



**ASIC**  
Australian Securities &  
Investments Commission

# **Senate Select Committee on Financial Technology and Regulatory Technology: Second issues paper**

## **Submission by the Australian Securities and Investments Commission**

December 2020

# Contents

<b>A</b>	<b>About this submission</b> .....	<b>3</b>
	ASIC’s role, vision and mission .....	3
<b>B</b>	<b>Regulation</b> .....	<b>4</b>
	General observations on approach towards fintech and regtech .....	4
	ASIC’s approach to financial innovation .....	5
<b>C</b>	<b>Access to capital</b> .....	<b>13</b>
	General information in ASIC’s first submission .....	13
	Managing shareholdings for founders of start-up businesses .....	13
<b>D</b>	<b>Regulator skills and culture</b> .....	<b>16</b>
	Regulator accountability .....	16
	ASIC’s approach to the new product intervention power .....	19
	ASIC’s approach to regtech.....	21
<b>E</b>	<b>Trade and international policy</b> .....	<b>24</b>
	ASIC’s approach to international engagement .....	24
	UK–Australia fintech bridge .....	24
	GFIN cross-border testing trials.....	25
<b>F</b>	<b>Future engagement framework</b> .....	<b>27</b>
<b>G</b>	<b>Updates on other topics of past interest to the Select Committee</b> .....	<b>28</b>
	Review of the ePayments Code .....	28
	Screen scraping .....	29
	Buy now pay later .....	30
	<b>Appendix 1: Innovation Hub’s engagement outcomes</b> .....	<b>32</b>
	Fintech engagement .....	32
	Regtech engagement .....	33
	<b>Appendix 2: ASIC’s recent fintech enforcement actions</b> .....	<b>35</b>
	Unauthorised access and insider trading .....	35
	Superannuation identity theft .....	36
	OTC derivatives to retail clients .....	36
	Cryptocurrency—Unlicensed platform .....	37
	<b>Appendix 3: Key terms</b> .....	<b>39</b>
	<b>Appendix 4: ASIC’s first submission</b> .....	<b>42</b>

## A About this submission

- 1 ASIC welcomes the opportunity to make a submission in response to the second issues paper of the Senate Select Committee on Financial Technology and Regulatory Technology (Select Committee) released on 9 November 2020. This issues paper seeks to consider longer-term issues relating to the financial technology (fintech) and regulatory technology (regtech) sectors as foreshadowed by the Select Committee’s interim report released in September 2020.
- 2 We previously provided a submission to the Select Committee in December 2019 (ASIC’s first submission) and a supplementary submission in April 2020 (ASIC’s supplementary submission). For convenience, ASIC attaches the ASIC’s first submission to this response as we make cross-references to content in that submission (Appendix 4). We have provided a link to [ASIC’s supplementary submission](#) (PDF 253 KB) for reference. The updating content of ASIC’s supplementary submission is superseded and updated in this submission.
- 3 In this submission, we provide perspectives and information on a range of topics raised in the second issues paper, in particular:
  - (a) regulation;
  - (b) access to capital;
  - (c) skills and culture, with a focus on regulatory culture;
  - (d) trade and international policy, with a focus on the Australia–UK fintech bridge between ASIC and the Financial Conduct Authority (FCA); and
  - (e) the framework of ongoing policy engagement by the Australian Government.
- 4 In dealing with the subjects set out above, ASIC also provides an update on its relevant innovation activities and regulatory technology (regtech) initiatives.
- 5 We are open to providing more information and answering any questions the Select Committee may share with ASIC. We also look forward to the opportunity to appear again before the Select Committee should the committee require this.

### ASIC’s role, vision and mission

- 6 By way of background, we summarised ASIC’s role, vision and mission in paragraphs 5 to 11 of ASIC’s first submission: see Appendix 4.

## B Regulation

- 7 In this section, we provide:
- (a) general observations on the potential Australian Government policy approach to the fintech and regtech sectors; and
  - (b) ASIC's approach to financial innovation.

### General observations on approach towards fintech and regtech

- 8 The fundamentals of our regulatory framework that supports investor and consumer trust and confidence and market integrity provide an important basis for the success of fintech and regtech businesses.
- 9 In summary, this basis can be well utilised by an approach that:
- (a) *is technology neutral* in the design and drafting of regulatory frameworks and the promotion of business sectors including the regtech sector. For example, legislation should not assume or promote the use of any particular form of technology to provide financial services or markets but instead provide a framework which can foster the continuous innovation as new technologies emerge;
  - (b) *recognises digital services in updates to legislation*, to reflect the capacity to deliver services and comply with the law in digital and non-digital means. For example, updating the law to enable virtual meetings of companies and managed investment schemes, and digital communications with investors and consumers;
  - (c) *applies consistent compliance obligations* to businesses, regardless of the differences in business models. For example, similar obligations should apply to all listed and public companies, subject to some allowances for businesses of smaller nature and scale;
  - (d) *supports a broad regulatory toolkit* to be used by regulators to intervene and deal with poor conduct that has the potential to cause harm to investors and financial consumers. For example, regulators should be able to apply their powers to deal with concerning conduct by any kind of business model, so as to promote trust and confidence in financial services and markets irrespective of the mechanism used to deliver the financial service.
  - (e) *promotes competition as a regulatory goal—but competition should be a complementary and not primary goal* of the regulatory framework for financial services and markets. For example, measures directed to promote competition need to be carefully considered, so as to not shift material risk to investors and consumers or have material anti-

competitive impacts on businesses not the focus of the particular policy measures;

- (f) *promotes the use of regtech* by businesses and government with a view to supporting better consumer and market integrity outcomes through enhanced efficiencies and effectiveness in risk management, compliance and supervisory activities. For example, recent work of the Productivity Commission highlights the important and special role that can be played by government and regulators towards this goal; and
- (g) *promotes Australian stakeholder involvement in the development and maximum adoption of international standards* related to data, blockchain, artificial intelligence and other technology-related subjects. For example, Australia's financial markets obtain efficiencies from maximising the adoption of international messaging standards.

## ASIC's approach to financial innovation

### ASIC's Corporate Plan 2020–24

- 10 ASIC's Corporate Plan 2020–24 has a specific priority reflecting ASIC's mission that is directed to *promoting the strong and innovative development of the financial system*.
- 11 A summary of the measures we will take under the plan include:
  - (a) We will facilitate advancements in technology that are beneficial to consumers, investors and markets (e.g. through the work of ASIC's Innovation Hub).
  - (b) We will mitigate potential harms of technological change.
  - (c) We will contribute to and implement law reform and Australian Government initiatives directed to promote innovation.
  - (d) We will facilitate cross-border financial activities and capital flows.
  - (e) We will address potential harms to domestic consumers and markets flowing from the interconnectedness of global financial markets.
- 12 More details of *ASIC's approach to innovation* are set out in the [ASIC Corporate Plan 2020–24: Focus 2020–21](#) (in particular, pp. 28-29).

### Consideration of competition in ASIC's approach to financial innovation

- 13 Competition has always been relevant to ASIC's statutory objective to maintain, facilitate and improve the performance of the financial system. In addition, since October 2018, ASIC has an explicit mandate to consider the

effects that the performance of our functions and the exercise of ASIC’s powers will have on competition in the financial system.

14 This revised explicit mandate underscores our pre-existing requirements to consider the effect of our decisions on the efficiency and development of the economy.

15 Healthy competition is essential to markets delivering better products, services and prices. The absence of competition, or the presence of unhealthy supply-side competition, can be a sign of misconduct and poor consumer outcomes.

16 We undertake in-depth and high-level analysis of our regulated markets, using competition factors to inform our strategic planning and target our regulatory work. For example, ASIC teams consider the effects of their work on competition across such areas as applications for relief, licence applications or other permissions, and more generally when making decisions that align with our remit to promote the confident and informed participation by investors and consumers in the financial system.

17 The establishment of our Innovation Hub (March 2015) and the ASIC sandbox (December 2016) are examples of our work to support fintech businesses and promote healthy innovative competition. In particular:

- (a) the ASIC Innovation Hub streamlines our engagement with the fintech and regtech sectors, and promotes competition in financial services and removes red tape where possible; and
- (b) the ASIC sandbox was the world’s first regulatory sandbox licensing class waiver exemption, which allowed innovative businesses to test services with real consumers without first obtaining a licence. ASIC’s regulatory sandbox went as far we thought we could in balancing the promotion of competition and consumer protection within our mandate (including as amended in October 2018).

18 We have used ASIC’s product intervention power to ensure that competitive forces operate in a way that is beneficial and not detrimental to consumers. We have intervened in markets so that products or services developed as a result of competitive forces do not pose an undue risk of consumer detriment. We have provided background and specific examples of our use of the product intervention power in paragraphs 90–96.

### **ASIC’s Innovation Hub**

19 The strategic rationale and five-point approach to the ASIC Innovation Hub is set out in paragraphs 13 to 34 of ASIC’s first submission: see Appendix 4.

20 ASIC's Innovation Hub continues to operate to help fintech and regtech start-ups and scale ups navigate Australia's regulatory framework through the provision of informal assistance.

