

## FINANCIAL SERVICES REGULATORY UPDATE

True Oak develops and distributes a monthly overview of current and proposed regulatory changes in the Australian financial services industry that we think might be of interest to our CAR and Fund Manager clients.

### GOVERNMENT

#### (1) Treasury Releases Consultation Paper re Company Meetings and Documents

Treasury has published a [Consultation Paper](#) in support of a Statutory Review of the amendments made to the Corporations Act 2001 by the [Corporations Amendment \(Meetings and Documents\) Act 2022](#) and [Schedule 1 to the Treasury Laws Amendment \(2021 Measures No. 1\) Act 2021](#).

These amendments allowed companies and registered schemes to hold online meetings, electronically execute documents and transmit meetings-related documents electronically.

The Review Panel is examining the following themes:

##### Meetings

- Regarding meetings of members, whether (compared to physical meetings) wholly online or hybrid meetings have created difficulties for members, in terms of their participation and voting in meetings or otherwise, and if so, how those problems might be addressed, and whether the cost of convening and holding wholly online or hybrid meetings is higher or lower than physical meetings.
- Regarding meetings of directors, any issues that have arisen in the conduct of directors' meetings after the commencement of the 2021 and 2022 Acts.

##### The treatment of documents

- Whether the 2021 and 2022 amendments have succeeded in facilitating simple and efficient operation of technology neutral giving, signing and execution of document.
- Whether, after the 2021 and 2022 amendments, there are greater risks of fraudulent or other misuse of the law regarding signing and execution of documents.

#### (2) Treasury Releases M&A Draft Reforms

Treasury has released a draft of the intended reforms to Australian merger and acquisitions (M&A) processes.

The reforms were flagged by the government back in April, in which it said the new rules would promote competition, protect consumers, and provide greater certainty by streamlining the approval process.

The government is looking to create a risk-based system that will be better targeted and the ACCC will be better equipped to identify acquisitions that are most likely to result in harm to competition, consumers, and businesses.

The [Exposure Draft](#) sets out the framework for the new merger control system and its key elements, including notification rules, timelines, the suspensory rule, tests for competition and substantial public

benefit determinations, limited merits review in the Australian Competition Tribunal, and transitional arrangements.

Treasury will consult on the regulations, which will cover notification thresholds, fees, and the ACCC's public register and associated transparency safeguards later this year.

The draft also set out a review timeline in which it anticipates M&As to take around 230 days from notification of the intention to getting a determination from the ACCC.

The bill amends the *Competition and Consumer Act (CCA)* to overhaul the existing framework for merger review and replaces it with a single mandatory and suspensory administrative system for acquisitions, with the ACCC as the first instance administrative decisionmaker.

Currently, businesses are not legally required to notify the ACCC before completing a transaction, so the new bill aims to change that.

Businesses will still be given the option to seek an informal view from the ACCC on whether an acquisition is likely to break the prohibition against anti-competitive acquisitions to manage regulatory risk, which is currently how most transactions are notified to the commission.

Treasury is seeking feedback on the effectiveness of the exposure draft through to 13 August 2024.

### (3) Senate Economic References Report on ASIC

The Senate Economic References Committee has wrapped up almost two years of work reviewing ASIC by handing down 11 recommendations in its [Australian Securities and Investments Commission Investigation and Enforcement Report](#).

The recommendations include:

- ASIC's remit is too broad for it to be an effective and efficient agency, and the government should strongly consider separating its functions between a companies' regulator and a separate financial conduct authority.
- The Government make it a legislative requirement that ASIC investigate reports of alleged misconduct at an appropriate rate, and that it establishes and maintains a high-level of transparency of investigation and enforcement outcomes.
- The Government investigate amending the whistleblower protection provisions in the Corporations Act 2001 to include pecuniary incentives and compensation for whistleblowers who make a substantiated disclosure.
- That regulatory authorities adopt an enforcement approach which prioritises the litigation of all serious instances of suspected breaches of corporations law, particularly in cases where consumer losses arise, or could have potentially arisen, from such breaches.

[As background, in October 2022, the Senate referred an inquiry into the capacity and capability of ASIC to proportionately respond to reports of alleged misconduct. The inquiry, chaired by Liberal Senator Andrew Bragg, involved five public hearings and received 197 submissions.]

