

April 2017

PwC Regulatory Update



1

Legislative/Government developments

Self-reporting of contraventions by financial services and credit licensees

The ASIC Enforcement Review Taskforce has published a [consultation paper](#), *Self-reporting of contraventions by financial services and credit licensees*, seeking feedback on the self-reporting regime for Australian Financial Services (AFS) licensees. The paper poses reforms that would:

- Clarify when the reporting obligation is triggered - reducing compliance costs and delays, and removing uncertainty;
- Increase accountability for licensees by expanding the class of reports that must be made to expressly include misconduct by individual advisers and employees;
- Introduce new and heightened penalties for non-reporting, giving ASIC greater flexibility to impose a range of penalties in response to a failure to report;
- Require ASIC to publish data on major breach reports; and
- Introduce an equivalent reporting regime for credit licensees.

Submissions are due by 12 May 2017.

Source: [Treasury](#)

Expanding the range of capped defined benefit income streams

The Minister for Revenue and Financial Services has released [draft regulations](#), *Capped defined benefit income stream*, which allows large pensions to be subject to additional tax instead of forced commutation.

Source: [Treasury](#)

Superannuation - integrity of limited recourse borrowing arrangements

The Government has released [draft legislation](#) for consultation, seeking feedback on the use of limited recourse borrowing arrangements (LRBA) in a member's total superannuation balance and transfer balance cap. The amendments will address the ability of SMSF members to use LRBAs to circumvent contribution caps, effectively transferring accumulation growth to retirement phase.

Source: [Treasury](#)

1

Legislative/Government developments

Alternative Superannuation Default Models

The Productivity Commission has released a draft [report](#), *Superannuation: Alternative Default Models*, to identify possible models which will guide employees to simpler, preferred default retirement products.

The focus is not on taxation or contribution, but rather on how to help the least informed members. The primary suggestion is that employees only default to a superannuation provider the first time they enter the workforce.

The aimed benefits include reducing reliance of superannuation providers on default membership (almost two-thirds rely primarily on this) as well as lower fees and better returns for consumers.

Source: [Productivity Commission](#)

Updates from the Treasurer

The government welcomes additional supervision from APRA on residential mortgage lending. The Treasurer supports limiting investor credit growth and tightening of standards regarding interest-only housing loans. APRA also maintains and enforces a 10% speed limit on investor credit growth, which ADIs are responsible to be comfortably under.

See [media release](#)

The government welcomes the ATO's announcement that it has raised \$2.9bn in tax liabilities against a group of seven multinational companies. The ATO is auditing 59 multinational corporations to ensure compliance with taxation law, including the government's new Multinational Anti-Avoidance Law (MAAL). This is administered by a special 1,000 person strong taskforce.

See [media release](#)

2

What have the regulators been up to?

APRA

Australian Prudential
Regulation Authority

ASIC

Australian Securities and
Investments Commission

ASX

Australian Securities
Exchange

AUSTRAC

Australian Transaction
Reports and Analysis
Centre

APRA proposes revisions to large exposure requirements

APRA has released a [discussion paper](#) seeking feedback on the proposed revisions to large exposure requirements, including:

- The limit to an unrelated authorised deposit-taking institution (ADI) and their subsidiaries be reduced from 50% of Total Capital to 25% of Tier 1 Capital;
- A new limit of 15% of Tier 1 Capital be applied to exposures to a bank designated as a global systemically important bank, and to exposures between banks designated as domestic systemically important banks; and
- New criteria for identifying a group of connected counterparties and measuring large exposure values.

The consultation package includes a draft revised [prudential standard](#), *APS 221 - Large Exposures*, as well as [associated instructions](#).

APRA expects to release a response paper and its final revised prudential standard and associated reporting package in the second half of 2017. The revised large exposure requirements will come into effect from 1 January 2019, in line with the internationally-agreed timetable.

Submissions are due by 5 July 2017.

See [media release](#)

APRA responds on prudential practice guide on Securitisation

APRA has released a letter to all ADIs in response to consultation on the revised prudential practice guide *APG120 - Securitisation*. The letter outlines APRA's response to issues raised in submissions to this consultation:

- Derivatives transactions;
- Shared collateral and trust-back agreements; and
- Warehouse arrangements.

APRA has released the final [revised guide](#) and will take effect from 1 January 2018.

