ASIC quarterly update: July to September 2021

Report 704 | October 2021

About this report

This report provides an update on ASIC's work undertaken between 1 July and 30 September 2021.

Contents

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.

Achieving a fair, strong and efficient financial system

In August we released our new Corporate Plan, which outlines our priorities over the next four years to achieve a fair, strong and efficient financial system for all Australians. The Corporate Plan is consistent with ASIC's new Statement of Intent released in response to the Australian Government's Statement of Expectations.

To achieve our vision, we remain committed to using all of our regulatory tools to drive good consumer and investor outcomes, promote a strong and innovative financial system and act against misconduct.

For 2021–22, we have a particular focus on supporting Australia's economic recovery from the impacts of the COVID-19 pandemic. This includes offering short-term regulatory relief to entities where appropriate, as well as longer-term strategies such as identifying and pursuing opportunities for smarter regulation.

> ‘I will ensure ASIC continues to take opportunities to support businesses through more efficient methods of regulation. At the same time I will ensure ASIC remains vigilant in protecting consumers and investors from harm. By using the full suite of regulatory tools at our disposal, we will disrupt misconduct and drive quick, effective and proportionate regulatory outcomes.’
>
> – Chair Joseph Longo

Providing industry with guidance and clarity during challenging times

We helped industry weather the challenges of the COVID-19 pandemic by taking a reasonable approach in implementing reforms, and extending the time for companies to hold annual general meetings (AGMs).

ASIC is committed to supporting economic growth and recovery. We are taking an active and targeted approach to enforcement, focusing our action on the areas of greatest harm, and using our enhanced range of regulatory tools to ensure Australians can participate with confidence in the financial system.

We continue to work closely and constructively with Government and other regulators such as the Australian Prudential Regulation Authority (APRA).

Supporting transition towards law reforms

With a raft of significant law reforms commencing in October 2021, we continued to work closely with industry to support the transition towards new standards.

The new laws include design and distribution obligations, restrictions on the unsolicited selling of financial products (hawking), a deferred sales model for add-on insurance products, reference checking and information sharing requirements for financial advisers and brokers, and new requirements around how breaches are reported to ASIC and disputes are managed internally in firms.

These laws provide consumers with long-term protection from the harms highlighted by the Financial Services Royal Commission, and close regulatory gaps that previously existed.

On 21 August, Chair Joe Longo made it clear that ASIC will take a reasonable approach in the early stages of these reforms, provided industry participants use their best efforts to comply. However, where firms are not acting in good faith or where we detect conduct causing actual harm, we will not hesitate to enforce the law.

Between August and September we issued guidance to provide industry with further clarity on how they can comply with new obligations.

Read more

ASIC publishes guidance on hawking reforms

ASIC publishes guidance on breach reporting

Information Sheet 259 *Complying with the notify, investigate and remediate obligations* (INFO 259)

Guidance and customer information requirements to implement the new add-on insurance deferred sales model

ASIC releases reference checking and information sharing protocol for financial advisers and mortgage brokers

> ‘New obligations benefit consumers by allowing ASIC to better identify and swiftly address systemic problems. There will be greater transparency for consumers and firms with the publication of breach reporting data from late 2022.’
>
> – Deputy Chair Karen Chester

Offering flexibility to companies preparing for the 2021 AGM season

On 8 September 2021, we formally extended the time public companies have to hold their AGM by two to four months.

We granted this extension to allow flexibility for companies preparing for the upcoming AGM season as restrictions on gathering and movement remained during the COVID-19 pandemic.

Read more

ASIC extends time for companies to hold annual general meetings

Licensing and professional registration activities

In September we reported that in 2020–21 we received 1,883 Australian Financial Services (AFS) licence and Australian credit licence applications. This was a significant increase from 1,346 the previous year, which was due to the licensing reforms relating to insurance claims handling and debt management services.

Our report also acknowledged the impact of the COVID-19 pandemic and our continued flexibility during these times.

Read more

Licensing and professional registration activities: 2021 update

Debt management licensing regime has commenced

Helping managed funds maintain valuation best-practice during times of volatility

In August we released findings from our review of managed funds' illiquid asset valuation practices. The review was aimed at assessing whether the current regulatory settings for the valuation of illiquid assets are adequate to protect members' interests in times of heightened market volatility.