Linked Article: [‘Not a capable regulator’: Why Bragg wants to split ASIC](#) (Investor Daily – 4 July 24)

Linked Article: [Committee calls for 'sick agency' ASIC to be split in half](#) (Financial Standard – 4 July 24)

## ASIC

### (4) Consultation Paper on Updates to RG 236 – Carbon Markets

*Apologies I missed referencing this Consultation Paper in the May 2024 Reg Update.*

[ASIC RG 236 – Do I Need an AFS Licence to Participate in Carbon Markets](#) is intended to assist participants in carbon markets understand their Australian financial services (AFS) licensing requirements.

ASIC is proposing to update RG 236 to address the safeguard mechanism reforms. Importantly, existing AFS licensees with an authorisation to provide particular financial services in relation to EIEUs (*like True Oak Investments*) will not be required to vary their AFS licence to provide those financial services in relation to SMCs.

The proposed updates will also address changes that have occurred since RG 236 was last re-issued in May 2015, particularly in relation to Australian Carbon Credit Units (ACCUs). In particular, ASIC is proposing to amend RG 236 to:

- Provide additional guidance on when an entity will provide financial product advice in relation to ACCUs.
- Provide guidance on when an entity will provide financial product advice in relation to SMCs.
- Update guidance on when a person will be making a market, in relation to ACCUs or SMCs.

[Consultation Paper CP 378](#) was released by ASIC in May 2024, and comments closed in early June.

ASIC has stated that it intends to update RG 236 and [Information Sheet 156 Regulated emissions units: Applying for or varying an AFS licence](#) in the second half of 2024.

*True Oak will provide a fulsome update on the revised RG 236 when it is released.*

### (5) Intensifies Spotlight on Private Markets

Just over a month since ASIC commissioner Simone Constant emphasised the need for heightened accountability within private markets, chair Joe Longo has announced that the regulator is expanding its focus to respond to an uptick in privatisations.

Longo said in [an article penned for the ASX](#) that the corporate regulator has been examining “other products and markets”, including debt markets, as part of its latest project to test market cleanliness.

The project, which is set to ensure that Australia has “one of the cleanest equity markets in the world”, is nearing completion with an announcement expected in a matter of weeks, Longo said.

“As part of our efforts to keep Australia’s markets clean, ASIC has been actively targeting insider trading through our new award-winning system which automatically hunts for and detects suspected market misconduct,” Longo said.

Acknowledging a recent drop in listed companies and fewer entities “lining up to come to market”, Longo said private markets pose certain risks, including an increased chance of insider trading.

“A reduction in the number of large, strong-performing listed entities limits opportunities for Australians to participate directly in the potential future success of Australian companies. There is also likely more

concentration in large institutional investors in these companies. This dynamic may pose risk to the equitable participation in listed entities by smaller investors,” the chair said.

“Private markets do not only provide fewer investment opportunities for retail investors, they also have reduced financial reporting, disclosure, and corporate governance requirements. There is an associated risk of insider trading because there can be many contact points between listed entities, consultants and experts.”

In response, Longo said, the Australian Securities and Investments Commission (ASIC) is expanding its focus to respond to changes in the structure of capital markets.

“This includes examining other products and markets, including debt markets, when we conduct our market cleanliness work and further consider how firms are managing inside information,” the chair said.

## (6) Releases Note on Virtual-Only Meetings for Companies and Registered Schemes

On 12 July 2024, ASIC published a [note](#) on virtual-only meetings for companies and registered schemes. This follows the commencement of the Treasury’s [Statutory Review](#) of the “Meetings and Documents Amendments”, which will review amendments made to the Act to allow companies and registered schemes to hold virtual meetings, electronically execute documents and transmit meeting-related documents electronically, and must report to the Government by 14 August 2024.

ASIC’s note emphasises that if companies and responsible entities of registered schemes wish to hold virtual-only meetings of members, they should ensure their constitutions have been amended to permit this and notify ASIC of the amendment if required.