See [letter](#)

APRA releases letter in relation to prescribed provisioning and AASB 9 financial instruments

All ADIs are required to apply AASB 9 for annual reporting periods beginning on or after 1 January 2018.

APRA confirms that ADIs using the prescribed provisioning approach under prudential standard, *Credit Quality* may continue to do so for APRA reporting purposes.

See [letter](#)

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ASIC consults on establishing a Financial Services Panel

ASIC has published a [consultation paper](#), *Financial Services Panel*, seeking feedback on their proposal to establish the Financial Services Panel to make administrative decisions on certain matters relating to financial services and credit activities.

The Panel would comprise financial services and credit industry participants (and/or non-industry participants with relevant expertise) and at least one ASIC staff member.

ASIC is also seeking feedback on:

- How the Panel would enhance the impact of ASIC's administrative decisions;
- The types of matters that would be referred to the Panel; and
- The optimal composition of the Panel.

Submissions are due by 23 May 2017.

See [media release](#)

ASIC releases further report on emerging market issuers

ASIC has released a [report](#), *Further review of emerging market issuers*, providing key observations on regulatory issues relating to entities listed on Australian markets with substantial connection to emerging markets. It refers to the challenges highlighted in an [earlier report](#), *Emerging market issuers*, and discusses how ASIC has responded to some of those challenges.

See [media release](#)

ASIC remakes class order on reporting requirements for Australian financial services licensees who are natural persons

Following [consultation](#), ASIC has remade a class order into a new legislative instrument, *ASIC Corporations (Financial Reporting: Natural Person Licensees) Instrument 2017/307*. The new instrument continues relief for AFS licensees who are natural persons from the requirement to include, in a profit and loss statement, any revenues and expenses that do not relate to the financial services business carried on by the licensee.

See [media release](#)

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The ASX responds to consultation on OTC rule and amendments related to Default Management processes

The ASX has released a [response](#) to [consultation](#) on OTC Rule and Handbook amendments related to Default Management processes, summarising the response received in relation to consultation. The ASX intends to make the following further amendments:

- Correct a reference to Futures Rules 7.6 in Schedule 1;
- Increase the minimum number of DMG Members from five to six members and provide the ASX with discretion to increase this number;
- Reduce the notice period for the ASX to invite OTC Participants to participate in the DMG from three months to two months. OTC Participants will have one month to accept;
- Clarify the scope of regular DMG meetings by specifically including a reference to meetings held to prepare for or execute 'fire drills' (default simulations); and
- Amend the Form of Specific Terms for DM Auctions to make it clear that in a default auction answers to questions of general relevance received by ASX during the Auction Phase will be disseminated to all DM Auction Invitees on an anonymised basis.

ASX intends to implement the proposed amendments to the OTC Rules and Handbook at the end of Q2 2017 so that the framework is in place for the new DMG Term commencing 1 July 2017.

See [media release](#)

The ASX responds to consultation on reverse takeovers

The ASX has released its [response](#) to [consultation](#) on reverse takeovers, together with [exposure draft listing rule amendments](#), seeking feedback on requiring bidders to obtain shareholder approval for reverse takeovers, i.e. a takeover bid or scheme of arrangement where the bidder issues securities in excess of 100% of existing capital as consideration, resulting in the target's shareholders owning more than 50% of the bidder post-takeover.

ASX's proposal would have captured the high profile reverse takeovers that have attracted public criticism in recent years.

Submissions are due by 26 May 2017.

See [media release](#)

AUSTRAC publishes draft Privacy Impact Assessment – AUSTRAC Data Matching Program and Fintel Alliance

AUSTRAC has published a [draft Privacy Impact Assessment](#), considering the initial operational projects facilitating collaborative, innovative and timely sharing of financial intelligence with Fintel Alliance partners in order to manage money-laundering and terrorism-financing risk. The Data Matching Program involves obtaining external data from a variety of non-open and open sources to enhance AUSTRAC's intelligence and research capabilities.

See [media release](#)

3

Industry bodies

ABA

Australian Bankers'
Association

FPA

Financial Planning
Association of Australia

FSC

Financial Services Council

ABA comments on McPhee fourth report on bank reforms

ABA has welcomed the release of the fourth [report](#) by Mr Ian McPhee, *Australian banking industry: Package of initiatives*, highlighting significant progress in delivering the reform program announced a year ago.

