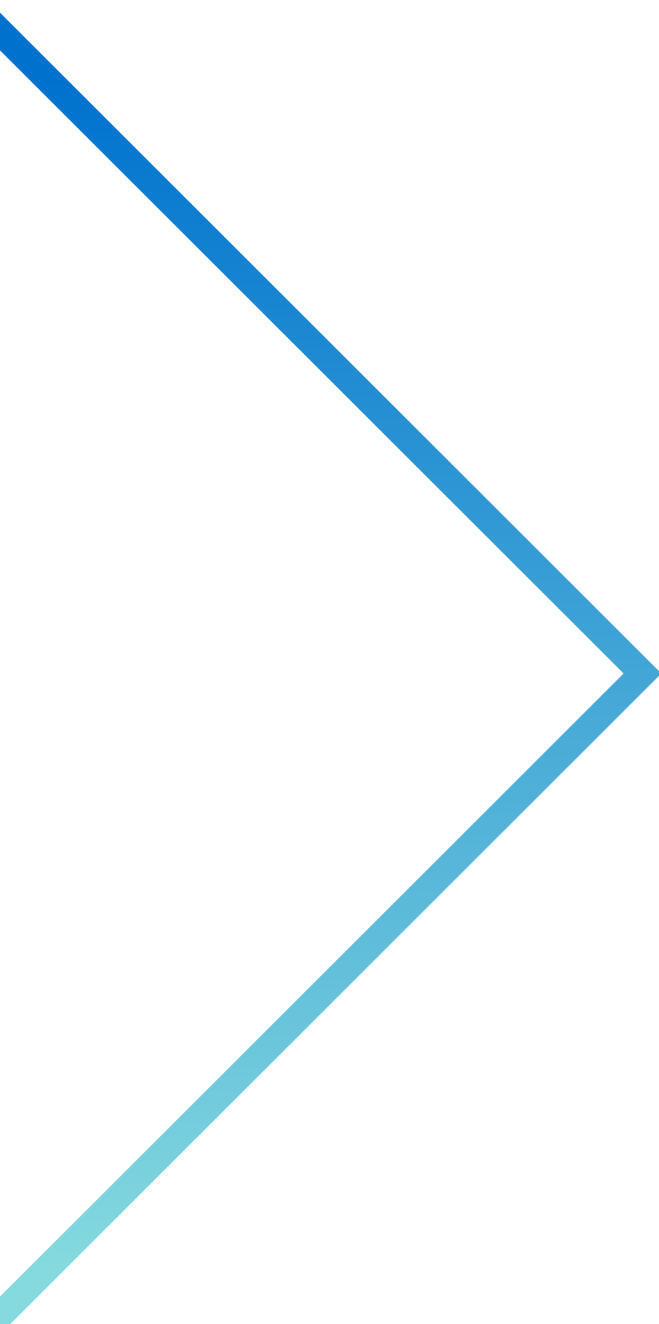




ASIC
Australian Securities &
Investments Commission

A large, stylized blue arrow graphic pointing to the right, composed of two parallel lines that converge at the tip.

ASIC quarterly update: January to March 2022

Report 725 | April 2022

About this report

This report provides an update on ASIC's work undertaken between 1 January and 31 March 2022.

Contents

Acting against misconduct	3
Upholding market integrity	5
Implementing new obligations	7
Protecting consumers and investors	9

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.

Acting against misconduct

In the first quarter of 2022 we continued to address misconduct using the full range of our regulatory tools.

We took action against corporations, regulated entities, directors and liquidators over alleged breaches of the law, which included charging 'fees for no service' and providing consumers with misleading information.

We continue to focus our enforcement action on areas of greatest harm, and take an active and targeted approach to enforcement.

“As we enter the third year of the pandemic, ASIC will continue to support the nation's economic recovery by using the full range of our regulatory tools in a targeted and proportionate way, to identify and address misconduct in the markets and sectors we regulate.”

– Chair Joseph Longo

Combating 'fees for no service'

In February, Aware Financial Services Australia Limited (Aware FS), formerly State Super Financial Services Australia Limited, was ordered by the Federal Court to pay a \$20 million penalty for charging over 25,000 customers fees for financial services it did not provide.

Aware FS's conduct was the subject of a case study by the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission). This civil penalty is another outcome arising from a number of fees-for-no-service cases brought before the courts by ASIC.

Read more

[Aware Financial Services Australia fined \\$20 million for charging fees for no service](#)

Collaborating with overseas regulators on disclosure breach

In March the Federal Court ordered Rio Tinto Limited to pay a penalty of \$750,000, after finding the mining company had contravened its continuous disclosure obligations.