21 We have set out updated details of the activities of ASIC's Innovation Hub, including our fintech and regtech engagement, in Appendix 1.

### **Implementation of the Australian Government's enhanced regulatory sandbox**

22 ASIC recently implemented the Australian Government's enhanced regulatory sandbox (ERS) exemption. The exemption is effective from 1 September 2020. The ERS exemption is modelled on and supersedes the ASIC sandbox. The ERS exemption offers innovative businesses the opportunity to test a wider suite of financial services and products and credit activities for a longer duration (up to 24 months) without holding an Australian financial services (AFS) licence or Australian credit licence (credit licence).

23 The ERS exemption expands on the ASIC sandbox in several ways—including:

- (a) increasing the class of eligible services to include issuing of credit, non-cash payment facilities and insurance under a binder;
- (b) increasing the class of eligible products to include superannuation, life insurance and international securities;
- (c) broadening the scope of eligible businesses to include existing licensees that don't have a licence for the activities they want to test, and to allow a business to use the exemption more than once (for services not tested previously);
- (d) lengthening the duration for testing under the ERS exemption to two years
- (e) removing the limit on retail clients and the caps of product lines where the issuers are regulated by the Australian Prudential Regulation Authority (APRA).

24 The ERS exemption retains the overall cap of \$5 million and continues to apply all the same ASIC probity, conduct, professional indemnity and dispute resolution (including membership of the Australian Financial Complaints Authority (AFCA)) requirements.

25 However, the application of the \$5 million overall cap has been altered in relation to insurance activities. The cap applies now to overall premiums, rather than amount covered (as under the ASIC sandbox).

26 The ERS exemption introduces two eligibility tests that the ASIC sandbox did not contain—the *net consumer benefit test* and the *innovation test*.

Applicants must provide a justification in their notification to ASIC as to how they meet these tests. In particular, a justification of why:

- (a) exempting the proposed service will result, or be likely to result, in a benefit to the public that will outweigh the detriment to the public that will result, or be likely to result, from exempting that service ('the net consumer benefit test'); and
- (b) the proposed service is either:
  - (i) new; or
  - (ii) a new adaptation, or new improvement, of another service ('the innovation test').

27 Applications to use the ERS exemption must be made in a notification form prescribed by ASIC.

28 We have 30 days after receiving a notification to determine whether these tests and all other aspects of a notification are satisfied. We publish details of entities approved for testing under the ERS exemption on a [public register](#) available on our website.

29 Currently there is one entity testing in the ERS exemption, with a further two applications currently under assessment by ASIC. We also continue to respond to, and assist with, inquiries that we have been regularly receiving about the ERS exemption.

#### **ASIC guidance on the ERS exemption**

30 ASIC has issued the following guidance to assist businesses understand and consider making a notification under the ERS exemption:

- (a) [Information Sheet 248](#) *Enhanced regulatory sandbox* (INFO 248);
- (b) the [ERS exemption infographic](#) (PDF 132 KB); and
- (c) the prescribed forms—one each for [financial services](#) (PDF 203 KB) and [credit activities](#) (PDF 210 KB).

31 ASIC has undertaken two public webinars providing information about the ERS exemption (on 31 August and 27 November 2020).

#### **Deterrence actions to promote trust and confidence**

32 We consider that it is important to take deterrence action against poor conduct to promote trust and confidence in financial services and markets. This approach includes taking action against poor conduct by technology-based business models. If such action was not taken, measures to promote the fintech sector could be undermined by a lack of trust and confidence by investors and consumers in the new and emerging fintech business models.



- 33 We have recently taken deterrence action against poor conduct in relation to the following kinds of technology-based activities:
- (a) cyber-crime—trading related;
  - (b) identity theft scams;
  - (c) over-the-counter (OTC) derivatives offered to retail clients; and
  - (d) crypto-currency financial markets.
- 34 We consider that maintaining and making use of the current broad regulatory toolkit applicable to all financial sectors, including fintech, is essential to our capacity to respond flexibly and swiftly to concerning conduct.
- 35 We may decide, in appropriate circumstances, to make use of the new product intervention power in ASIC’s regulatory toolkit. Further discussion of our use of the product intervention power is set out at paragraphs 90–96.
- 36 We provide examples of our other recent deterrence actions relating to technology-based activities in Appendix 2.

### **ASIC’s involvement in standard setting work**

- 37 We have an ongoing interest in the development and application of international data and technology standards. For example, ASIC has a representative on the Standards Australia Committee IT-43, which is an Australian mirror committee for the international standards committee ISO/IEC JTC1 SC 42. The Standards Australia committee has a focus on the ethical use of artificial intelligence and is part of a significant program on an international level around certification for trustworthy actors.

### **ASIC’s crypto-asset work**

- 38 We have established an internal crypto-currency working group, made up of specialist staff from ASIC’s stakeholder teams and Strategy Group. The working group is a forum for sharing information and intelligence on domestic and international developments relating to crypto-assets, including on ‘stablecoins’ and scams.
- 39 Our general regulatory approach towards crypto-assets includes:
- (a) engagement with legitimate crypto-asset businesses to support their compliance;
  - (b) monitoring the crypto landscape to identify emerging risks;
  - (c) identifying opportunities to disrupt scams and take enforcement action where required; and

- (d) engaging with industry participants on practical proposals involving crypto-assets, to identify any gaps in the financial services regime to share with Treasury.

40 We have met and provided informal assistance to many businesses interested in crypto-assets related services and offerings. We provide this assistance through the Innovation Hub or by stakeholder teams directly engaging with businesses.

#### **ASIC's guidance on crypto assets and initial coin offerings**

41 We provided guidance to industry on crypto-assets and initial coin offerings (ICOs) in [Information Sheet 225 Initial coin offerings and crypto-assets](#) (INFO 224). This information sheet describes how obligations under the *Corporations Act 2001* (Corporations Act) and the *Australian Securities and Investments Commission Act 2001* (ASIC Act) may apply to ICOs and businesses involved with crypto-assets.

42 The features of individual crypto-assets and related services will dictate if and how the laws administered by ASIC apply. INFO 225 also sets out how prohibitions against misleading or deceptive conduct apply to all ICOs and business involved with crypto-assets, regardless of whether they are financial products or not. Australian laws will also apply even if the ICO or crypto-asset is promoted or sold to Australians from offshore. Issuers of ICOs, crypto-assets and their advisers should not assume the use of these structures means that key consumer protections under Australian laws do not apply or can be ignored. We have called for businesses seeking to operate lawfully and legitimately to distinguish themselves from possible scams and comply with the law.

#### **ASIC's efforts at disrupting crypto scams**

43 We note that the crypto-asset marketplace is online, global, and surrounded by hype. As such, it lends itself to some unscrupulous actors seeking to mislead or deceive investors wishing to invest in this area. These features also make disrupting scams difficult and elusive.

44 We have seen an increase in crypto-scams this year. We have released a number of scam alerts to assist consumers in avoiding crypto scams—for example, these alerts issued recently in June and July 2020:

- (a) [Scam alert: ASIC sees a rise in crypto scams](#) (18 June 2020); and
- (b) [That celebrity-endorsed bitcoin ad is probably a scam](#) (29 July 2020).

### **Crypto-related enforcement action**

45 We have taken enforcement action in relation to unlicensed conduct by crypto-asset businesses that contravene the law. See, for example, details of our enforcement action against BitConnect in Appendix 2.

### **Domestic engagement**

46 We are working with the Council of Financial Regulators' Distributed Ledger Technology working group, led by the Reserve Bank of Australia (RBA). The working group has representatives from the RBA, APRA, Treasury, Australian Transaction Reports and Analysis Centre (AUSTRAC), Office of the Australian Information Commissioner, Department of Industry, Science, Energy and Resources (DISER) and the Department of Home Affairs to monitor and engage with crypto asset developments like stablecoins.

### **International engagement**

47 We note crypto-asset related work occurring in international regulator forums where domestic regulators are represented. We are involved with the work of Fintech Network of the International Organization of Securities Commissions (IOSCO), which issued a report in March 2020 entitled *Global stablecoin initiatives* (PDF 544 KB). We also note that the RBA is the Australian representative in Financial Stability Board (FSB) working groups focused on financial innovation and stablecoins, and that APRA is the Australian representative in similar groups of the Bank of International Settlements.

48 We also undertake discussions with international regulators on a bilateral basis to discuss crypto-asset developments and emerging regulatory approaches.

### **Ernst and Young (EY) Fintech Census 2020—Regulation**

49 We note that the [EY Fintech Australia Census 2020](#) (PDF 3 MB) did not raise any significant issues in the remit of ASIC to act on as a priority.

50 We also note that the regulatory issues raised by the EY Fintech Australia Census 2020 were more general, cross-sectoral regulatory issues, such as:

- (a) taxation of start-up and scale-up businesses, including capital gains tax relief for tech start-up businesses first incorporated in Australia and reducing employee payroll taxes;
- (b) incentives for research and development investment by businesses, including making the research and development tax incentive more accessible;

- (c) allowing access to Open Banking via an intermediary; and
- (d) Australia adopting a digital identification framework.