Significant milestones achieved in the quarter to April 2017 included:

- The appointment of customer advocates by 19 banks to help customers resolve issues.
- Major banks updating their whistleblower protections to meet the highest standard to encourage a 'speak up' culture (three other banks doing this ahead of schedule).
- The delivery of two key independent reviews into the Code of Banking Practice (Khoury Review) and retail bank staff remuneration (Sedgwick Review), which will in significant benefits to customers.
- Three additional initiatives which address consumer concerns about people in financial hardship, switching banks and small businesses.

The report also highlighted that some reform initiatives, such as external dispute resolution arrangements and ASIC breach reporting, rely on government and regulatory action before banks can progress them further.

See [media release](#)

ABA comments on Mr Sedgwick's recommendations

The banking industry supported the recommendations made by Mr Stephen Sedgwick. The review was completed on 19 April 2017 with the release of a final [report](#) into product sales commissions and product based payments in retail banking.

The report contained 21 recommendations about what banks should do to ensure payments achieve better customer outcomes, including:

- No longer paying retail bank employees incentives based directly or solely on sales.
- Where incentives are paid, they should be based on a range of measures where financial measures are not dominant.
- Incentives paid should be product neutral.
- Examining workplace culture and leadership frameworks to ensure they are aligned with good customer outcomes.
- Increasing transparency of remuneration arrangements with third parties, such as mortgage brokers, including stopping payments directly linked to loan size and introducing more robust performance management like that used with employees.

See [media release](#)

3

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ABA responds to Carnell inquiry recommendations

The ABA has released its [response](#) to the Australian Small Business and Family Enterprise Ombudsman's report into small business lending. ABA's Chief Executive Anna Bligh response stated:

- Banks supported the recommendations to make banking better for small businesses and recognised the need to improve lending practices for small business customers.
- There will be a reduction in the number of specific events to enforce a loan.
- Banks will give more notice to customers of changes to loan conditions and decisions on rollover.
- The industry supported the Ombudsman's recommendations for more transparency around how banks work with small businesses.
- The ABA is working with stakeholders on developing best practice industry guidelines on bank valuation practices and the appointment of investigative accountants and receivers for small businesses and farmers.
- Nine of the eleven Ombudsman's recommendations for banks are consistent with the findings of the independent review of the Code of Banking Practice, and these new obligations will form part of the revised Code.
- The new Code will have a dedicated section for small businesses and require banks to simplify loan contracts so they're written in plain English.

See [media release](#)

FPA welcomes new government ethics body FASEA

The FPA welcomes the Financial Adviser Standards and Ethics Authority (FASEA) that will be responsible for governing the conduct of financial advice professionals. In particular the balance of the newly-appointed Board between consumer and industry advocates was congratulated by the FPA.

The FPA and other bodies will be responsible for ensuring member conduct meets the minimum standards declared by FASEA, including the minimum education requirements coming into force in January 1, 2019.

See [media release](#)

FSC releases draft standard for life insurance APL

The FSC released a [draft standard](#) Approved Product List (APL) for life insurance which is compulsory for all FSC members once approved. The standard is aimed at providing competitive access and choice for advisers and their clients.

Disclosure of products and providers on the APL will also be available in Statements of Advice, allowing consumers to make informed decisions.

The draft standard also sets out best practice guidelines for Licensees in researching and approving products for inclusion on the APL.

See [media release](#)

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Overseas developments – Global

BIS: Report on repo market functioning

The Committee on the Global Financial System has published a [report](#), *Repo market functioning*, analysing the changes in the availability and cost of repo financing and how these changes affect the ability of government-backed repurchasing agreements to support the financial system, both in normal and stressed conditions.

The report, which drew on a survey of repo market participants and feedback from the industry, identifies several drivers behind these changes, including:

- Exceptionally accommodative monetary policy to provide ample central bank liquidity to the market and reduced the need for banks to trade reserves through the repo market; and
- Changes in regulation that have made intermediation more costly in terms of regulatory capital.

Source: [BIS](#)

FSB: Recent consultations

The Financial Stability Board (FSB) has released a [consultation paper](#), *Proposed Framework for Post-Implementation Evaluation of the Effects of the G20 Financial Regulatory Reforms*, seeking feedback on the main elements of the proposed framework.

The framework will guide analyses of whether the G20 core financial reforms are achieving their intended outcomes, and help to identify any material unintended consequences that may have to be addressed, without compromising on the objectives of the reforms.

Submissions are due by 11 May 2017.