The review showed that managed funds' illiquid-asset valuation practices continued to be robust, timely and consistent with ASIC guidance and industry standards even during the early stages of the COVID-19 pandemic, when the market was volatile. We do not see any need to change our guidance on valuations for managed funds.

Read more

ASIC finds good practices from COVID-19 review of managed funds' valuation of illiquid assets

Monitoring and protecting market integrity in the digital age

We have continued to work with domestic and international regulatory agencies to address market fragmentation and support innovation in capital markets. We are collaborating with several jurisdictions and international bodies to establish multilateral agreements on supervisory cooperation.

Domestically, we continue to work closely with market operators to identify and disrupt actions that threaten the integrity of markets. This includes monitoring a range of platforms for illegal market manipulation activity and exposing common tactics used to lure investors.

Disrupting illegal market manipulation and exposing common tactics used to lure investors

We continue to actively monitor a range of platforms in order to identify and disrupt illegal market manipulation. Along with identifying and taking action against illegal activity, we are reminding brokers and listed entities of their obligations and warning people of the tactics used by unscrupulous online promoters.

On 23 September 2021 we issued a warning that the recent trend of social media–led ‘pump and dump’ campaigns may amount to market manipulation.

We reminded market participants and listed entities to report any suspicious activity and encouraged investors and consumers to report misconduct to us.

Our campaign also focuses on identifying and exposing some of the tactics used by online promoters to convince inexperienced investors to trade more or pay too much without properly considering the risks. In a recent segment on ABC Radio’s Melbourne Drive, our Chief Operating Officer Warren Day discussed common tactics such as ‘pump and dump’ schemes, gamification and copy trading.

Read more

ASIC warns of social media led ‘pump and dump’ campaigns

Don’t believe the hype: Common tactics to get you to invest in shares

Warning against trading crypto-asset–related financial products through unlicensed entities

In August we urged Australians to be wary of investing in crypto-asset–related financial products through unlicensed entities.

We have received a number of reports from Australians claiming they have experienced significant losses while using unlicensed platforms to trade crypto-asset–related financial products. Most of these complaints related to excessive leverage, platform outages and unfair liquidations.

We reminded investors to check and ensure entities they deal with hold an AFS licence or an Australian market licence.

Read more

Warning: Trading crypto-asset related financial products through unlicensed entities

Moneysmart: Cryptocurrencies and ICOs

Remaining vigilant against cyber security risk

In August we reminded Australian businesses to remain vigilant against cyber threats. We continue to see an increase in scams involving fake websites, social media sites, calls from call-centre staff, stock exchanges – even fake regulators.

We asked company directors and business owners to take the time to understand cyber security risk and how to best protect their business and customers.