## C Access to capital

- 51 In this section, we provide:
- (a) reference to information on the capital fundraising framework;
  - (b) up-to-date information on the crowd-sourced funding (CSF) market; and
  - (c) observations about the idea to amend the insider trading prohibition to consider trading by founding shareholders.

### General information in ASIC's first submission

- 52 We outlined in Appendix 3 of ASIC's first submission how the Corporations Act regulates fundraising activity, including how the laws may apply to raising funds as an early stage business. For the assistance of the Select Committee, this is contained in Appendix 4 of this submission.

#### Most recent crowd-sourced funding information

- 53 ASIC highlights that crowd-sourced funding has developed as a viable option for small businesses to raise capital—including fintech businesses.
- 54 As at 26 October 2020, our records indicate that the total amounts raised through crowd-sourced funding (for all kinds of businesses) was as follows:
- (a) Proprietary companies—59 completed CSF offers, raising a total of \$35.6 million. This represents an almost 100% increase in the one-year period since October 2019, in both the number of proprietary companies raising funds (30) and the amount of funds raised (\$17.8 million);
  - (b) Public companies—29 completed CSF offers, raising a total of \$22.6 million. In comparison to October 2019, this is an increase of 32% in the number of public companies raising funds (22) and an increase of 15% in the amount of funds raised (\$19.6 million).
- 55 We issued [Report 657](#) *Survey of crowd-sourced funding intermediaries* (REP 657) in April 2020. REP 657 contains more detailed information on the CSF market as at the end of 2019.

### Managing shareholdings for founders of start-up businesses

- 56 The Select Committee requested feedback on the potential for a scheme similar to the Rule 10b5-1 trading plans, available under the *Securities Exchange Act 1934* (US), to be offered in Australia.

57 We note that this subject has not been highlighted as an issue with ASIC in its engagement with the fintech sector, nor is it noted a priority regulatory issue in the most recent EY Fintech Census 2020.

### **Context—Legal position**

58 Rule 10b5-1 of the *Securities Exchange Act 1934* (US) provides an insider trading defence for passive investment schemes (commonly referred to as ‘non-discretionary trading’ in Australia). The defence allows company insiders, such as directors or executives, to passively trade in their company’s securities even when they have material non-public information. There is no specific defence of this type in Australia’s Corporations Act, although there are some exclusions for acquisitions by a director of a share qualification and under employee incentive schemes: see reg 9.12.01 of the Corporations Regulations 2001.

59 ASX Listing Rules 12.9–12.12 require listed entities to have a trading policy that restricts trading in the entity’s securities by key management personnel. ASX Guidance Note 27 *Trading policies* (GN 27) provides guidance on trading policies required by ASX Listing Rules 12.9–12.12. It says that a common exclusion from trading restrictions may occur under a ‘pre-determined investment or divestment plan’ that meets certain criteria (e.g. the key management personnel did not enter or amend the plan during a prohibited period and cannot exercise any discretion over trading): see p. 14. GN 27 notes that, even if a trade falls within this type of exclusion, it may still breach insider trading laws if it is undertaken or procured by someone in possession of inside information at the time: see p. 15.

60 There is some doubt as to whether non-discretionary trading plans would provide an effective defence to prosecution for contravention of the prohibition on insider trading in s1043A of the Corporations Act. In November 2003, the Corporations and Markets Advisory Committee found that non-discretionary trading plans may contravene the insider trading provisions and a majority of the committee recommended a specific defence be provided.

61 We have been asked to provide a ‘no-action’ letter confirming that we will not take enforcement action in relation to s1043A if trading takes place under a non-discretionary trading plan. We have declined to do so because we consider this is a matter for law reform.

### **Need for change**

62 We consider that whether an insider trading defence for non-discretionary trading plans is required is a policy matter for the Australian Government. We note the following as matters for the Government to consider:

- (a) The need for a Rule 10b5-1 defence is greater in the United States where, under the regulations of the Securities Exchange Commission (SEC), companies must provide quarterly financial reports. This would generally result in US-listed companies having four ‘blackout’ trading periods per year, and directors being subject to much narrower trading windows. In contrast, the majority of ASX companies are only required to provide financial reports twice a year, and would therefore generally have only two ‘blackout’ trading periods (broader trading windows).
- (b) There is some evidence that Rule 10b5-1 has been subject to manipulation in the United States, and has allowed insiders to achieve above market returns. Rule 10b5-1 has therefore been unpopular with key institutional investors and their views should be sought to ensure any reform does not discourage investment in Australian companies. The first systemic study of 10b5-1 trading plans published by Professor Jagolinzer in 2006 found that insiders participating in the plans beat the market by 6% over 6 months. This result suggests that 10b5-1 plans were being used in a way that took advantage of insider information – including early termination of plans preceding declines in share prices. In 2012 the Wall Street Journal reported statistical evidence of abusive trading by insiders. Cited in ‘*10b5-1 trading plans under the microscope*’, *Financier Worldwide* (May 2013). In December 2018, the [Council of Institutional Investors](#) reiterated their argument that Rule 10b5-1 plans should be restricted. To support this argument, the CII cited the example of Intel CEO’s sale of \$39m worth of stock shortly before the company announced a flaw in its technology.
- (c) ASX already attracts a relatively large number of technology listings for its size, and there may be other reasons why very large technology companies choose to list on larger international markets.

### Scope of any change

- 63 If a defence for non-discretionary trading plans is to be introduced, we suggest Government consider that any such defence be introduced for all companies and all ‘insiders’ and not restricted to founders of technology companies. The Corporations Act does not distinguish between companies based on their activities (and trying to determine whether a company was a ‘tech’ company would not always be straightforward).

## D Regulator skills and culture

- 64 In this section, we address and provides information on the following topics:
- (a) regulator accountability;
  - (b) our approach to ASIC’s new product intervention power;
  - (c) our approach to regtech.

### Regulator accountability

- 65 The second issues paper noted an interest in the accountability of regulators, and relevantly referred to the establishment of a regulator performance role within the Department of Prime Minister and Cabinet. This role would be aimed at measuring, benchmarking and evaluating regulator performance, and streamlining and consolidating performance reporting at a whole-of-Government level.
- 66 For the reference of the Select Committee, we have outlined the current regulatory accountability framework as it applies to ASIC and the changes intended to be made to that framework in the near future: see paragraphs 67–89.

#### The current regulator accountability framework

##### ASIC’s accountability to Parliament and other statutory bodies

- 67 We are held accountable through public transparency, our industry funding model and Government processes. Government processes include Parliamentary committees, the Australian National Audit Office (ANAO), the Minister and Government (whose processes will soon be supported by the Financial Regulator Oversight Authority (FRAA)).
- 68 ASIC is accountable to Parliament through the following Parliamentary committees:
- (a) Parliamentary Joint Committee on Corporations and Financial Services;
  - (b) Senate Standing Committee on Economics; and
  - (c) House of Representatives Economics Committee.
- 69 We are transparent about our commitments in our [Corporate Plan](#). We report annually on how we meet those commitments, and we are transparent about our work throughout the year.
- 70 Our Corporate Plan measures are integrated with our team business plans and senior executive accountability. To ensure delivery of outcomes, we



have a range of internal performance and consequence management tools available to any employer.

- 71 We have also adopted a new accountability and governance structure, designed to oversee implementation of team business plans. This structure will better manage strategic decisions about, and oversee progress on and delivery of, ASIC's work.
- 72 The ANAO conducts audits of selected agencies each year for compliance with the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). ASIC has not yet been subject to an ANAO audit of our performance reporting. ANAO also does audits outside the PGPA Act, and has audited other ASIC programs over time.
- 73 Periodically, the Australian Government sets out its expectations as to how ASIC fulfils its role and responsibilities in a Statement of Expectations, to which ASIC responds with a Statement of Intent. The Government's Statement of Expectations outlines its expectations about the role and responsibilities of ASIC, issues of transparency and accountability, and operational matters. It provides that the Minister and the Chair of ASIC will meet at least annually to discuss ASIC's performance.
- 74 ASIC's Annual Report is tabled in Parliament. This includes an annual performance statement under the PGPA Act, additional compliance reporting, audited financial statements and information on ASIC priorities and activities. The most recent report is the [Annual Report 2019–20](#).
- 75 We report annually against the Australian Government's Regulator Performance Framework, which assesses the impact of regulation on business, the community and individuals. The most recent report is [Report 663 Regulator Performance Framework: ASIC self-assessment 2018–19](#) (REP 663).

#### **ASIC's performance reporting model**

- 76 ASIC's performance reporting model is broadly in line with other Australian and overseas peer regulators, but can be improved. ASIC's performance measurement and reporting framework comprises:
- (a) regulatory and market outcomes, set out in our Corporate Plan and Portfolio Budget Statement, which are reported against in our Annual Report;
  - (b) other more specific tools to evaluate our performance and communicate with stakeholders, including self-assessment against the Regulator Performance Framework, service charter performance, our enforcement update report, our market integrity report and our regulatory reform report.