ASIC worked in partnership with the US Securities and Exchange Commission and the UK Financial Conduct Authority on this matter.

Read more

[Rio Tinto Limited found to have breached continuous disclosure laws](#)

Taking action against 'bad advice'

The Federal Court ordered RI Advice Group Pty Ltd (RI Advice) to pay a \$6 million penalty in February. RI Advice failed to take reasonable steps to ensure that its authorised representative, John Doyle, provided appropriate financial advice, acted in his clients' best interests and put clients' interests ahead of his own.

Mr Doyle was ordered to pay an \$80,000 penalty after he inappropriately advised clients to invest, and stay invested, in complex structured financial products.

The conduct of both RI Advice and Mr Doyle was examined as a case study on 'Bad Advice' by the Financial Services Royal Commission. This civil penalty is another outcome arising from several 'poor financial advice' cases brought by ASIC.

Read more

[RI Advice to pay \\$6 million penalty, John Doyle to pay \\$80,000 penalty](#)

Taking action against liquidator for dishonesty and fraud offences

In February, the New South Wales District Court sentenced former registered liquidator Amanda Young to three years imprisonment for dishonesty and fraud offences.

The Court found that Ms Young transferred money from liquidation bank accounts to her own bank accounts, and attempted to disguise her misappropriation of funds by falsifying internal records and tampering with emails.

Read more

[Former Sydney liquidator sentenced to three years' imprisonment for dishonesty and fraud offences](#)

First civil penalty for breach reporting failure

In January, the Federal Court imposed combined penalties of \$4 million on Statewide Superannuation Pty Ltd (Statewide). Statewide provided members with misleading information regarding their insurance and failed to report the breach to ASIC in the time required by law.

This is the first civil case in which the Court has imposed a civil penalty on a licensee for failing to report breaches to ASIC since new penalty powers were introduced in 2019.

Read more

[Statewide Superannuation to pay \\$4 million penalty for misleading correspondence to members](#)

“Breach reporting is integral to board oversight and risk management by licensees. Financial services companies have strict obligations to report contraventions of the law to ASIC, including time limits in which to do so.”

– Deputy Chair Sarah Court

Upholding market integrity

During the quarter, we launched a range of initiatives aimed at ensuring our regulatory responses keep pace with developments in Australian and global markets.

We introduced new market integrity rules that reflect our increasingly digitised and automated markets, and worked with overseas regulators on emerging concerns in relation to retail investor participation in global markets. We also embarked on a new regulatory technology (regtech) initiative to address poor market disclosure.

Introducing new market integrity rules

In March, we introduced new market integrity rules aimed at promoting the technological and operational resilience of securities and futures market operators and participants.

We also amended the prohibition on payment for order flow to address certain regulatory gaps, and made deregulatory and administrative amendments to 10 ASIC-made rule books.

Read more

[ASIC amends market integrity rules and other ASIC-made rule books](#)

Addressing market outage

On 17 March, we issued a statement to address the ASX 24 futures market outage that took place that day. We remained in regular communication with ASX, market participants and members of the Australian Council of Financial Regulators. ASX is required to provide a full incident report to ASIC.

Read more

[ASIC statement on ASX 24 futures market outage](#)

Collaborating with global regulators on retail market issues

ASIC has, with co-Chair the Central Bank of Ireland, led a Retail Market Conduct Task Force for the International Organization of Securities Commissions (IOSCO) to review evolving retail investor trends and their implications for market conduct.

The Task Force identified a number of emerging concerns coinciding with the unprecedented surge in retail trading and published a consultation report on retail market conduct issues. It also encouraged global regulators to identify effective tools to address the relevant risks.

Read more

[Securities regulators worldwide to consult on concerns over rapidly evolving retail trading markets](#)

[Retail Market Conduct Task Force Consultation Report](#) (PDF 796 KB)

“Australia's experience indicates that a flexible and creative use of regulatory tools is important in acting quickly to disrupt misconduct. We encourage a broad range of stakeholders – including retail investors, financial consumers and market participants – to engage with the IOSCO consultation.”

– Commissioner Sean Hughes

Updating MOU with ESMA and RBA

ASIC and the Reserve Bank of Australia (RBA) updated their Memorandum of Understanding (MOU) with the European Securities and Markets Authority (ESMA) to reflect key amendments to the European Market Infrastructure Regulation relating to central counterparties (CCPs) clearing and settlement facilities.