There are specific requirements for how an entity may amend the constitution, including passing a special resolution for company constitutions and, subject to some exceptions, a special resolution for the constitution of a registered scheme. When a constitution is amended:

- A public company must lodge with ASIC a copy of a special resolution for the modification, along with a copy of the modification, within 14 days after it is passed. These resolutions are lodged with ASIC under Form 205J *Notification of resolution – alteration to constitution*.
- A registered scheme must lodge with ASIC a copy of the modified or replacement constitution along with Form 5101 *Notification of change to managed investment scheme's constitution*. The modified or replacement constitution of the registered scheme cannot take effect until a copy has been lodged.

## (7) Prioritising Scrutiny of the Private Markets Sector

ASIC has said it is keeping a close eye on Australia’s private markets that lack transparency and data and has questioned if regulatory settings could be playing a role in determining flows to the sector.

Speaking at an event in Sydney, ASIC chair Joe Longo confirmed the regulator has ramped up scrutiny of the sector and has set up a dedicated task force towards this.

“We need to understand better what’s going on there because the very nature of private markets is a lack of transparency and data,” Longo said while reiterating that the regulator does not hold a preference between public or private markets. Rather, with regard to opaque private markets, he said ASIC’s priority remains the protection of investors and the integrity of the market.

“And so, the issue we’ve got is questions of conflicts of interest, valuation of assets, and most of all, are we part of the problem? Are the regulatory settings part of the problem? It’s not in the public interest, it’s certainly not good regulation, if there are things we can change or adjust that can enable more confident investment, whether that’s private markets or public markets,” Longo said.

For ASIC’s Longo, part of the debate could lie in the compliance obligations of listed entities, and whether that is “having a chilling effect” on access to public markets.

Reflecting on discussions with numerous market participants on the time and cost of compliance, the ASIC chair noted this helps ensure high standards of confidence in Australian markets. But, he said, “if those requirements are having a chilling effect, such a chilling effect on access to public markets that people are driven into private markets and we create new problems there, then that’s not in the public interest either”.

#### **(8) Consults on Rules to Promote Competitive Outcomes in Cash Equity Clearing and Settlement Services**

ASIC has released [Consultation Paper CP 379 – CS Service Rules](#) on proposed rules to facilitate competitive outcomes in cash equity clearing and settlement (CS) services provided by the ASX Group. It is the first time ASIC is exercising its new powers under the competition in clearing and settlement (CS) reforms.

The consultation seeks feedback on ASIC’s proposals to:

- Implement the 2017 [Council of Financial Regulators Regulatory Expectations for Conduct in Operating Cash Equity Clearing and Settlement Services in Australia](#) (Regulatory Expectations) as enforceable obligations; and
- Impose additional requirements in several key areas, including technical interoperability, management of intragroup conflicts of interest, and external assurances on pricing and barriers to competition.

The proposed rules are intended to support the long-term interests of the Australian market by delivering efficient outcomes for investors consistent with those expected in a competitive environment, by:

- Ensuring the ASX remains responsive to users’ evolving needs, including in relation to its governance framework; and
- Providing access to its cash equity CS services on a transparent and non-discriminatory basis with terms and conditions, including pricing, that are fair and reasonable.

Consultation closes on 10 September 2024.

#### **(9) Expresses Confidence in Equity Markets**

ASIC has released its latest market cleanliness report – [Report 786 – Equity Market Cleanliness Snapshot](#) – which shows that Australia’s equity markets continue to operate with a high level of integrity and remain consistently among the cleanest in the world.

In a clean market, there should not be share price run-ups before material information is released. Trading ahead of public release may indicate some parties are profiting unfairly by using information that is not generally available to the market.

The report found in the five-year period up to 30 April 2024, there were two periods of temporary deterioration in market cleanliness. The first during the COVID-19 pandemic when global markets

experienced high market volatility and trading, and again in late 2023 as corporate activity increased. In both instances ASIC acted quickly to address the harmful conduct.

ASIC's regulatory interventions to address the deteriorations included targeting pump and dump activity, intervening on chat rooms, reviewing 'influencer' activity and undertaking targeted reviews where leaks were observed ahead of market announcements.

In the 2024 financial year, ASIC almost doubled the number of new insider trading investigations commenced over the previous financial year.