- 77 We have adapted our strategic planning process this year to respond to the impact of the COVID-19 pandemic. This is reflected in the [ASIC Interim Corporate Plan 2020–21](#). We have also improved our approach to performance reporting by:
- (a) more clearly specifying the threats and harms we will address, the methods we will use to address them and evidence we will rely on;
  - (b) including a number of project-specific measures taken from team business plans—this is intended to further develop the way we address the PGPA Act requirement that the Corporate Plan summarise how our performance will be measured and assessed; and
  - (c) more fully describing outcomes we are seeking to achieve.
- 78 We regularly report the volume and results of our supervision and enforcement activities in our Annual Report: see [Annual Report 2019–20](#). This will remain an important measure of our performance as an enforcement agency, and will continue to be of significant interest to our stakeholders and the wider community.
- 79 We use a multi-dimensional approach (i.e. using more than one regulatory tool) to addressing regulatory challenges and consumer harms. In reporting on our work, we combine quantitative and qualitative measures to provide a narrative about our approach. For example, our work in consumer credit insurance used six regulatory tools: surveillance, transparency ([Report 622 Consumer credit insurance: Poor value products and harmful sales practices](#) (REP 622)), enforcement investigations, remediation to consumers, guidance to industry on product design and sales practices, and intervention (banning unsolicited outbound telephone sales - see [Media Release \(19-335MR\) ASIC to ban unfair cold call sales of direct life insurance and CCI](#) (4 December 2019)).
- 80 We have project-specific measures that show the outcomes of regulatory actions. For example, following a report on total and permanent disability insurance, measuring whether claims handling improved, by looking at declined, withdrawn and disputed claims rates.

## **Changes to the regulator accountability framework**

### **ASIC's accountability to Parliament and statutory bodies**

- 81 The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry recommended that a new oversight authority for APRA and ASIC assess the effectiveness of each regulator. In accordance with that recommendation, the Australian Government has indicated that it intends to introduce legislation for the establishment of the Financial Regulator Assessment Authority (FRAA).

82 We expect that the FRAA will develop an overall framework for assessing ASIC and APRA's effectiveness and will report to Parliament.

### **Intended changes to ASIC's performance reporting**

83 We are reviewing ASIC's approach to performance measurement, with a view to more effectively illustrating ASIC's efficiency to better meet performance measurement obligations under the PGPA Act. The output of this work would be in addition to, and complement, operational statistics and case studies currently reported in our Annual Report.

84 Current work to enhance our performance measurement and reporting includes:

- (a) developing measures that will provide ongoing evidence of the efficiency of ASIC's operations and regulatory activities; and
- (b) developing and implementing a framework for measurement of the impact of our regulatory interventions that can be used to evaluate the outcomes and impact of regulatory interventions undertaken by ASIC.

85 The enhanced performance reporting framework will potentially include a series of discrete indicators of efficiency. Each indicator will have a target by which achievement is measured and will be aggregated at an organisational level.

86 Ultimately, our intention is to have a set of targets that we can clearly say have (or have not) been met, based on quantitative metrics or qualitative, evidence-based judgement.

87 Our objective is to better integrate our performance measures into an ongoing reporting record, and to use performance data to enrich the narrative in ASIC's annual performance statement. Performance metrics will also be useful for assessment by the FRAA.

88 Implementing this approach will take some time, as some data collection processes are yet to be implemented or baseline targets established.

89 We have engaged a consultant to support this work, which may include investigating novel indicators and methodologies and exploring best-practice approaches used by international peer regulators.

## **ASIC's approach to the new product intervention power**

### **General background**

90 On 5 April 2019, ASIC's powers were amended with the introduction of the product intervention power. The product intervention power allows ASIC to

temporarily intervene in financial and credit products where there is a risk of significant consumer detriment. The power can be used in a range of ways, up to and including banning products. We released guidance on 17 June 2020: see [Regulatory Guide 272](#) *Product intervention power* (RG 272).

91 The product intervention power reforms recognise that a product may cause detriment even if it complies with applicable laws (i.e. disclosure requirements, and the design and distribution obligations that commence on 5 October 2021). For example, ASIC is able intervene so that products or services developed as a result of competitive forces do not pose an undue risk of consumer detriment.

92 A proactive power that is broad and flexible allows ASIC to address harm arising from evolving products and practices without compromising the potential for innovation. The power could also limit or avoid the need for more prescriptive regulation in the future. And because the power is proactive and flexible, ASIC only needs to take enforcement action if there is non-compliance.

93 The product intervention is a critical tool for ASIC to respond to consumer detriment in a targeted, calibrated and timely way. It is particularly relevant when so many consumers are facing uniquely challenging circumstances with the impact of the COVID-19 pandemic.

### **ASIC's use of the product intervention power**

94 We are already using the product intervention power where we think it is needed:

- (a) On 22 August 2019, we announced proposals to address significant detriment to retail clients resulting from OTC binary options and contracts for difference (CFDs) (see [Consultation Paper 322](#) *Product intervention: OTC binary options and CFDs* (CP 322)).
- (b) On 12 September 2019, we used the power for the first time to ban a model of short-term credit product found to cause significant consumer detriment due to fees that, when combined, could add to almost 1000% of the loan amount (see [Media Release \(19-250MR\)](#) *ASIC makes product intervention order banning short term lending model to protect consumers from predatory lending*).
- (c) In October 2020, we intervened to impose conditions on the issue and distribution of CFDs to retail clients (see [Media Release \(20-254MR\)](#) *ASIC product intervention order strengthens CFD protections* (23 October 2020)). This order brought Australia into line with protections in force in comparable markets elsewhere. It targeted CFD product features and sales practices that amplified retail clients' losses—and those losses are significant. ASIC's previous reviews of the past few

years found that most retail clients lose money trading CFDs. During a volatile five-week period in March and April 2020, the retail clients of a sample of 13 CFD issuers made a net loss of more than \$774 million.

95 We note that in October 2020 the Federal Court ordered that AGM Markets Pty Ltd, OT Markets Pty Ltd and Ozifin Tech Pty Ltd pay \$75 million in pecuniary penalties for engaging in systemic unconscionable conduct while providing OTC derivative products (or contracts for difference referred to in paragraph 94 (a) above) to retail investors in Australia. This is the total highest penalty in ASIC’s history in a single proceeding. Clients lost about \$32 million from trading complex and risky products. This court decision continued to underscore our concerns with aspects of the operation of the retail OTC derivatives market.

96 We also note that we are considering using the product intervention power for particular continuing credit products where data shows that borrowers are incurring very high costs relative to the loan amount, and that these products are being issued to vulnerable consumers (see [Consultation Paper 330 Using the product intervention power: Continuing credit contracts](#) (CP 330)). We are also considering using the power for the sale of add-on insurance and warranty products sold with motor vehicles (see [Consultation Paper 324 Product intervention: The sale of add-on financial products through caryard intermediaries](#) (CP 324)).

## ASIC’s approach to regtech

97 We set out our approach to promoting regulatory technology and its regtech initiatives in 2018-19 in Section D of ASIC’s first submission: see Appendix 4 of this submission. In implementing our approach to regtech, we are careful to be technology neutral by focusing on risk management and compliance problems and providing opportunities for showcasing the potential of any form of technological applications to solve those problems.

98 We consider that regtech can help deliver for businesses ‘compliance by design’ business models, as well as better consumer and market integrity outcomes. See also, for example, the Productivity Commission’s information paper [Regulatory technology](#), published on 9 October 2020.

99 We note that the Australian regtech sector has developed into one of the world leaders for the concentration of regtech businesses: see Boston Consulting Group and RegTech Association, [Australia’s global regtech hub poised for growth: A perspective on supporting the local regtech sector to scale](#), published 27 October 2020.

## Our 2019–20 regtech initiatives

- 100 On 7 August 2018, ASIC received budget funding from the Australian Government of \$6 million over two financial years to help promote Australia as a leader in the development and adoption of regtech. As part of that goal, we developed a series of regtech initiatives that commenced in the 2018–19 financial year. This first set of initiatives showcased how businesses could use regtech solutions to deal with a range of compliance issues. Our aim was to promote better outcomes for consumers and market integrity. For the findings from this first series, see [Report 653 ASIC’s regtech initiatives 2018–19](#) (REP 653).
- 101 The COVID-19 pandemic affected our proposed 2019–20 regtech initiatives. We suspended a range of public showcases and regtech research initiatives, as we wanted to limit the demands on businesses as they handled the impact of COVID-19. In place of these suspended initiatives, we designed a small number of internal regtech (otherwise known as supervisory technology or ‘suptech’) initiatives. See the [ASIC regtech initiative series 2019–20 page](#) on the ASIC website.
- 102 We hosted two public regtech initiatives in 2019–20:
- (a) *Regtech remote services and supervision webinar* (14 July 2020)—A public information session. Its aim was to highlight the ability of regtech to contribute to the monitoring and compliance of financial services, as well as the remote supervision of staff.
  - (b) *Regtech lending demonstration and webinar* (20 August 2020)—A public problem-solving event. We prepared a curated, synthetic dataset for selected regtech providers to use, to demonstrate how artificial intelligence and machine learning can be used to support good lending practices.
- 103 We undertook five suptech initiatives in 2019–20:
- (a) *Financial promotions tool trial—COVID-19 response*—A trial with a regtech business. The business used machine-learning capabilities to help ASIC identify potential misconduct in financial services promotions that targeted vulnerable consumers.
  - (b) *Voice analytics framework*—We engaged a regtech consultancy firm to deliver an organisation-wide voice analytics operational framework. The purpose of the framework is to guide our supervisory and investigative projects that involve audio file reviews.
  - (c) *Data automation and process workflow trial*—A proof-of-concept project seeking productivity improvements for our Licensing and Misconduct and Breach Reporting teams. The project aimed to do this by automating data flows and reporting of matters of interest.