Source: [FSB](#)

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Overseas developments – Europe

EBA: Recent announcements

The European Banking Authority (EBA) has issued three sets of final guidelines on bail-in under the Bank Recovery and Resolution Directive (BRRD), complementing existing regulation and guidance to facilitate the use of the bail-in power to absorb losses and recapitalise banks in resolution. The three guidelines relate to:

- [Interrelationship between the BRRD and the Capital Requirements Directive \(CRD\) and Capital Requirements Regulation \(CRR\)](#);
- [Treatment of shareholders in bail-in](#); and
- [Rate of conversion of debt to equity in bail-in](#).

The Joint Committee of the three European Supervisory Authorities has launched a [consultation paper](#), seeking feedback on draft guidelines to prevent terrorist financing and money laundering in electronic fund transfers.

Submissions are due by 5 June 2017.

The EBA has issued its final draft Implementing Technical Standards ([ITS](#)) on supervisory reporting for EU institutions to keep reporting requirements in line with changes to the regulatory framework and with the evolving needs for risk assessments. The updated ITS include:

- New information on sovereign exposures;
- Changes to operational risk;
- Changes to additional monitoring metrics for liquidity; and
- Q&A- based changes and other minor amendments.

4

Overseas developments – UK

Bank of England: Launch of new UK money markets code

The [UK Money Markets Code](#) is a voluntary code written by market participants, setting out such standards and the best practice expected from participants in the deposit, repo and securities lending markets in the UK. It incorporates revised relevant sections of the Non-Investment Products (NIPs) Code, and also a revision and update of the Gilt Repo Code and Securities Borrowing and Lending Code. It was published on 26 April 2017.

It is expected that the code should be embedded by the market by January 2018.

Source: [Bank of England](#)

PRA: Recent policy statements and supervisory statements

The Prudential Regulatory Authority has published a [policy statement](#), *The PRA's expectations on remuneration*, providing feedback on responses to consultation paper related to the PRA's expectations on remuneration. The statement includes [supervisory statement](#), *Remuneration*, bringing together the PRA's existing supervisory statements on proportionality, the application of malus and other elements of remuneration, and sets out additional expectations of firms.

The PRA has published a [policy statement](#), *Whistleblowing in non-EEA UK branches*, providing feedback on responses to consultation paper related to the whistleblowing in non-EEA UK branches and sets out the final rules.

The PRA has published a [policy statement](#), providing feedback on responses to consultation paper, *Ensuring operational continuity in resolution: reporting requirements*.

Source: [Bank of England](#)

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Overseas developments – Asia

Hong Kong: Recent consultations by SFC and HKMA

The Securities and Futures Commission (SFC) and Hong Kong Monetary Authority (HKMA) has jointly published a [consultation paper](#), *Joint consultation paper on the prescription of additional markets and clearing houses and prescription of Delta One Warrants under the OTC derivatives regulatory regime*, seeking feedback on the following:

- Expanding the list of markets and clearing houses prescribed under section 392A of the *Securities and Futures Ordinance* (SFO); and
- Excluding from the definition of “OTC derivative product”, certain warrants with strike prices set at zero or near zero (Delta One Warrants).

Submissions are due by 26 May 2017.

Source: [SFC](#)

Korea: FSC sets new approach to corporate restructuring

The Financial Services Commission (FSC) has set out a new approach to corporate restructuring, complementing the existing framework of corporate restructuring; and to shift its focus to more market-based restructuring schemes, in which capital market players including private equity funds (PEFs) play a bigger role in corporate restructuring.

The new approach includes:

- Credit risk evaluation system to be improved; and
- Market-based restructuring schemes.

Source: [FSC](#)

Singapore: Recent consultations by MAS

The Monetary Authority of Singapore (MAS) has published a [consultation paper](#), *Review of Policy Owners' Protection Scheme (PPF Scheme) – Scope, Coverage & Operational Issues*, seeking feedback on:

- Introduction of caps, on a per policy basis, on certain specified personal lines to prevent the PPF General Fund from being potentially exposed to very high property damage claims; and
- Definition of a “personal” insurance policy as one that is owned by an individual. This will allow claims on damage to properties owned and used by individuals to be protected under the PPF Scheme, even if these properties are sometimes used for commercial purposes.

Submissions are due by 19 May 2017.