The MOU, updated in February, establishes regulatory and supervisory cooperation arrangements between ASIC, ESMA and the RBA with respect to Australian CCPs that are recognised or seeking recognition in the EU (covered CCPs).

Read more

[ASIC and RBA update MoU with European Securities and Markets Authority](#)

Exploring the use of regtech to identify poor market disclosure

In January, we announced our participation in the Department of Industry, Science, Energy and Resources' Business Research and Innovation Initiative (BRII), which assesses the potential of regtech to solve challenges.

ASIC is working with five regtech entities to explore the potential of using technology to help identify and assess poor market disclosure by listed companies.

Read more

[ASIC embarks on regtech innovation initiative into poor market disclosure](#)

Consulting on revised ETP naming conventions

We released [Consultation Paper 356 ETP naming conventions: Updates to INFO 230](#) (CP 356) in January to seek feedback on proposals to update the guidance in [Information Sheet 230 Exchange-traded products: Admission guidelines](#) (INFO 230) on naming conventions for licensed Australian exchanges that admit exchange traded products (ETPs).

This feedback will help ASIC revise our guidance in a way that simplifies the naming conventions and promotes flexibility for the next phase of ETP market development.

Read more

[ASIC consults on revised ETP naming conventions](#)

Taking action against compliance failures

In January, BGC Partners (Australia) Pty Ltd (BGC Partners) paid a penalty of \$110,250 after the Markets Disciplinary Panel found that it transacted pre-negotiated business orders on the ASX 24 market without making the required enquiry through the trading platform's message facility. The Markets Disciplinary Panel also noted that there had been previous compliance failures of this type by BGC Partners.

Read more

[BGC Partners pays \\$110,250 infringement notice](#)

Implementing new obligations

During this quarter, we continued to implement new responsibilities stemming from recent law reform. We also issued a range of consultation papers and review reports to engage with industry and set out our expectations.

Implementing new responsibilities under the Better Advice Act

On 1 January, our new responsibilities under the *Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Act 2021* (Better Advice Act) commenced. As part of the Better Advice Act, the operation of the Financial Services and Credit Panel (FSCP) was expanded. In February, we released [Consultation Paper 359 Update to RG 263 Financial Services and Credit Panel \(CP 359\)](#) to seek feedback on proposed updates to [Regulatory Guide 263 Financial Services and Credit Panel \(RG 263\)](#).

The Better Advice Act also requires ASIC to administer the financial adviser exam in accordance with the principles approved by the Minister. In February, ASIC administered our first sitting of the exam, adopting arrangements put in place by the Financial Adviser Standards and Ethics Authority (FASEA) to ensure consistency in delivering the exam, and equity between past and current candidates. Results of the exam were released in March.

Read more

[ASIC consults on Financial Services and Credit Panel regulatory guidance](#)

[ASIC releases February 2022 financial adviser exam results](#)

[ASIC releases final sitting dates for 2022 financial adviser exams](#)

Reviewing responsible entity governance

We released findings from a high-level review of the governance practices of 10 large responsible entities of managed investment schemes in January.

We have provided the findings to the 10 responsible entities and written to them individually. We also encourage all responsible entities to consider the review findings and proactively take steps to evaluate and improve their governance practices to stay ahead of both financial and non-financial risks, improve compliance and deliver better investor outcomes.

Read more

[ASIC releases findings from review of responsible entity governance](#)

[Governance of responsible entities](#) (PDF 228 KB)

“Appropriate governance is integral to maintaining consumer trust and confidence in the superannuation industry.”

– Commissioner Danielle Press

Extending timeframe for virtual-only meetings

We granted relief in March to allow additional time for certain companies and registered schemes to hold virtual-only meetings, subject to conditions.

The extended timeframe provides flexibility for companies and registered schemes preparing for annual general meetings or other meetings of members, as we continue to recover from the challenges presented by the COVID-19 pandemic.

Read more

[ASIC allows additional time for holding virtual-only meetings](#)

Implementing new retirement income covenant

ASIC and the Australian Prudential Regulation Authority (APRA) issued a joint letter in March to all registrable superannuation entity (RSE) licensees on the implementation of a new retirement income covenant.

The letter sets out ASIC's and APRA's expectations of RSE licensees in implementing new requirements for their members in response to the retirement income covenant. RSE licensees are required to formulate a retirement income strategy by 1 July 2022, and expected to implement the strategy through a continuous improvement process over time.

Read more

[ASIC and APRA release joint letter on the implementation of retirement income covenant](#)

Seeking feedback on licensing requirements for CCIVs

We released [Consultation Paper 360](#) *Corporate collective investment vehicles: Preparing for the commencement of the new regime* (CP 360) in March to seek industry feedback on our proposed licensing requirements for corporate collective investment vehicles (CCIVs).

