

Financial Services Snapshots

27 October 2020

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For all ASIC-related matters, access the ASIC Media Centre website for the relevant media release.

Financial Markets

Westpac ordered to pay \$1.3 billion penalty

On 21 October 2020, the Federal Court of Australia ordered Westpac Banking Corporation (**Westpac**) to pay a \$1.3 billion penalty for its breaches of the AML/CTF Act. The penalty imposed is the highest civil penalty in Australian history, reflecting the seriousness of Westpac's compliance failings, which amounted to 23 million contraventions. Westpac continues to partner with AUSTRAC to assist AUSTRAC and other law enforcement agencies with their efforts to stop financial crime.

See: [Media Release](#)

Government launches Australian Business Growth Fund

On 16 October 2020, the Government announced the formal establishment of the Australian Business Growth Fund (**BGF**). Through the BGF, the Government is investing \$100 million and partnering with financial institutions to provide equity funding to small and medium-sized businesses. Major banks including ANZ, CBA, NAB and Westpac have each committed \$100 million; and HSBC and Macquarie have each committed \$20 million to the Fund. Established Australian businesses will be eligible to apply for long-term equity capital investments between \$5 million and \$15 million where they have generated annual revenue between \$2 million and \$100 million and can demonstrate three years of revenue growth and profitability, allowing from the impact of COVID-19 on business.

See: [Media Release](#)

APRA publishes Annual Report for 2019/20 financial year

On 13 October 2020, APRA published its Annual Report for the 2019/20 financial year (**Report**). The Report outlines APRA's progress against the following four strategic focus areas as outlined in its updated Corporate Plan released in August 2019:

- Maintaining financial system resilience;
- Improving outcomes for superannuation members;
- Transforming governance, culture, remuneration and accountability in regulated financial institutions; and
- Improving cyber-resilience across the financial system.

The Report also reflects on the impact of the COVID-19 pandemic on APRA's operating environment.

See: [Report](#); [Corporate Plan](#)

APRA announces alignment of supervisory standards within international framework and designation of QBE

On 12 October 2020, APRA announced its commitment to align its prudential standards and practices with the International Association of Insurance Supervisors' Common Framework for the Supervision of Internationally Active Insurance Groups (**ComFrame**), where appropriate. ComFrame applies supervisory standards and guidance focused on effective groupwide supervision of Internationally Active Insurance Groups (**IAIGs**).

In a letter to QBE Insurance Group Limited (**Letter**), APRA confirmed that this alignment will be iterative, where APRA's standards will come into line with ComFrame's as part of more substantial updates occurring over time. The Letter also publicly designated QBE as an IAIG, which is expected to promote effective and efficient coordination of activities between APRA (as the groupwide supervisor) and other international supervisors.

See: [Media Release](#); [Letter](#)

Regulators urge Australian institutions to adhere to the ISDA IBOR Fallbacks Protocol and Supplement

On 9 October 2020, the International Swaps and Derivatives Association (**ISDA**) announced that it will launch the 2020 IBOR Fallbacks Protocol and associated Supplement to the 2006 ISDA Definitions (**Protocol**) on 23 October 2020 (**Announcement**). These are required to implement robust fall-back provisions for derivative contracts referencing key interbank offering rates (**IBORs**), such as the London Interbank Offered Rate (**LIBOR**). ASIC, APRA, the RBA and Financial Stability Board encourage broad and timely adherence to the Protocol. This will assist with the orderly transition of LIBOR-referenced derivatives contracts. All financial and corporate institutions using derivatives contracts which reference LIBOR are strongly encouraged to review and adhere to the Protocol by its effective date of 25 January 2020.

See: [Announcement](#); [Media Release](#)

Consumer Credit

Federal Court imposes \$75 million penalty on OTC derivative issuer AGM Markets and former authorised representatives

On 16 October 2020, the Federal Court ordered that AGM Markets Pty Ltd (**AGM**) and its former authorised representatives – OT Markets Pty Ltd (**OTM**) and Ozifin Tech Pty Ltd (**Ozifin**) – pay a total of \$75 million in pecuniary penalties for systemic unconscionable conduct while providing over-the-counter derivative products to retail investors. AGM, OTM and Ozifin provided unlicensed personal financial advice in situations involving conflicts of interest. Further, deliberate express and implied representations were made to clients which were false or misleading, being designed to engender clients' trust and expose them to greater risk of loss. The penalty was split proportionately between the defendants, with the licensee being fined the most given its failure to monitor the conduct of its authorised representatives. The case is a reminder to

licensees to ensure that their representatives comply with financial services laws, as licensees will be responsible for representatives' conduct. Further, licensees should be ready to deal with ASIC's continued scrutiny of the OTC derivatives sector, particularly with the upcoming introduction of new product design and distribution obligations from October 2021.

See: [Media Release](#); [Federal Court judgment](#)

Insurance

ASIC updates information sheets on new protections under the unfair contract terms laws

On 20 October 2020, ASIC updated its information sheets on unfair contract terms protections for consumers and small business. The protections will be extended to insurance contracts following enactment of the *Financial Sector Reform (Hayne Royal Commission Response – Protection Consumers (2019 Measures)) Act 2020* (Cth). Information Sheet 210 *Unfair contract term protections for consumers (INFO 210)* and Information Sheet 211 *Unfair contract term protections for small businesses (INFO 211)* provide information on how unfair contract terms will apply to insurance contracts. The changes will be effective from 5 April 2021.

See: [Unfair contract terms: A guide for businesses and legal practitioners](#)

Superannuation

APRA issues letter to RSE licensees on controlling stake obligations and updated application kit

On 15 October 2020, APRA released a letter to superannuation licensees reinforcing their obligations under the controlling stake requirements (**Letter**). In the Letter, APRA advised licensees to review their current ownership structures in relation to requirements that have been in place since July 2019. APRA has also provided an updated application form (**Application Form**) and instruction guide for owning or controlling a registrable superannuation entity licensee (**Guide**).

See: [Media release](#); [Letter](#); [Application Form](#); [Guide](#)

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