Read more

No business is too small for a cyber security strategy

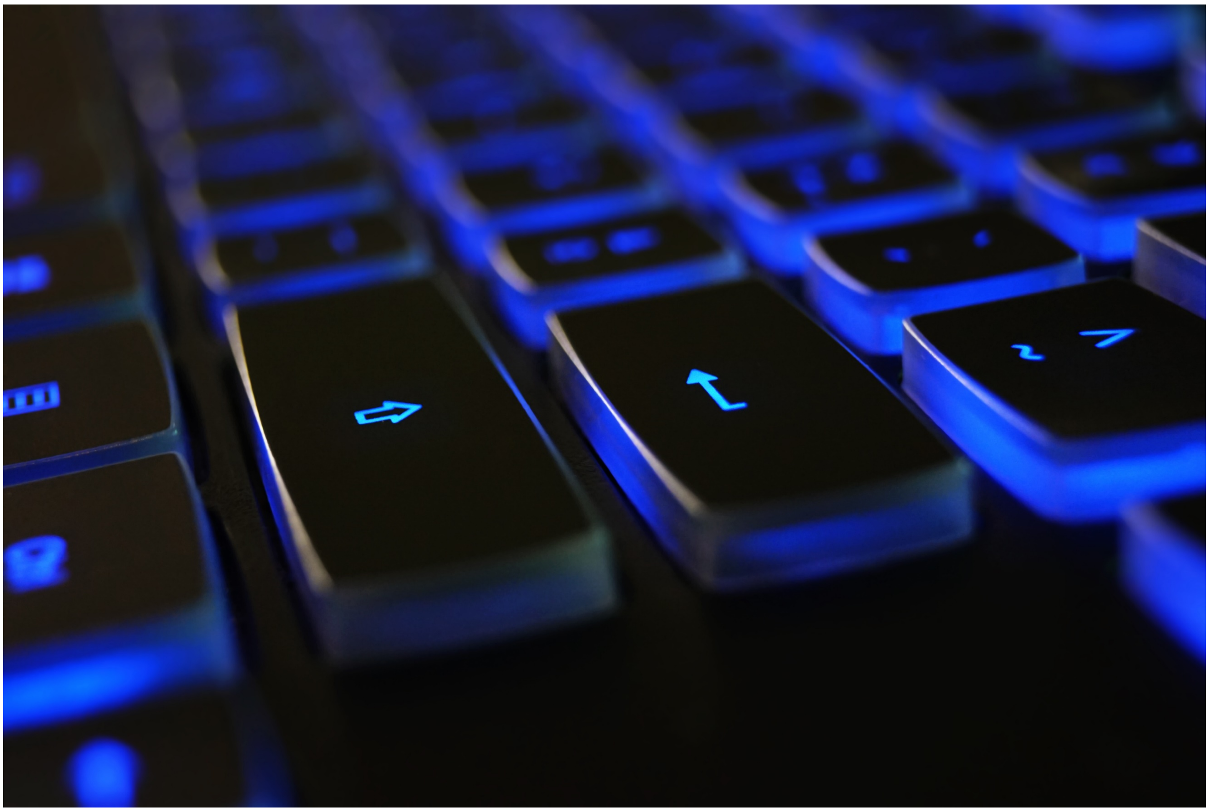
Moneysmart: Investment warnings

Scammers taking advantage of COVID-19 to target small businesses

ASIC warns against fake news articles promoting investment scams

‘ASIC has been working closely with market operators to identify and disrupt pump and dump campaigns, and we will continue to target actions that threaten the integrity of markets and to take enforcement action where appropriate.’

– Commissioner Cathie Armour



Targeting enforcement action to deter misconduct

During this quarter, we pursued enforcement, regulatory and remediation action to tackle misconduct and protect Australian investors and consumers.

In August, ASIC released an update on compensation for financial advice–related misconduct as of 30 June 2021. Six of Australia's largest banking and financial services institutions have paid or offered a total of $1.86 billion in compensation as at the end of June to customers who suffered loss or detriment because of fees-for-no-service misconduct or non-compliant advice.

Addressing consumer harms in insurance

On 2 August 2021, we reported on how major life insurers offering total and permanent disability (TPD) insurance cover – representing 75% of the Australian TPD market – are addressing the consumer harms identified in our report in 2019.

We found that while all nine major insurers are working to repair the TPD safety net in response to our 2019 findings, there remain important areas for improvement. These include better ways to store and use data.

We will continue to monitor progress and hold insurers accountable to their commitments. We will also continue to engage with super trustees to supervise their progress towards improving data quality and monitoring consumer outcomes. ASIC and APRA will also continue to work closely to drive data uplift by insurers and trustees.

Read more

ASIC finds gaps remain despite progress to repair the TPD ‘safety net’

Penalty on sale of travel insurance policies

In September, the Federal Court ordered Allianz Australia Insurance Ltd (Allianz) and AWP Australia Pty Ltd (AWP) to pay penalties of $1.5 million relating to the sale of travel insurance policies through Expedia websites.

Allianz and AWP were found to have engaged in misleading and deceptive conduct when selling travel insurance by failing to correctly state how premiums were calculated, and by allowing insurance to be sold to ineligible customers.

Read more

Allianz Australia Insurance and AWP Australia ordered to pay penalties of $1.5 million for misleading sale of travel insurance on Expedia websites

Penalty on failing to act in clients' best interests

In August, the Federal Court ordered Westpac Bank subsidiaries, Westpac Securities Administration Limited (Westpac Securities) and BT Funds Management Limited (BT Funds), to pay a combined penalty of $10.5 million for failing to act in their clients' best interests.

An ASIC investigation found that Westpac Securities and BT Funds conducted two telephone campaigns which recommended that customers roll out of their other superannuation funds into a Westpac-related superannuation account. By doing so, Westpac failed to act in the best interests of its customers as neither Westpac Securities nor BT Funds was licensed to provide personal advice.