- (d) *Natural language processing prospectus project*—A first-phase application of natural language processing to extract core prospectus information for supervisory analysis.
- (e) *Enhanced evidence document score project*—We engaged regtech consultants with a deep understanding of the analytics capabilities of ASIC’s evidence document system (Ringtail). The specialist consultants developed an enhanced evidence score capability, which they trialled on live investigations.

104 We will release a report on our regtech initiatives for 2019–20 soon.

### **Regtech initiatives in 2020–21**

105 We will continue to support engagement, networking, information sharing and problem solving with the regtech community during 2020–21. We will undertake these activities on a more limited basis, given the special budget funding for ASIC to promote regtech ceased on 30 June 2020. In particular, we will continue to:

- (a) engage with and, where relevant, provide informal assistance to regtech firms through the Innovation Hub;
- (b) host a quarterly Regtech Liaison Forum, where ASIC, regulators and industry can share information and developments across the sector;
- (c) act as an observer with limited engagement for regtech trials undertaken by industry when the subject relates to an ASIC priority; and
- (d) engage in international information-sharing opportunities on regtech. For example, we are a steering group member of the Global Financial Innovation Network (GFIN) (made up of over 50 regulators) and chair a regtech workstream for 2020-21.

106 We intend to host additional webinar-based regtech panel discussions during the remainder of 2020–21. We are considering webinar panel discussions on some of the following topics:

- (a) breach reporting;
- (b) debt collection with hardship;
- (c) design and distribution of financial and credit products;
- (d) digital financial reporting; and
- (e) cyber and operational resilience.

107 We will update industry in the new year on the exact number and subject-matter of our regtech webinars for 2021. We will contact them through the Regtech Liaison Forums, the regtech news on the ASIC website, and our regtech email subscription list.

## E Trade and international policy

### ASIC's approach to international engagement

108 We detailed our international engagement in Section C of ASIC's first submission to the Select Committee: see Appendix 4 of this submission.

109 In the remainder of this section, we provide and update on some developments in ASIC's international engagement.

### UK–Australia fintech bridge

110 Paragraphs 39 and 74 to 81 and Appendix 1 of ASIC's first submission include a discussion of the key features of, and the commitments made under, the UK–Australia fintech bridge.

111 The UK–Australia fintech bridge envisaged the following initiatives:

- (a) facilitating the entry of fintech start-up businesses from each other's jurisdictions into their respective regulatory sandboxes;
- (b) exploring opportunities to enable quicker licensing of innovative businesses that are already licensed or authorised in the other jurisdiction; and
- (c) consider developing shared approaches towards technologies that require research and testing.

112 The impact of the COVID-19 pandemic required that some of these activities be suspended.

113 However, during our most recent quarterly dialogue with the FCA in late November 2020, ASIC and the FCA agreed to reflect on options to refresh these initiatives in the coming year. These options include conducting a series of virtual meetings (or webinars) to share deeper insights and experience on fintech and regtech developments for staff at ASIC and the FCA (instead of secondments or visits), and considering opportunities for joint fintech and regtech initiatives.

114 We also note that the ERS exemption (described in paragraphs 22–31) may offer an attractive proposition to UK-based fintech businesses to test their innovative businesses in Australia, including using the exemption as a short-term alternative to obtaining an Australian financial services licence or credit licence. The Innovation Hub is committed to providing informal assistance and guidance to these and other fintech businesses to navigate Australia's regulatory requirements.



## **Mutual recognition of licensing frameworks—Observations**

- 115 ASIC notes that the Select Committee may be interested to support some form of mutual recognition of licensing frameworks with certain jurisdictions. Based on ASIC's experience with measures like this, we think the Australian Government consider the following issues if such an approach were to be adopted:
- (a) It is more likely to be successful if there is government-to-government commitment and agreement.
  - (b) It is likely changes would be needed in each relevant jurisdiction's legislative framework to reflect the agreement.
  - (c) It is likely a whole-of-government priority will be needed for the design and implementation of the agreed approach.
- 116 We do not consider that such a policy outcome can be achieved only at a regulator-to-regulator administrative level, given different mandates, powers and competing priorities.
- 117 We are making these observations based on our experience with:
- (a) Australian–NZ mutual recognition under the Corporations Act for certain activities;
  - (b) the Asia–Pacific collective investments mutual recognition framework; and
  - (c) our review and amended approach to foreign wholesale financial service providers.

## **GFIN cross-border testing trials**

- 118 ASIC is also an active participant of GFIN. Information on the purpose and work of the GFIN is described in paragraphs 42 to 44 of ASIC's first submission: see Appendix 4. GFIN now has over 50 international regulators as its members and is growing.
- 119 The GFIN launched an initiative to facilitate cross-border testing in November 2020. This initiative aims to give fintech businesses the opportunity to test their services in multiple jurisdictions, provided they meet the requirements of the respective jurisdictions.
- 120 ASIC is participating in the GFIN cross-border testing trials. This will enable overseas fintech businesses to potentially use the ERS exemption to provide innovative services to Australian consumers.
- 121 ASIC also has a representative that is the chair of a recently-launched GFIN Regtech Ecosystem Special Unit. This unit has the objective of sharing

information and insights on regtech ecosystems to inform regulatory knowledge and identify use cases for future areas of collaboration.

- 122 The GFIN Regtech Ecosystem Special Unit plans to coordinate and proceed with two projects. The first project will aim to prepare a brief report about regtech ecosystems in various jurisdictions and the approach taken by agencies in engaging with regtech. This project will be led by ASIC. The second project will produce practical guidance for regulators on conducting regtech ‘techsprints’ and other forms of showcase events. This project will be led by the Financial Industry Regulatory Authority (FINRA) (US). The unit aims to have outcomes by May 2021 (if not earlier).

## **F Future engagement framework**

- 123 ASIC is open to be engaged on an as-needed basis in any Australian Government advisory groups on fintech and regtech.
- 124 ASIC’s Innovation Hub has established and maintained a network of regulators, agencies, industry bodies and academia. We engage with this network on a regular basis to inform areas of focus for our work and to share information.
- 125 Our network includes the Digital Finance Advisory Panel, with whom we engage on a quarterly basis. More details are available in paragraphs 32 to 34 of ASIC’s first submission.
- 126 We also now engage on a monthly basis with industry bodies such as Fintech Australia and the Regtech Association.

## **G Updates on other topics of past interest to the Select Committee**

127 ASIC notes that the Select Committee has been interested in a number of topics, which it has raised with ASIC during the inquiry. Most of these subjects have been discussed in the submission, with the exception of:

- (a) the review of the ePayments Code;
- (b) screen scraping; and
- (c) ASIC's most recent review of the buy now pay later sector.

128 In this section, we provide updates on these the topics.

### **Review of the ePayments Code**

129 We are aiming to release an updated ePayments Code by the middle of 2021. Our current review is primarily aimed at assessing the code's adaptability to, and fitness for purpose in light of, the significant changes we have seen in electronic payments technology (including consumers' needs as a result of their take-up of such technologies) and the changes we will undoubtedly continue to see in this space.

130 Some examples of areas within the ePayments Code that have not kept up, or soon may not keep up, with the advancement of technology are:

- (a) the code's assumption that users (e.g. account holders) rely solely on account passwords or personal identification numbers (PINs) (comprising numbers, letters or a combination of both) to gain access to their bank accounts and to authenticate payments, despite the emergence of other means of authentication (e.g. biometrics and tokens);
- (b) the code's assumption that users make payments using only subscriber-issued (e.g. bank-issued) 'devices' (e.g. credit and debit cards), despite the increasing ability for consumers to make, for instance, electronic funds transfer at point of sale (EFTPOS) payments using their own device (like a smart phone or watch);
- (c) the fact that the code's protections—for example, those relating to retrieving mistaken internet payments, assisting customers with obtaining lists of their periodic payments arrangements (e.g. direct debits) and switching to another authorised deposit-taking institution (ADI)—are based on the existence of only one payments platform (i.e. the Bulk Electronic Clearing System), despite the recent commencement of the New Payments Platform;

- (d) the range of opportunities that may arise from the consumer data right (CDR) and Open Banking in terms of facilitating a customer's switching to another ADI.

131 We are presently finalising some initial proposals for updates to the ePayments Code, which we will detail to a range of key stakeholders as part of a targeted consultation round. The purpose is to get feedback on the workability of the proposals so that we do not waste time in presenting unworkable proposals in our subsequent consultation (which we hope to issue early in 2021). Another benefit of the targeted consultation is that we will have an opportunity to ensure we understand various concepts correctly and are therefore providing the right solutions and approaches.

