useful reports and tip-offs about concerns and issues in the workplace. As a result, those entities had greater opportunity to identify and address these concerns and issues at an early stage.

Also in March, we took action for the first time over alleged breaches of the whistleblower provisions. We commenced civil penalty proceedings in the Federal Court against TerraCom Limited, its managing director Daniel McCarthy, chief commercial officer Nathan Boom, former chair Wallace King, and former director and deputy chair Craig Ransley for engaging in conduct that

harmed a whistleblower. The whistleblower alleged that TerraCom had falsified coal quality results.

Read more

[23-046MR](#) ASIC publishes report on good practices for handling whistleblower disclosures (2 March 2023)

[23-045MR](#) ASIC sues TerraCom Limited, its managing director, chief commercial officer, former Chair and a former director (1 March 2023)

'Whistleblowing is a key part of a transparent, accountable and safe work culture. Whistleblowers need to know that when they have reasonable grounds to suspect misconduct or an improper situation involving a firm, they can raise the issue without being victimised.'

– Danielle Press, Commissioner, ASIC

Calling for improvements to insurance in superannuation

In March, we called on superannuation trustees to continue to focus on improving the life insurance they provide to their members. This followed our recent review of actions taken by a sample of 15 superannuation trustees to enhance their life insurance arrangements.

The review looked at whether trustees had made progress in addressing the issues we had raised in various public communications since 2019, and whether they were meeting new regulatory obligations. We outlined our findings in [Report 760 Insurance in superannuation: Industry progress on delivering better outcomes for members](#) (REP 760).

Read more

[23-076MR](#) Superannuation trustees urged to improve insurance outcomes for members (22 March 2023)

Monitoring remediation over financial advice misconduct

In March, we provided a final update on remediation paid or offered by six of Australia's largest banking and financial services institutions to customers who suffered loss or detriment because of fees-for-no-service misconduct or non-compliant advice. As at 31 December 2022, the total compensation reached \$4.7 billion.

This final update follows eight years of addressing financial institutions' and advisers' failure to provide ongoing services to fee-paying customers.

Read more

[23-057MR](#) Final ASIC update: Compensation for financial advice related misconduct as at 31 December 2022 (10 March 2023)

Providing conditional design and distribution obligations relief for insurers

In March, we provided conditional relief for life insurers from the design and distribution obligations when reissuing life insurance policies in certain limited circumstances.

This relief will reduce the regulatory burden for life insurers so they can reissue policies first issued before 5 October 2021 (i.e. the effective date of the design and distribution obligations) when there is a low risk of consumer harm. For policies issued on or after 5 October 2021, the relief also allows life insurers to correct administrative errors and reinstate lapsed policies.

Read more

[23-070MR](#) ASIC grants conditional relief to facilitate reissue of certain life insurance policies (17 March 2023)

Reviewing the small business restructuring process

In January, we published [Report 756 Review of small business restructuring process](#) (REP 756). We reviewed the ASIC company register and ASIC lodgements data for all 82 small business restructuring practitioner appointments that commenced in the review period. REP 756 outlines our findings from this review and the outcomes of those restructurings to 30 September 2022.

This is our first report since the reforms were introduced on 1 January 2021. The aim of the reforms was to create a new simplified debt restructuring process for eligible small businesses and a new type of registered liquidator.

Read more

[23-007MR](#) ASIC reports on small business restructuring (17 January 2023)

Providing more information about financial advisers

Our [financial advisers register](#) is published on Moneysmart. From 1 February, the register displays whether a relevant provider (i.e. a person who is authorised to provide personal advice to retail clients about relevant financial products) can provide tax (financial) advice services. This information is set out under each relevant provider's appointment details.

Read more

[FAR to display whether financial advisers can provide tax \(financial\) advice](#) (2 February 2023)