

01.02.2021

**PUBLICATION**

## Financial Services Thinking – Issue 10

Welcome to our first edition of *Financial Services Thinking* for 2021 with the latest financial services news.

In this edition we highlight the latest developments around the product disclosure and distribution obligations as well as conflicted and other banned remuneration. We also share a hot tip about the AFS licensing requirement for trustees of unregistered managed investment schemes.

Please share *Financial Services Thinking* with your friends and colleagues, and we value **your feedback**.

---

### **ASIC**

#### **Report on retail market conduct**

ASIC and IOSCA have released a **report** following an investigation into the impacts of retail market conduct issues during COVID-19. The Report identifies the following themes in retail market activity from the onset of the pandemic—

- high market volatility
- heightened financial and psychological stressors
- an increase in aggressive advertising, online marketing, and digital offerings of financial products that may target vulnerable investors.

The Report makes the following suggestions to combat the negative impact of COVID-19 on retail markets—

- proactive supervisory monitoring, including offerings targeting vulnerable investors
- targeted and effective enforcement action
- close cross-border co-operation and regulatory co-ordination
- leveraging the experience from previous crises to enhance agile regulatory approaches.

#### **Review of 30 June 2020 financial reports**

ASIC announced the results of its **review of 170 financial reports** lodged by public entities as part of its risk-based review process. Following the review, ASIC raised concerns with 27 public entities about 58 matters primarily concerning impairment of non-financial assets, asset values, and disclosure. Asset valuation was a theme of the review last year, with the regulator also noting valuation as a particular area of concern in its **review of audit inspections**.

ASIC previously indicated its financial report reviews would focus on the following areas:

- asset values
- provisions

- solvency and going concern assessments
- events occurring after year end and before completing the financial report
- disclosures in the financial report and operating and financial review.

Our [Funds Management team](#) can help with your queries and you can [click here](#) for a recent article by partners Sean McMahon and Elliott Stumm about ASIC reminding REs to ensure valuations are regular, robust and reasonable.

### **ASIC's general approach to the product design and distribution obligations**

In December 2020, ASIC released [Regulatory Guide 274](#) covering product design and distribution obligations (DDOs) which come into effect on 5 October 2021. The DDOs require firms to design financial products to meet the needs of consumers and to distribute their products in a more targeted manner.

[Click here](#) for a video interview with Partner Sean McMahon and Greg Preston from the PFA or read our latest article on the topic [here](#).

### **Conflicted and other banned remuneration – updates**

ASIC has released a series of [technical updates to Regulatory Guide 246](#) (RG 246) which reflect recent changes to the law. RG 246 covers conflicted and other forms of banned remunerations for AFS licensees, their representatives, and other entities that must comply with the conflicted and other banned remuneration provisions in the Corporations Act.

The updates include the following:

- The end of the grandfathering of conflicted remuneration for financial product advice from 1 January 2021
- The extension of the ban on conflicted remuneration to stamping fees paid for listed investment companies and listed investment trusts (excluding real estate investment trusts) which took effect on 1 July 2020.

If you have any queries about RG 246 or the AFS licensing regime please contact partner [Elliott Stumm](#) and our [Funds Management lawyers](#).

---

## **TREASURY**

### **Simplified debt restructuring for small business**

Following a consultation period in November 2020, Treasury released [guidance](#) about the simplified debt restructuring processes for small business. The simplified process will only apply to entities with total liabilities not exceeding \$1 million (amongst other criteria) and aims to keep business owners in control of their business while reducing the costs associated with debt restructuring. The new restructuring framework came into effect on 1 January 2021.

If you need assistance with your debt financing needs, partner [Emma Donaghue](#) or a member of our [Funds Management team](#) can explain your options and answer any questions you may have.

---

## **CASES AND LEGISLATION**

### **Lending unsuitability assessment obligations**

The National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill, introduced into the House of Representatives on 9 December 2020, proposes to amend the National Consumer Credit Protection Act by significantly limiting the credit contracts to which unsuitability assessment obligations apply. If the Bill is successful, the unsuitability assessment obligations will only apply to small amount credit contracts, that is, unsecured loans up to \$2,000, and where the contract term is between 16 days and 12 months.

---

## **HOT TIP!**

### **AFS licensing requirement for trustees of unregistered managed investment schemes**

ASIC has recently released [Information Statement 251](#) which outlines Australian financial services licensing requirements for trustees of unregistered managed investments schemes. In particular, INFO 251 provides an outline of the limits of the authorised representative exemption and the intermediary authorisation exemption.

Partner [Elliott Stumm](#) and our [Funds Management](#) lawyers can help with any queries you may have about what INFO 251 and the AFS licensing regime mean for your business.

---

#### **Authors**



**EMMA DONAGHUE**

Partner