

# Financial Services Snapshots

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

## Consumer credit

### Morrison Government announces consumer credit reforms regarding responsible lending obligations

On 25 September 2020, Josh Frydenberg announced the Morrison Government's intention to implement a number of consumer credit reforms in the interests of removing barriers to accessing credit. In the Media Release, the Minister describes the reforms as including:

- removing responsible lending obligations from the National Consumer Credit Protection Act 2009, with the exception of small amount credit contracts and consumer leases;
- ensuring that ADIs will continue to comply with APRA's lending standards requiring sound credit assessment and approval criteria;
- adopting key elements of APRA's ADI lending standards and applying them to non-ADIs;
- requiring consumers to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial institutions;
- replacing the current practice of "lender beware" with a "borrower responsibility" principle; and
- removing the ambiguity regarding the application of consumer lending laws to small business lending.

See: [Media release](#); [Australian Government "Consumer Credit Reforms" fact sheet](#)

## ASIC Enforcement

### AUSTRAC and Westpac agree to proposed \$1.3 billion penalty

On 24 September 2020, Westpac and AUSTRAC agreed to a 1.3 billion dollar proposed penalty over Westpac's breaches of the *AML/CTF Act*. Westpac and AUSTRAC have agreed that the proposed penalty reflects the seriousness and magnitude of compliance failings by Westpac. In reaching the agreement, Westpac has admitted to contravening the *AML/CTF Act* on over 23 million occasions.

The Federal Court of Australia will now consider the proposed settlement and penalty. If the Court determines the proposed penalty is appropriate, the penalty order made will represent the largest ever civil penalty in Australian history.

See: [Media release](#)

## ASIC releases enforcement update report for the period 1 January to 30 June 2020

On 22 September 2020, ASIC released its enforcement update report for the period 1 January to 30 June 2020 (**REP 666**). Report 666 outlines key actions taken by ASIC over the period to enforce the law and support its objectives. It directs particular regard to:

- adaptation of ASIC's regulatory approach in light of COVID-19;
- Royal Commission-related enforcement work; and
- other enforcement work.

Specifically, in response to COVID-19, ASIC has developed a set of enforcement priorities to guide its response to misconduct associated with the pandemic, and thereby adequately protect vulnerable consumers. The enforcement priorities address:

- behaviour seeking to exploit the pandemic environment, eg, predatory lending, poor claims handling;
- opportunistic conduct, eg, scams, unlicensed conduct, misleading and deceptive advertising;
- failure to disclose materially negative information;
- misleading market announcements made to the ASX; and
- governance failures within corporations, schemes and superannuation funds.

Other general enforcement work by ASIC detailed in REP 666 concerns:

- misconduct by individuals, eg, fraud, insolvent trading;
- misconduct related to superannuation and insurance, eg, dealings with assets of self-managed superannuation funds;
- significant market misconduct, eg, insider trading; and
- illegal phoenix activity, eg, money laundering to remove company assets of a company which went into liquidation.

See: [REP 666](#)

## Funds Management

### ASIC instructs fund managers to be "true to label"

On 22 September 2020, ASIC reported the results of surveillance which found that fund managers must do more to ensure that their products are "true to label", such that the product name aligns with the nature of the underlying asset. This is important to the maintenance of a competitive marketplace and for enabling investors to redeem their investments when they anticipate they are able to do so.

ASIC examined the appropriateness of the product labels used by the 37 managed funds operated by 20 responsible entities, collectively holding approximately \$21 billion in assets. It assessed whether the funds were described and promoted in a manner reflecting the underlying assets in terms of risk and liquidity. The surveillance identified issues associated with confusing or inappropriate "cash" product labels and redemption terms offered to investors not being supported by and consistent with the liquidity of underlying assets.

From the review, ASIC sought corrective action from 13 responsible entities. Responsible entities should consult ASIC's Regulatory Guide 168 *Product Disclosure Statements (and other disclosure obligations)* (**RG 168**) for guidance on labelling and disclosure requirements.

See: [RG 168](#)

## Capital markets

### ASIC extends COVID-19 relief for certain capital raising and financial advice

On 23 September 2020, ASIC announced that it will extend the temporary relief for capital raisings and financial advice due to the continuing uncertain impacts of COVID-19. ASIC is also extending the financial advice relief related to the COVID-19 early release of superannuation scheme in light of the extension of the scheme by the Government. To do so, ASIC has registered the *ASIC Corporations (Amendment) Instrument 2020/862*, which means:

1. the earlier amendment to the *ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547* will now be repealed on 1 January 2021 (instead of 2 October 2020).
2. the *ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289* will now be repealed on 1 January 2021 (instead of 2 October 2020).
3. the *ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355* will now be repealed on 15 April 2021 (instead of 15 October 2020).