The licensing requirements will come into effect on 1 July 2022 when the CCIV regime commences.

Read more

[ASIC consults on financial services licensing requirements for corporate collective investment vehicles](#)

Taking action against reciprocal audit arrangements

In March, we accepted voluntary cancellations or imposed conditions on the registration of a number of self-managed superannuation fund (SMSF) auditors who were involved in reciprocal audit arrangements, which create self-interest and familiarity and threaten independence.

These actions follow referrals to ASIC by the Australian Taxation Office of 18 SMSF auditors for contravening the independence requirements under APES 110 Code of Ethics for Professional Accountants because of their involvement in reciprocal audit arrangements.

Read more

[ASIC acts against SMSF auditors involved in reciprocal audit arrangements](#)

Protecting consumers and investors

During the quarter, we published a new information sheet to explain how the law applies to social media influencers who discuss financial products and services online.

We encouraged regulated entities to improve their cyber resilience and adopt enhanced cyber security measures. We also reminded consumers to stay vigilant against online scammers and issued a number of alerts and warnings.

To help consumers impacted by recent catastrophic weather events, we issued relief to streamline the process for insurers to provide emergency payments.

Discussing financial products and services online

Financial services laws protect investors and promote market integrity. They set minimum requirements and provide important protections for investors if something goes wrong.

In March, we published [Information Sheet 269 Discussing financial products and services online](#) (INFO 269). It outlines how the law applies to social media influencers who discuss financial products and services online as well as the Australian financial services (AFS) licensees who use them. AFS licensees should be aware of their obligations as they may also be liable for any misconduct by an influencer they engage.

Read more

[ASIC issues information for social media influencers and licensees](#)

“ASIC monitors select online financial discussion by influencers who feature or promote financial products for misleading or deceptive representations or unlicensed advice or dealing. If we see harm occurring, we will take action to enforce the law.”

– Commissioner Cathie Armour

Warning on SMSF and crypto investment

In January, we issued a warning to remind superannuation fund members to seek advice from a licensed financial adviser before agreeing to transfer their superannuation out of a regulated fund into an SMSF.

We also reminded those who decide to self-manage their superannuation to consider the risks before they use their SMSF to invest in crypto-assets.

Read more

[Warning: Self-managed super funds and crypto investments](#)

Alert on impersonation scams

We alerted consumers in March to a rise in investment scams impersonating companies or financial investment firms.

We found that scammers often make contact through Gmail and Outlook email accounts. Their contact details do not match the information published on the legitimate company's website.

Read more

[Alert: Impersonation scams using fake contact details](#)

Encouraging cyber security enhancements

In March, we called on all ASIC-regulated entities to follow the Australian Cyber Security Centre's advice and adopt an enhanced cyber security position.

We suggested that boards, senior management, licensees and other regulated entities pay heightened attention to their entity's exposure to the environment and progress on timely mitigation.

We also suggested that they consider where they have an obligation to report breaches to ASIC or other government agencies, and where disclosure to the market or in financial reports is necessary.

Read more

[The ACSC encourages Australian organisations to urgently adopt an enhanced cyber security position](#)

Scrutinising marketing of managed funds

We commenced a surveillance in March into the marketing of managed funds, to identify the use of misleading performance and risk representations in promotional materials.

We are scrutinising traditional and digital media marketing of funds, including search engine advertising targeting retail investors and potentially unsophisticated wholesale investors.

We are concerned that promoters continue to target consumers, particularly retirees or those planning for retirement, with ambiguous or misleading performance and risk representations.

Read more

[ASIC scrutinises marketing of managed fund performance and risks](#)

‘ASIC is committed to protecting consumers where misleading marketing practices run counter to their interests. If we identify misleading conduct, we will take prompt action to disrupt behaviours by deploying our regulatory tools – from administrative intervention through to enforcement action if warranted.’

– Deputy Chair Karen Chester

Streamlining process for insurers in emergencies

In March, we issued relief to allow insurers to give emergency payments to consumers in certain circumstances without first giving them a Cash Settlement Fact Sheet.

Under the relief, insurers could apply the streamlined process to emergency payments for insured consumers impacted by the recent catastrophic severe weather and flooding in Queensland and northern NSW.

The relief came into effect on 11 February 2022.

Read more

[ASIC streamlines process for insurers to provide consumers cash in emergency situations](#)

[Storms and floods: What to do if you are affected](#)