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PUBLICATION

## Financial Services Thinking – Issue 7

Welcome to the September edition of *Financial Services Thinking* where we wrap-up the latest news for the financial services sector and share a warning about ASIC's current focus on advertising.

We encourage you to get in touch with our team who can provide tailored solutions so that you are best placed to reset your business for the road ahead.

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

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### ASIC

#### Corporate Plan 2020-2024

On 31 August, ASIC released its **Corporate Plan** setting out the regulator's strategic priorities over the next four years. The plan outlines ASIC's approach to addressing the impacts of COVID-19 as well as the long-term recovery of the economy. ASIC's long-term focus areas are:

- Promoting confident participation in the financial system to support long-term economic recovery.
- Deterring poor behaviour and misconduct through its 'why not litigate' discipline and driving cultural change using all of its regulatory tools.
- Improving entities' management of key risks to prevent and mitigate harms to consumers and promote a healthy financial system and economic growth.
- Addressing consumer harm as a result of elevated debt levels and hardship, with a particular focus on predatory lending.
- Reducing poor product design and restricting mis-selling.
- Reducing misconduct by company directors and professional service providers.
- Delivering as a conduct regulator for superannuation.

Click [here](#) for a recent article where **Langton Clarke** and **Elliott Stumm** discuss ASIC's plans to return to business as usual.

#### Relief for companies planning an initial public offering

ASIC is taking two steps aimed at reducing the red tape faced by companies planning an initial public offering (IPO)—

- facilitating voluntary escrow arrangements under an IPO so the relevant interests of an issuer, professional underwriter or lead manager arising from the escrow agreement are disregarded for the purposes of the takeover provisions, but not the substantial holding provisions, in the Corporations Act
- facilitating non-promotional communications to security holders and employees of a company proposing to undertake an IPO prior to lodging a disclosure document with ASIC.

ASIC has also updated Regulatory Guide 5 and Regulatory Guide 254 to reflect the amendments to the IPO process. Click [here](#) for more information.

## Relief for investors in frozen funds

ASIC has announced new relief measures for responsible entities (REs) of registered managed investment schemes that have become 'frozen funds'. The relief, which is designed to permit withdrawals by members facing financial hardship due to the pandemic, is similar to the hardship relief previously granted by ASIC on a case-by-case basis only.

The relief provides for four categories of hardship – urgent financial hardship, unemployment, compassionate grounds, and permanent incapacity.

If a member meets the criteria for at least one of the above categories, the RE may allow the member to withdraw in accordance with the provisions of the fund's constitution. A member may make up to four hardship withdrawals not exceeding a total of \$100,000 in any calendar year. For more details click [here](#) for a recent article by [Emma Donaghue](#).

If you need help determining whether your fund should be frozen, whether relief is appropriate, how hardship withdrawals can be dealt with, and ensuring ongoing compliance with your obligations, then please get in touch.

## Enhanced regulatory sandbox guidance

On 1 September 2020, a new enhanced regulatory sandbox (ERS) replaced the existing ASIC sandbox issued in December 2016. The ERS exemption allows natural persons and businesses to test some innovative financial services or credit activities without first obtaining an AFSL or Australian credit licence, with the aim to facilitate financial innovation in Australia.

The ERS allows testing of a broader range of financial services and credit activities for a longer duration (up to 24 months).

There are strict conditions that must be met to rely on the ERS. For more information click [here](#) or contact us if you have any questions.

## ASIC's expectations of lenders

ASIC has published additional expectations of retail lenders specific to when loan repayment deferrals end. The key expectation is that lenders should make reasonable efforts to work with consumers unable to recommence compliance with their obligations under loans to gain an understanding of their circumstances and make a decision about the loan in a fair and appropriate manner. If you have any queries about the impact of these additional expectations, please get in touch with a member of our [team](#).

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## APRA

### Corporate Plan 2020-2024

APRA has published its Corporate Plan for the next four years which, although updated to account for the impacts of COVID-19, continues to focus on delivering four key outcomes—

- maintaining financial sector resilience
- improving outcomes for superannuation members
- transforming governance, culture, remuneration, and accountability across all regulated institutions
- improving cyber resilience across the financial system.

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## AUSTRAC

### Assessing risk

AUSTRAC has issued a reminder that effective risk assessment and management processes are critical to protecting

businesses from criminal exploitation. To assist business, AUSTRAC has released a new suite of resources designed to help businesses understand their obligations and AUSTRAC's expectations regarding the assessment of money laundering and terrorism financing (ML/TF) risks. The key resource is the guidance document found in AUSTRAC's Insight series, 'Assessing ML/TF Risk'.

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## TREASURY

### Corporate Plan

Treasury's **Corporate Plan** sets out an overview of the current operating environment, key priorities, activities, and how performance will be measured for the regulator. Treasury's priority for the coming years is promoting—

- a sound economic environment
  - organisation capability
  - sustainable taxation and revenue arrangements
  - well-functioning markets which serve consumers and investors
  - effective Government spending arrangements and regulations
  - sound governance and assurance.
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## RBA

### Corporate Plan

Like ASIC, APRA and Treasury, the RBA has released its updated **Corporate Plan** where its focus will be—

- supporting the Australian economy in the wake of COVID-19
  - supporting the evolution of payments
  - attracting and maintaining a high-quality and innovative workforce
  - strengthening the resilience of technology services
  - harnessing the power of data
  - ensuring we communicate effectively in a changing world.
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## IN THE NEWS

### Temporary insolvency protections extended

The Australian Government announced that the moratorium from insolvent trading, which was due to expire at the end of September, has been extended until the end of 2020. The change to statutory demands and bankruptcy notices was also extended to the same date. For more details click [here](#) for a recent article by [Selina Nutley](#) from our [Litigation](#) team.

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## HOT TIP!

### ASIC crackdown on advertising

ASIC has continued its regulatory focus on false or misleading advertising by financial service providers. We recommend fund managers carefully review their promotional material to ensure it is in line with ASIC's guidance. We can help with reviewing your advertisements and answering any queries you may have about meeting ASIC's requirements.

Click [here](#) for a recent article by senior associate [Kristy McCluskey](#) where she warns fund managers need to test whether their advertising is true-to-label.

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## Authors



**EMMA DONAGHUE**

Partner