See: [Media release](#); [ASIC Corporations \(Amendment\) Instrument 2020/862](#)

### ASIC and IOSCO report on conflicts of interest within debt capital raising process

On 22 September 2020, ASIC issued Report 668 *Allocations in debt capital market transactions (REP 668)*. REP 668 outlines findings from ASIC's surveillance of market practices in debt capital market (**DCM**) transactions and sets out better practice guidelines, including ASIC's expectations that Australian financial services licensees:

- identify and manage potential conflicts of interest when making allocation recommendations;
- have effective policies and procedures for identifying and managing confidential and market-sensitive information;
- have processes to ensure that information provided to issuers and investors (including updates) is accurate and not misleading or deceptive; and
- have active and effective supervision and monitoring for DCM transactions.

ASIC's report follows the 21 September 2020 release of the *Final report on conflicts of interest and associated conduct risks during the debt capital raising process (IOSCO Report)* by the Board of the International Organization of Securities Commissions. The IOSCO Report helps regulators to identify and address conflicts of interest and associated conduct risks from the role of intermediaries in debt capital raisings, which can impact market integrity and investor outcomes.

See: [REP 668](#); [IOSCO Report](#)

### ASX is revising its temporary emergency capital raising measures

On 15 September 2020, the ASX announced that it is revising its temporary emergency capital raising measures which help listed entities affected by the COVID-19 pandemic. The measures were introduced on 31 March 2020 and are due to expire on 30 November 2020. From 16 September 2020, any entity wishing to rely on the measures must satisfy the ASX that it is raising capital predominantly for the purpose of addressing the existing or potential future financial effect on the entity caused by the COVID-19 health crisis, and/or its economic impact. The ASX considers it prudent and timely to revise the settings given the stabilisation in market conditions. The revisions are being implemented by the publication of two replacement class waivers dated 15 September 2020: the *Temporary Extra Placement Capacity Class Waiver* and *Non-renounceable Offers Class Waiver*. Further details are available in the ASX's *Listed@ASX Compliance Update 9/20 (Compliance Update 9/20)*.

See: [Media release](#); [Temporary Extra Placement Capacity Class Waiver](#); [Non-renounceable Offers Class Waiver](#); [Compliance Update 9/20](#)

## Morrison Government announces extension of temporary changes to continuous disclosure provisions for companies and officers

On 23 September 2020, the Morrison Government announced its intention to continue to provide regulatory relief for businesses that have been impacted by COVID-19 by extending temporary continuous disclosure provisions applying to companies and their officers for a further six months until 23 March 2021. The existing relief temporarily amends the *Corporations Act* so that companies and officers remain liable where there has been "knowledge, recklessness or negligence" with respect to updates on price sensitive information to the market. The extension will be effected under the instrument-making power inserted into the *Corporations Act* as part of the Government's response to COVID-19.

See: [Media release](#)

## Banking

### APRA issues letter to ADIs following review of treatment of loans impacted by COVID-19

On 22 September 2020, APRA issued a letter to ADIs following a review of their comprehensive plans for the assessment and management of loans with repayment deferrals (**Letter**). The Letter encourages ADIs to consider the following areas of better practice identified through its review of all the submitted plans:

- **Governance and oversight:** better practice provided for regular reporting to senior management to enable timely escalation of issues requiring management attention and oversight of process.
- **Customer engagement and contact strategies:** better practice provided for a series of contacts, using multiple contact mediums over an extended period of up to six weeks prior to deferral expiry. Where repayments are to be recommenced, better practice involved closely monitoring the performance of these loans.
- **Credit assessment processes:** better practice incorporated strong quality assurance processes and controls around customer conversations and credit assessment decisions to ensure consistency in how customer outcomes were implemented. It also included appropriate controls to detect system and process errors.
- **Credit management and resourcing:** better practice plans incorporated strong operational reporting capability, with regular oversight by Executive Management, and supported by contingency plans for identification, training and allocation of additional resources at short notice, if required.

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

### APRA releases consultation on alignment of Daily Liquidity Report for ADIs

On 17 September 2020, APRA released a consultation on updates to Reporting Standard ARS 210.0 *Liquidity (ARS 210.0)*. The proposed changes extend to data items currently collected. They seek to align the Reporting Form ARF 210.5 *Daily Liquidity Report* with the modified version submitted by certain ADIs (**ARF 210.5**). APRA has also drafted updates to the ARF 210.5 reporting instructions to provide ADIs with additional guidance, and to ensure consistent reporting across entities.

See: [Media release](#); [Draft ARS 210.0](#); [Letter to ADIs – Proposed changes to ARS 210.0](#)

## Other

### APRA and ACCC sign updated Memorandum of Understanding

On 15 September 2020, APRA and the Australian Competition and Consumer Commission signed an updated Memorandum of Understanding (**MoU**) designed to foster closer collaboration between the two regulators. The new MoU commits both agencies to a broader model of engagement, with a greater emphasis on proactive information sharing and collaboration. The updated document will strengthen the relationship between the two agencies, who have worked closely together during the COVID-19 pandemic on issues including resolution planning and authorisations on anti-competitive arrangements in the financial system.

See: [Media release](#)

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