#### **(10) Signs MoU with the OAIC to Accelerate Data and Privacy Breach Responses**

ASIC and the Office of the Australian Information Commissioner (OAIC) have signed a [Memorandum of Understanding](#) (MoU) for the sharing of data and privacy breach information.

The MoU allows for information sharing, enabling the two agencies to proactively share information for the purposes of exercising powers or performing functions, and in response to written requests. It sets out steps and actions for the request, sharing, use and confidentiality of information.

The agreement, effective from date of signing, continues in perpetuity so long as both agencies deem it accurately reflects their powers, functions and duties relevant to the sharing of information.

### ACCC

#### **(11) Draft Guidance on Competition Considerations for Sustainability Collaborations**

The ACCC has published a [draft guide](#) to assist businesses collaborating to achieve positive environmental outcomes to consider and understand potential competition law risks.

The purpose of the guide is to assist businesses to understand:

- a. When collaboration between businesses is likely to breach Australian competition law and when it is unlikely to do so; and
- b. Whether the businesses may have the option to seek an exemption from Australian competition law, through ACCC 'authorisation', when there is a risk of breaching the *Competition and Consumer Act (2010)* (Cth).

The ACCC uses the term "sustainability collaboration" to refer to discussions, agreements or other practices amongst businesses which are aimed at preventing, reducing or mitigating the adverse impact that economic activities have on the environment.

## AUSTRAC

### (X) Releases National Risk Assessments

AUSTRAC has released two national risk assessments, which show the scale, sophistication and threat of money laundering and terrorism financing in Australia. They offer an in-depth look at the extent of these crimes and the channels and sectors that are at highest risk of exploitation.

- [Money laundering in Australia national risk assessment 2024](#)
- [Terrorism financing in Australia national risk assessment 2024](#)

## PROFESSIONAL DEVELOPMENT OPPORTUNITIES

### Online Courses

Carbon Markets Institute - <https://carbonmarketinstitute.org/education-and-training/>

- Carbon Market Fundamentals Training
- Carbon Farming Banker Training

Bright Law - <https://learn.brightlaw.com.au/collections>

- The Hawking Prohibition: financial services marketing (January 2024) – 36 min video; \$330.
- Privacy Law for Financial Services Providers – a course of 4 videos; \$440.
- Responding to Regulatory Investigations – draft policies on responding to regulatory investigations, either with or without notice; \$66

Financial Education - <https://www.financialeducation.com.au/courses/>

FINSIA - <https://www.finsia.com/education>

- Certificate in Climate Risk - <https://www.finsia.com/education/qualifications/certified-professional-banker/the-certificate-in-climate-risk>
- Professional Refresher Packages - <https://www.finsia.com/professional-refresher>
- The Ethics of Artificial Intelligence - <https://www.finsia.com/the-ethics-artificial-intelligence>

### Events and Webinars

#### August 2024

- (a) FINSIA – **Economic Update** (Webinar – 14 August) – more info [here](#).
- (b) CARBON MARKET INSTITUTE – **Singapore Carbon Market and Investor Forum** (Singapore – 15-16 August) – more info [here](#).
- (c) THOMSON REUTERS – **Australian Regulatory Summit** (Sydney – 29 August) – more info [here](#).

#### September 2024

- (a) JANA – **Annual Conference 2024** (Melbourne – 5 September) – more info soon.
- (b) AUSTRALIAN INVESTMENT COUNCIL – **Australian Investment Conference 2024** (Gold Coast – 4-5 September) – more info [here](#).
- (c) INTERNATIONAL BUSINESS REVIEW – **Investment Operations Challenges Forum** (Sydney – 11-12 September) – more info [here](#).
- (d) AUSTRALIAN INVESTMENT COUNCIL – **Principles of Venture Capital** (Sydney – 16 September) – more info [here](#).
- (e) INTERNATIONAL BUSINESS REVIEW – **Member Engagement, Communications and Experience in Financial Services 2024 Forum** (Sydney – September 24) – more info in 2024.
- (f) AUSTRALIAN INVESTMENT COUNCIL – **Principles of ESG** (Sydney – 24 September) – more info [here](#).
- (g) AUSTRALIAN INVESTMENT COUNCIL – **Principles of Private Equity** (Sydney – 25 September) – more info [here](#).