## Screen scraping

132 The practice involves a customer inputting their internet banking credentials (login and password) so that the provider can obtain access to the customer's bank statements. Screen scraping is used by numerous service providers of useful consumer products and services, such as personal financial management or budgeting tools and service providers who provide some lenders with bank statement analytical services to assist the lender in assessing a loan applicant's ability to service a loan.

133 We have, to date, refrained from either promoting or warning consumers against engaging the services of providers who use screen scraping. However, we have previously noted the risks perceived by some stakeholders (e.g. relating to data security and breach of a customer's obligation to keep their banking passcodes secret).

134 It should be noted too that Scott Farrell (who prepared the Australian Government's consumer data right report) has maintained the view, to date, that Open Banking is not intended to prohibit screen scraping but, in time, it is expected that Open Banking would make the practice redundant. He has previously mentioned that screen scraping, existing alongside Open Banking, at least initially, will also provide a good test for the effectiveness and efficiency of Open Banking as it is further rolled out.

135 For now, some fintech feedback to ASIC has been that CDR is costly to access and also might not offer the same richness of data that screen scraping does. Further, Open Banking has only rolled out to the big four banks so far (the remainder of ADIs are to follow in stages from mid-2021). Some argue that, even once Open Banking rolls out in a meaningful way, screen scraping will provide a reliable fail-safe, in case the system hosting an ADI's application programming interface (API) is temporarily down.

- 136 The Australian Competition and Consumer Commission (ACCC), which is the lead regulator for Open Banking, has gradually been rolling out new frameworks within the CDR to present various options for service providers (data recipients) to enter the framework in different ways to accommodate various structures (e.g. as accredited intermediaries, unaccredited trusted third parties). A digital data capture provider who currently uses screen scraping technology might find itself able to fit into the CDR framework in some way, but we do not know the precise details of any hurdles to access or the particular models made available by the ACCC that will be most attractive (the model type may depend on the particular service the provider wishes to offer and how their business is structured).
- 137 Presently, the ePayments Code, while not either prohibiting or expressly permitting screen scraping, is perceived by many to present a ‘grey area’ with regards to the topic. This is because the code allows a customer to disclose their passcodes to another person if their ADI has expressly or implicitly promoted, endorsed or authorised the use of a service. Some stakeholders argue that, on the basis of this wording, if a customer’s ADI knows the customer is using screen scraping services but the ADI does not act to prevent this, or if the ADI itself uses such services for its own specific services, then a customer’s use of those services for their own purposes is implicitly permitted by the ADI. Others would argue this is not the appropriate interpretation of the provisions. It is apparent that this grey area is not meeting the needs of consumers to be clear on the status of the code protections when engaging the services of these providers.
- 138 This is a highly complex issue, with vastly opposing stakeholder points of view. Options for addressing the grey area will be one topic of our upcoming targeted stakeholder consultations. While subject to further stakeholder and then public consultation, it might well be that we seek to remove grey areas while still refraining from either expressly or implicitly prohibiting or permitting screen scraping.

## Buy now pay later

- 139 On 16 November 2020, we released our follow-up report on buy now pay later arrangements: see [Report 672](#) *Buy now pay later: An industry update* (REP 672). This follows [Report 600](#) *Review of buy now pay later arrangements* (REP 600), which we released in November 2018.
- 140 REP 672 sets out our observations to inform industry, government and consumers of:
- (a) the continued growth and evolution of the buy now pay later industry;
  - (b) the impact of buy now pay later arrangements on consumers; and

(c) recent regulatory developments relevant to buy now pay later arrangements.

141 The buy now pay later industry continues to grow and evolve with the total amount of credit extended almost doubling (from \$3.1 billion to \$5.6 billion) from 2017–18 to 2018–19. These arrangements are used by as much as 30% of the Australian adult population.

142 While our review found buy now pay later arrangements are working for many, it also found that some consumers (about one in five) have missed payments.

143 Buy now pay later providers often have business models such that they are not regulated under the *National Consumer Credit Protection Act 2009*. However, buy now pay later arrangements are regulated as credit under the ASIC Act, which means that the more general consumer protections provisions (e.g. prohibitions against misleading, deceptive and unconscionable conduct) of that Act apply.

144 Buy now pay later arrangements are subject to ASIC’s new product intervention power and the forthcoming design and distribution obligations (from October 2021). These new regulatory tools focus on consumer outcomes and harms, rather than imposing prescriptive compliance obligations. The tools will play an important role in promoting good consumer outcomes.

145 REP 672 also points out that there is a significant role for industry self-regulation, through the industry code of practice being developed by the Australian Finance Industry Association, to ensure good consumer outcomes.

146 On 21 October 2020, the Government announced the [Review of the Australian payments system](#), to ensure it remains fit for purpose and responsive to advances in payments technology. This review, led by Scott Farrell, will not explicitly consider specific regulatory settings that are currently in place, but rather focus on the overall regulatory architecture.

147 Separately, the RBA is also undertaking its periodic review of payments regulation. Among other things, this review will consider the ‘no-surcharge’ rules that are typically imposed by buy now pay later providers on merchants. This review is expected to be completed in 2021.

148 We note that the question of further regulation of the buy now pay later industry is a matter for government, which REP 672 may help inform.

## Appendix 1: Innovation Hub's engagement outcomes

- 149 This appendix sets out details of the engagement outcomes from the activities of ASIC's Innovation Hub. The activities and outcomes described are as at the end of October 2020.
- 150 See Figure 1 for a summary of the fintech and regtech organisations we have engaged with.

### Fintech engagement

- 151 On average, fintech businesses that engage with the Innovation Hub before submitting their application for approval of an AFS or credit licence receive approval 28% faster than those seeking these licences without assistance (112 days compared to 144 days).
- 152 We have received 151 AFS or credit licence applications from 143 fintech businesses. Of these 151 licence applications:
- (a) 103 were granted;
  - (b) 41 were rejected or withdrawn; and
  - (c) 7 are currently under assessment.
- 153 We granted 103 licences to 98 entities, including 84 full licences granted to 82 entities and 19 licence variations granted to 16 entities.
- 154 The licences granted cover a wide spectrum of fintech business types:
- (a) marketplace lending (20 licences);
  - (b) digital advice (15 licences);
  - (c) non-cash payment facilities (23 licences);
  - (d) crypto currency (4 licences);
  - (e) consumer credit (19 licences);
  - (f) CSF intermediaries (43 licences, 40 applications received after the enactment of the CSF legislation);
  - (g) neo banks (4 licences); and
  - (h) 16 licences were granted to various other entities, which includes, for example, insurance services.

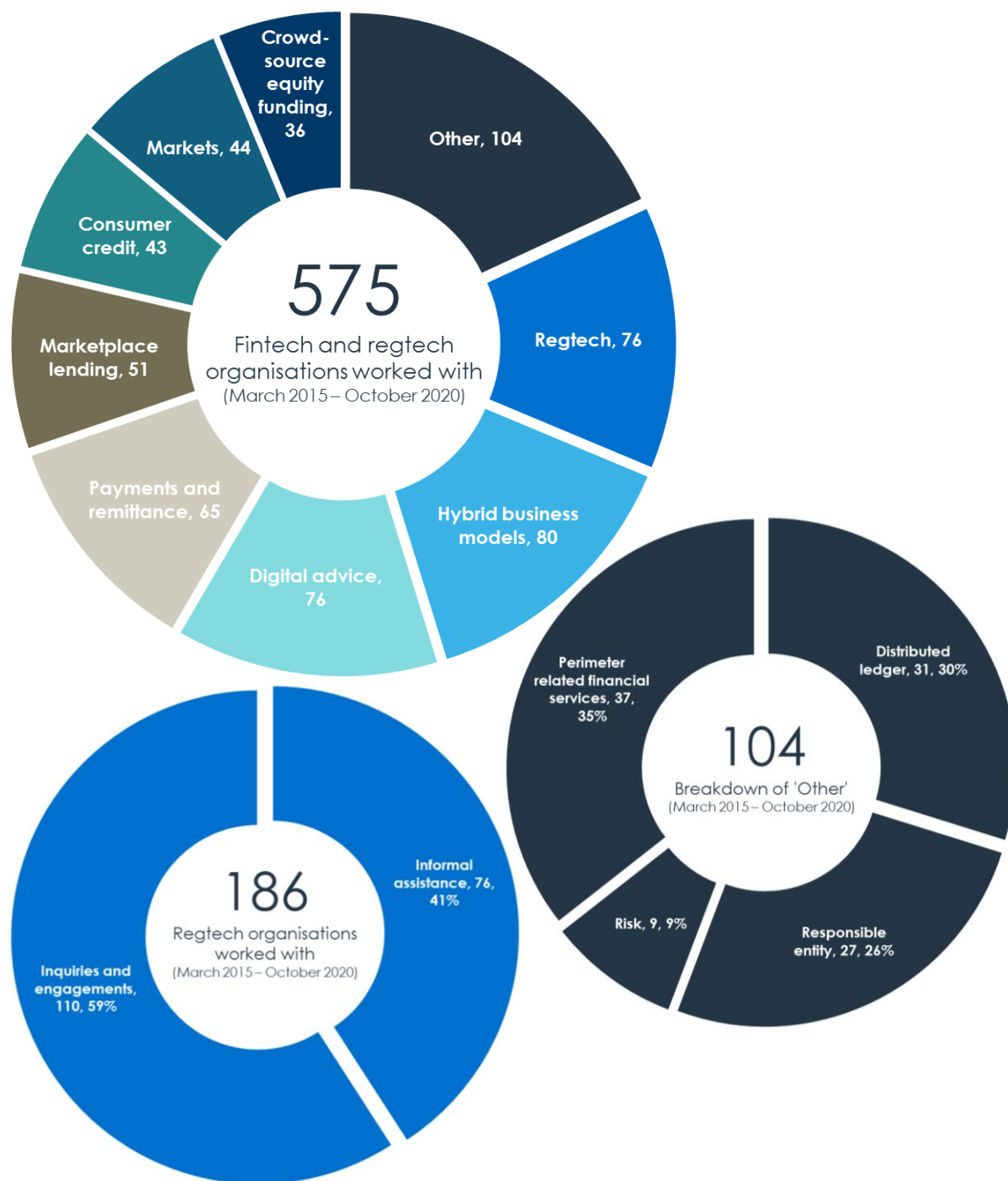
Note: Some entities have been granted licence applications or variations that cover more than one level of business model.