Source: [MAS](#)

5

PwC publications

PwC Hong Kong: Beyond Compliance

PwC Hong Kong has published an article, *Beyond Compliance: Being proactive on cybersecurity to build consumer trust*, discussing the increasing costs of cyber breaches, why preventive cybersecurity measure is smart for business and the need for insurers to refresh their approach to cybersecurity policy and regulations.

Some of the key highlights include:

- The costs of a data breach in 2016 have reached US\$4 million on average (across all industries), with a global average of \$154 for each lost or stolen record — as per the Ponemon Institute; and
- Now is the right time for the insurance sector to proactively work with regulators to shape cybersecurity policy and regulations.

See [publication](#)

PwC Hong Kong: Navigating the new margin requirements HKMA CR-G-14

PwC Hong Kong has published a report, *Navigating the New Margin Requirements HKMA CR-G-14*, discussing the new margin requirements HKMA CR-G-14.

The Non Cleared derivatives margin rules which were based on the BCBS/IOSCO framework went live for the biggest financial institutions as of September 2016, requiring them to exchange both variation and initial margin collateral for their OTC derivative exposures. March 2017 saw other derivative users in US, EU and Japan implementing the variation margin requirements whilst most of the Asian regulators, including Hong Kong and Singapore, have allowed for a 6 month roll out period until September 2017.

PwC can help to successfully implement the regulatory requirements and advise on future operating model, legal agreement planning, model development and validation and integration with third party providers.

See [publication](#)

PwC Hong Kong: Asia Insurance Regulatory Updates – April 2017

PwC Hong Kong brings a roundup of key regulatory activities around the region in the past few months:

- China: New governance rules to get back to basics; Stock investment limits to be tightened; Guidelines to strengthen asset-liability and risk management; Property insurance rules to be tightened; New compliance system; Beijing-Tianjin-Hebei triangle; Investors with “impure motives” to be kept out.
- India: Life insurance product rules to be reviewed; Order of preference for ceding business to reinsurers; IPO proposal for life insurers shelved.
- Japan: Mandatory auto liability insurance premium rates to be cut.
- Pakistan: Draft insurance Bill addresses microinsurance reforms.
- Philippines: Rules outlines for converting insurance mutual.
- Thailand: Foreign shareholding and board limits eased.

See [publication](#)

5

PwC publications

PwC US: *Home Mortgage Disclosure Act* - a sprint to the finish line

Beginning 1 January 2018, mortgage lenders must begin collecting additional data in accordance with the Consumer Financial Protection Bureau's (CFPB) new Home Mortgage Disclosure Act (HMDA) rule. While many lenders are making steady progress toward compliance with the new requirements, some lenders are taking a "wait and see" approach due to the uncertainty about the CFPB's leadership and agenda and the Trump Administration's regulatory review initiatives.

The CFPB recently issued its largest-ever fine for violating the existing HMDA requirements. PwC US has released a report, *Home Mortgage Disclosure Act: A sprint to the finish line*, taking a closer look at the CFPB's expectations for mortgage lenders during implementation and recommend actions to help mortgage lenders manage compliance risks.

See [publication](#)

PwC US: Risk and finance alignment – the path forward

Managers of financial institutions are under pressure from boards of directors, investors, and regulators to deliver improved and more transparent performance management data, and effectively price for risk when making business decisions while meeting regulatory expectations. In order to meet these demands, the industry must shift towards greater alignment between the risk and finance functions – a shift that is still in its early stages but expected to be of greater importance as institutions move towards a growth agenda.

PwC US has released a report, *Risk and finance alignment – The path forward*, integrating findings from a recent global survey conducted by PwC on risk-finance alignment to address (a) why risk and finance alignment should be a priority for institutions (b) the key elements of an effective risk and finance alignment framework (c) the key obstacles to alignment and (d) what institutions should do now.

See [publication](#)

PwC US: Governor Tarullo's farewell speech

Federal Reserve Governor Daniel Tarullo delivered a farewell address this week to assert his views on completing and protecting what he considers to be the most important regulatory reforms before leaving his position as de facto leader of Fed supervision.

In deal-making fashion, he reiterated his case for adding a new stress capital buffer to Comprehensive Capital Analysis and Review (CCAR) stress tests while also presenting several options for reducing regulatory compliance burdens. PwC US has published a report, highlighting the five key points from his farewell speech:

- Pall over Volcker.
- Qualitative objection overruled?
- A peek behind the curtain.
- Back-track the e-SLR.
- Small FR-Y relief.

See [publication](#)

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