Read more

[Westpac subsidiaries to pay $10.5 million penalty for breaches of best interests duty]

> 'Consumers' decisions about their superannuation are significant long-term financial decisions affecting their retirement income. Financial institutions seeking to influence those decisions by providing financial product advice must comply with the law designed to protect consumers.'
>
> – Commissioner Danielle Press

Penalty for misleading fee disclosure statements

On 26 August 2021, the Federal Court ordered National Australia Bank Limited (NAB) to pay an $18.5 million penalty for failures relating to misleading fee disclosure statements.

The court also declared that NAB contravened its obligations as an AFS licence holder to act efficiently, honestly and fairly by failing to have procedures and systems in place to provide timely and effective fee disclosure statements.

This is the first penalty imposed by the court for fee disclosure statements failures under the *Corporations Act 2001*.

Read more

[NAB to pay $18.5 million penalty for fee disclosure statement failures]

Criminal prosecutions against ME Bank and CBA

On 15 September 2021, Members Equity Bank Limited (ME Bank) faced criminal charges in the Federal Court for allegedly making false and misleading representations in letters to its home loan customers and allegedly failing to provide written notice about annual interest rate and repayment amount changes. These criminal charges were originally filed on 25 May 2021.

Criminal charges were also laid against the Commonwealth Bank of Australia (CBA) in the Federal Court on 16 September 2021 for the mis-selling of consumer credit insurance, relating to the promotion and sale of CreditCard Plus and Loan Protection policies as an add-on insurance product.

These are the first two criminal prosecutions against a bank under the consumer protection provision of the *Australian Securities and Investments Commission Act 2001* (ASIC Act) (s12DB).

Read more

ASIC brings criminal charges against ME Bank for alleged misconduct against home loan clients

ASIC brings criminal charges against CBA for mis-selling consumer credit insurance

Penalties for charging fees for no service

On 26 July 2021, the Federal Court imposed civil penalties totalling $3 million against BT Funds Management Limited (BT) ($1.5 million) and Asgard Capital Management Limited (Asgard) ($1.5 million) for charging fees for no service and making misleading statements to clients.

BT and Asgard were also ordered to publish an Adverse Publicity Order on their websites.

Read more

BT Funds Management and Asgard Capital Management ordered to pay a $3 million penalty for charging fees for no service and making misleading statements

> ‘The licensed financial services industry has an obligation to ensure that their systems and processes are reliable and accurate, and their customers must be able to have trust in them.’
>
> – Deputy Chair Sarah Court

Protecting consumers from unfair contract terms

In August, upon ASIC's application, the Federal Court declared several terms in some Bank of Queensland small business contracts to be unfair.

The court held that the vindicated the claim by ASIC that the bank had contravened the ASIC Act and would deter other corporations from entering contracts containing unfair terms.

We will take action against unfair practices in standard form contracts for the benefit of consumers and small businesses.

Read more

[Court declares Bank of Queensland used unfair contract terms]

Addressing misconduct related to overcharging interest

On 16 August 2021, the Federal Court made orders requiring CBA to publish notices on its website and newsroom, acknowledging its false or misleading conduct in overcharging interest on business overdraft accounts.

The requirement ensures CBA's customers and the public are aware of the misconduct, and reinforces that there is significant financial and reputational risk in failing to have systems in place to prevent overcharging.

Read more

[CBA to publish misconduct notices for overcharging interest]

First conviction of an auditor for audit breaches

On 18 August 2021, Robert James Evett and EC Audit Pty Ltd became the first auditors in Australia to face criminal charges and to be sentenced under section 989CA of the Corporations Act.

The court found the former auditors of Halifax Investment Services Pty Ltd had failed to conduct audits in accordance with auditing standards. Mr Evett and EC Audit were convicted and sentenced to pay a fine of $10,000 and $40,000 respectively.

Read more

[Halifax auditor pleads guilty to criminal charges]

[Halifax auditor convicted and fined for audit breaches]

[Halifax auditor's registration cancelled]

> ‘The requirement for CBA to notify its customers and the general public that it unlawfully overcharged interest is an important part of deterrence, along with the $7 million fine handed down by the court.’
>
> – Commissioner Sean Hughes