## Regtech engagement

155 As at the end of October 2020 we have engaged with 186 regtech businesses and assisted them with their inquiries.

**Figure 1: ASIC’s engagement with fintech and regtech organisations—March 2015–October 2020**



Note: See Tables 1 to 3 for the data shown in this figure (accessible version).

**Table 1: ASIC’s engagement with fintech and regtech organisations – March 2015-October 2020**

Business model	Number of organisations
Other	104
Regtech	76
Hybrid business models	80
Digital advice	76
Payments and remittance	65
Marketplace lending	51
Consumer credit	43
Markets	44
Crowd-source equity funding	36
Total	575

Source: ASIC's Innovation Hub internal engagement tracking

**Table 2: Breakdown of ‘Other’ – March 2015-October 2020**

Business model	Number of organisations
Distributed ledger	31
Responsible entity	27
Risk	9
Perimeter related financial services	37
Total	104

Source: ASIC's Innovation Hub internal engagement tracking

**Table 3: ASIC’s engagement with regtech organisations – March 2015-October 2020**

Type of engagement	Number of organisations
Informal assistance	76
Inquiries and engagements	110
Total	186

Source: ASIC's Innovation Hub internal engagement tracking

## Appendix 2: ASIC's recent fintech enforcement actions

156 In this appendix, we provide examples of ASIC's recent deterrence actions relating to technology-based activities.

### Unauthorised access and insider trading

157 The emergence of cyber-related offending is among the most significant concerns for financial markets and the economy at large. Given the central role that firms operating in Australia's financial markets play in our economy, the cyber resilience of these firms and participants in our financial markets is a key focus for ASIC.

158 We continue to pursue cyber-related market offending. We investigated information technology (IT) consultant Steven Oakes and found that between January 2012 and February 2016 Mr Oakes hacked into the private computer network of Melbourne-based financial publisher, Port Phillip Publishing (PPP). Mr Oakes attended within the vicinity of PPP's secure Wi-Fi network and used hacking software to intercept and decrypt Wi-Fi data to obtain the network login credentials of PPP staff. He did this with the intention of using PPP's information to engage in insider trading.

159 The inside information delivered buy recommendations for shares—in particular, ASX listed companies from unpublished PPP stock recommendation reports. The publication of a buy recommendation by PPP for a particular company typically caused an increase in that company's share price. Mr Oakes used this inside information on 70 occasions to buy shares in 52 different companies before the reports with the buy recommendations were published. He made profits from selling the shares soon after the publication of the reports.

160 Mr Oakes plead guilty to a total of 11 charges for insider trading, unauthorised access to data with the intention to commit a serious offence (insider trading) and the alteration of electronic devices. On 25 June 2019, he was sentenced in the County Court (Melbourne) to a total effective sentence of three years imprisonment, and ordered that he be released after serving 18 months of the term of imprisonment, on his own recognisance to be of good behaviour for 18 months.

## Superannuation identity theft

- 161 ASIC and the Australian Federal Police (AFP) have conducted investigations (as part of the Australian Government’s joint-agency Serious Financial Crime Taskforce) into a major fraud and identity theft syndicate, which resulted in alleged thefts from the superannuation and share trading accounts of innocent victims worth of millions of dollars. A woman has been charged.
- 162 ASIC and the AFP allege the woman worked as part of a syndicate which used fraudulently obtained identities to commit large-scale online fraud.
- 163 It is alleged the syndicate used stolen identity information purchased from dark net marketplaces, together with single-use telephone SIM cards and fake email accounts, to undertake an ‘identity takeover’.
- 164 These identities, fraudulently created to mimic real individuals who unknowingly had their identities compromised, were then used to open bank accounts at various Australian ADIs. Investigations have uncovered at least 70 bank accounts created using fraudulently-obtained identities to date.
- 165 Once the false identities and accounts were established, ASIC and the AFP allege the syndicate committed cybercrime offences to illegally steal money from the superannuation accounts of these victims, and from their share-trading accounts in ASX-listed companies.
- 166 This matter highlights the challenging era of the digitalisation of the criminal economy. Cybersecurity threats such as data breaches and financial system attacks are a major concern for ASIC. We will continue to pursue cyber-related market and superannuation offending. We will also emphasise the need for institutions to maintain their obligations to ensure they have adequate cyber resilience. Investigations into the syndicate are continuing, and further arrests and charges have not been ruled out.

## OTC derivatives to retail clients

- 167 The size of the Australian market for OTC retail derivatives has grown considerably over recent years, through the increase in the number of clients and transactions, as well as gross annual turnover. With that growth, there has been a dramatic increase in complaints to ASIC about conduct relating to OTC retail derivatives.
- 168 As part of our multi-pronged strategy to address potential harm to retail investors, we have and will continue to take enforcement action against AFS licensees and others that offer OTC retail derivatives. We will also take action against related individuals for breaches of law.

- 169 We have several ongoing investigations relating to AFS licensees and others that offer OTC retail derivatives. We will continue to take strong enforcement action against AFS licensees and their related parties in relation to the offering of OTC retail derivatives when misconduct is detected.
- 170 In February 2018, we obtained interim injunctions and warned investors against AGM Markets, OT Markets and Ozifin. On 9 November 2018, we cancelled AGM Markets' AFS licence after an ASIC investigation found AGM Markets' financial services business involved core elements of unconscionability and unmanaged conflicts of interest and followed a business model that disregarded key conduct requirements. We also disqualified a former director of AGM Markets for eight years.
- 171 On 11 October 2019, the Federal Court of Australia ordered that AGM Markets, OT Markets and Ozifin Tech be wound up on just and equitable grounds. The court also ordered that separate liquidators be appointed to each of the three entities. On 16 October 2020, the Federal Court ordered that AGM Markets, OT Markets and Ozifin Tech pay a total of \$75 million in pecuniary penalties, after these entities were found to have engaged in systemic unconscionable conduct while providing OTC derivative products to retail investors in Australia. The court found that Australian investors lost over \$30 million as a result of the conduct.
- 172 The companies used account managers, often located offshore, to engage with retail investors in Australia. The court found that the account managers and the companies engaged in misleading and deceptive conduct, provided unlicensed personal advice, and advice which was not in the best interests of their clients.

## **Cryptocurrency—Unlicensed platform**

- 173 John Bigatton, the former Australian national promoter for BitConnect, an online cryptocurrency platform, was charged following an ASIC investigation. The matter is being prosecuted by the Commonwealth Director of Public Prosecutions (CDPP).
- 174 We allege that Mr Bigatton was the Australian national promoter of BitConnect from around 14 August 2017 to 18 January 2018. It is estimated that BitConnect had a market capitalisation of over US\$2.5 billion in December 2017, prior to its collapse in early 2018.
- 175 We allege that Mr Bigatton operated an unregistered managed investment scheme known as the BitConnect Lending Platform in Australia, and that he provided unlicensed financial advice on behalf of another person in, among other things, seminars he conducted at various locations around Australia.

176 We further allege that during four seminars conducted by Mr Bigatton, he made false or misleading statements which were likely to induce investors to apply for, or acquire, interests in the BitConnect Lending Platform. On 1 September 2020, we banned Mr Bigatton from providing financial services for seven years.