#### October 2024

- (a) AUSTRALIAN INVESTMENT COUNCIL – **Principles of Venture Capital** (Brisbane – 1 October) – more info [here](#).
- (b) IQ INTERNATIONAL – **Carbon Capture Summit Australia 2024** (Perth – 9-10 October) – more info [here](#).
- (c) FSC – **Investment Performance Training Course** (Melbourne -16-18 October) – more info [here](#).
- (d) INTERNATIONAL BUSINESS REVIEW – **Foundational Investment Finance Workshop 2024** (Melbourne – 17 October) – more info [here](#).
- (e) FSC – **Investment Performance Training Course** (Sydney -22-24 October) – more info [here](#).
- (f) INTERNATIONAL BUSINESS REVIEW – **Foundational Investment Finance Workshop 2024** (Sydney – 23 October) – more info [here](#).
- (g) INTERNATIONAL BUSINESS REVIEW – **Asset Allocation Strategies 2024 Forum** (Sydney – 28-29 October) – more info [here](#).
- (h) CARBON MARKET INSTITUTE – **Australasian Emissions Reduction Summit** (Melbourne – 29-30 October) – more info [here](#).

#### November 2024

- (a) FINSIA – **Meet the Regulators** (Sydney – 8 November) – more info [here](#).
- (b) ASIC – **Annual Forum 2024** (Sydney – 14-15 November) – more info [here](#).
- (c) INTERNATIONAL BUSINESS REVIEW – **AI for Customer Experience in Financial Services 2024 Summit** (Sydney – 18-19 November) – more info [here](#).



December 2024

(a) INFORMACONNECT – Australian Carbon Capture, Utilisation and Storage Conference (Perth – 3 December) – more info [here](#).

## INTERESTING READS

### Links to interesting blogs and articles I've recently read:

- a. Frontier Advisors held their Annual Conference in June. Frontier has prepared session summaries and provided presentations and relevant papers on the dedicated conference website, which is publicly accessible [here](#).
- b. [A National Carbon Market Strategy for Australia: Harnessing carbon markets to accelerate to Net Zero](#) – The Policy Brief calls for a national carbon market strategy that explains how carbon markets can best operate in tandem with the Safeguard Mechanism, which will continue to increase its coverage of industrial emitters as its emissions cap decreases. The policy brief also details market alignments with emerging policies for energy, transport, land and agricultural sectors. (Carbon Market Institute, July 24)
- c. [Australia at a crypto crossroad: Regulate or fall behind](#) - With the global market capitalisation of crypto nearing US\$2.5 trillion and around a quarter of Australians currently invested, the absence of local regulation is increasingly glaring. (Investor Daily – 5 July 24)
- d. [ASX delistings outpacing new market entries](#) - The latest EQT ASX Group Monthly Activity Report for June 2024 highlighted a significant trend of ASX delistings outpacing new market entries last financial year. (Financial Standard – 8 July 24)
- e. [Understanding AI washing, job displacement risks, ESG reporting opportunities and more](#) - This guide outlines key ESG risks and impacts companies deploying AI should consider, the questions they should be asking, and what to do in response. (Allens Lawyers – 11 July 24)
- f. [Class action risk: interim update 2024](#) - Class action filings in 2024 are on track to fall short of the recent record-setting years, although there is reason to remain cautious as promoters maintain an appetite to pursue a broad base of claims with emerging areas of risk. In this interim report we provide a high-level overview of class action filings over the first half of the year and highlight several factors that are poised to shape the class action landscape moving forward. (Allens Lawyers – 18 July 24)
- g. [AIFMD 2.0: update for Australian fund managers](#) - On 26 March 2024, the final text of the amendments to the EU Alternative Investment Fund Managers Directive (AIFMD), known colloquially as 'AIFMD 2.0', was published in the Official Journal of the European Union, and AIFMD 2.0 entered into force on 15 April 2024. EU member states have two years after publication to transpose the rules into national law. AIFMD 2.0 will therefore apply in each member state from 16 April 2026 at the latest, although some rules will be subject to a transitional period. In this *Insight*, we provide a round-up of these latest developments and explain the key issues of concern for Australian fund managers who are marketing their products to EU investors. (Allens Lawyers – 29 July 24)

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