## Appendix 3: Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> <li>• banks;</li> <li>• building societies; and</li> <li>• credit unions</li> </ul>
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFP	Australian Federal Police
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC's first submission	<i>Submission by the Australian Securities and Investments Commission, December 2019</i>  Note: See Appendix 4 of this submission.
ASX	ASX Limited or the exchange market operated by ASX Limited
AUSTRAC	Australian Transaction Reports and Analysis Centre
CDR	Consumer data right
CFD	A contract for difference
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 330 (for example)	AN ASIC consultation paper (in this example numbered 330)

Term	Meaning in this document
credit licence	An Australian credit licence under s35 of the National Credit Act that authorises a licensee to engage in particular credit activities
CSF offer	An offer of ordinary shares that is made under the CSF regime in Pt 6D.3A of the Corporations Act Note: See s738B of the Corporations Act.
CSF intermediary	An AFS licensee whose licence expressly authorises the licensee to provide a crowd-funding service Note: See s738C of the Corporations Act.
ERS exemption	Enhanced regulatory sandbox exemption
EY	Ernst and Young
FCA	Financial Conduct Authority (UK)
FINRA	Financial Industry Regulatory Authority (US)
fintech	Financial technology
FRAA	Financial Regulator Oversight Authority
FSB	Financial Stability Board
GFIN	Global Financial Innovation Network
GN 27	ASX Guidance Note 27 <i>Trading policies</i>
ICO	Initial coin offering
INFO 248 (for example)	An ASIC information sheet (in this example numbered 248)
IOSCO	International Organization of Securities Commissions
OTC	Over the counter
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PPP	Port Phillip Publishing
RBA	Reserve Bank of Australia
regtech	Regulatory technology
REP 657 (for example)	An ASIC report (in this example numbered 657)
RG 272 (for example)	An ASIC regulatory guide (in this example numbered 272)



<b>Term</b>	<b>Meaning in this document</b>
s1043A	A section of the Corporations Act (in this example numbered 1043A), unless otherwise specified
SEC	Securities Exchange Commission (US)
Select Committee	Senate Select Committee on Financial Technology and Regulatory Technology
suptech	Supervisory technology

## Appendix 4: ASIC's first submission

177 Find ASIC's first submission over the page.



**ASIC**  
Australian Securities &  
Investments Commission

# **Select Committee on Financial Technology and Regulatory Technology**

## **Submission by the Australian Securities and Investments Commission**

December 2019

# Contents

<b>A</b>	<b>About this submission .....</b>	<b>3</b>
	Submission content .....	3
	ASIC’s role .....	3
<b>B</b>	<b>ASIC’s approach to financial innovation.....</b>	<b>5</b>
	ASIC’s Innovation Hub.....	5
<b>C</b>	<b>ASIC’s international engagement .....</b>	<b>12</b>
	ASIC bi-lateral cooperation agreement .....	12
	Different mandates and frameworks of international regulators.....	12
	UK-Australia FinTech Bridge .....	13
	International Organization of Securities Commissions (IOSCO) Fintech Network.....	13
	Global Financial Innovation Network (GFIN) .....	14
<b>D</b>	<b>ASIC’s approach to regulatory technology.....</b>	<b>15</b>
	ASIC general approach to regulatory technology.....	15
	ASIC’s Regtech Initiative Series .....	16
<b>E</b>	<b>Government’s Enhanced Sandbox .....</b>	<b>19</b>
	<b>Appendix 1: ASIC’s international engagement – further detail .....</b>	<b>20</b>
	Referral mechanism.....	20
	UK-Australia FinTech Bridge .....	20
	<b>Appendix 2: Options around digital financial product advice .....</b>	<b>23</b>
	Digital advice .....	23
	Regulatory Guide 255 Providing digital financial product advice to retail clients (RG 255) .....	24
	<b>Appendix 3: Capital raising .....</b>	<b>26</b>
	Raising funds at early stages.....	26
	Growing the business .....	29
	Capital raising once listed.....	29

## A About this submission

### Submission content

- 1 ASIC welcomes the Select Committee on Financial Technology and Regulatory Technology (Select Committee) and the opportunity this presents to reflect on Australia's financial technology (fintech) and regulatory technology (regtech) sectors, as well as consider opportunities for the Government to promote these sectors to enhance Australia's economic competitiveness.
- 2 In this submission, ASIC provides an overview of its approach to financial innovation and its experience with the fintech and regtech sectors as background and context for the Select Committee.
- 3 This submission provides information that is relevant to a range of issues surveyed by the Select Committee. In the appendices, ASIC provides more detailed information on some issues raised by the Select Committee (i.e. digital advice and international engagement).
- 4 ASIC looks forward to the opportunity to appear before the Select Committee in due course, including to answer any specific questions the Select Committee may have of ASIC.

### ASIC's role

- 5 ASIC is Australia's corporate, markets, financial services and consumer credit regulator. ASIC's vision and mission reflect our role under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
- 6 Our statutory role under the ASIC Act is to:
  - (a) maintain, facilitate and improve the performance of the financial system and the entities in it
  - (b) promote confident and informed participation by investors and consumers in the financial system
  - (c) administer the law effectively and, with minimal procedural requirements, enforce and give effect to the law
  - (d) receive, process and store information that is given to us, efficiently and quickly
  - (e) make information about companies and other bodies available to the public as soon as practicable
  - (f) take whatever action we can, and which is necessary, to enforce and give effect to the law.

7 ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.

8 It also has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system, by promoting the adoption of approved industry standards and codes of practice, the protection of consumer interests, community awareness of payments system issues, and sound customer–banker relationships.

### **ASIC’s vision**

9 ASIC’s vision is a fair, strong and efficient financial system for all Australians.

### **ASIC’s mission**

10 ASIC’s regulatory mission is to support its vision through the use of all its regulatory tools to:

- (a) change behaviours to drive good consumer and investor outcomes
- (b) act against misconduct to maintain trust and integrity in the financial system
- (c) promote strong and innovative development of the financial system
- (d) help Australians to be in control of their financial lives.

11 ASIC’s registry mission is to support its vision by:

- (a) providing efficient and accessible business registers that make it easier to do business.

## B ASIC's approach to financial innovation

- 12 Section B provides general information on ASIC's approach to financial innovation. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the fintech and regtech industries in Australia? (p.12)
  - (b) Do current regulatory settings support the growth of local fintech and regtech companies in Australia? (p.13)
  - (c) Is ASIC's fintech regulatory sandbox useful for start-ups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector? (p.14)
  - (d) How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia? (p.15)

### ASIC's Innovation Hub

- 13 ASIC established its Innovation Hub in March 2015 to help fintech and regtech businesses navigate Australia's regulatory system in the financial services sector without compromising investor and financial consumer trust and confidence. In so doing, the Innovation Hub streamlines ASIC's engagement with the fintech and regtech sectors and removes red tape where possible.
- 14 New and enhanced technologies, combined with increased computing capabilities, are enabling the development of new products and services that meet the needs of financial consumers and market participants more efficiently and cost effectively. These advances have the potential to enhance financial inclusion, bridge financing gaps and develop financial capabilities.
- 15 The Innovation Hub's overarching objective is to promote the provision of fair and professional financial services and markets in a digital environment while balancing the benefits of innovation against the potential risks to consumers and market integrity. To achieve this, ASIC applies a 5-point approach to innovation. This involves:
- (a) **Engagement** with the fintech and regtech sectors to maintain and support effective information sharing. Engagement activities include industry events (conferences, summits, forums) and initiatives (TechSprints, webinars, presentations); regular meetings with fintech and regtech networks (roundtables, quarterly meetings); addresses and

- panel discussions; international roundtables and conferences; as well as a quarterly Regtech Liaison Forums (more information in section B.19).
- (b) **Streamlining** ASIC's assistance to entities with innovative business models through the provision of informal assistance (accelerating their licensing applications) (more information in section B.20) and access to the Regulatory Sandbox (more information in section B.25).
  - (c) **Enhanced communication**, including the establishment of a one-stop-shop Innovation Hub website that contains tailored resources and guidance (more information in section B.29).
  - (d) **Coordination** refers to ASIC's internal innovation approach through its centralised Innovation Hub and disseminating information via senior committees, internal working groups, staff onboarding, and external networking. In addition, ASIC has established a network of domestic agencies dealing with innovative businesses with a view to promote information sharing and a cross-agency coordinated approach (more information in section B.31).
  - (e) ASIC formed a **Digital Financial Advisory Panel** to help inform how it should focus its efforts within the fintech and regtech sectors. DFAP brings together fintech industry representatives (FinTech Australia, the RegTech Association, fintech service providers) with academics (University of New South Wales (UNSW), Australian National University (ANU)) as well as other national authorities and regulators (the Australian Treasury, Australian Prudential Regulation Authority (APRA), Australian Transaction Reports and Analysis Centre (AUSTRAC), Office of the Australian Information Commissioner (OAIC), Australian Competition and Consumer Commission (ACCC), Reserve Bank of Australia (RBA)) to discuss issues of the day in the fintech and regtech sectors. It also provides an opportunity for ASIC to receive feedback as well as communicate changes within the industry (more information in section B.32).

### EY Fintech Australia Census 2019

- 16 ASIC notes that the [EY FinTech Australia Census 2019](#) identifies the most important subjects where government support would be most beneficial, in relation to promoting the fintech and regtech sectors, are open banking, accelerator and incubator support as well as government incentives, such as tax allowances (p.5).
- 17 Like previous years, the census identifies a range of areas of interest from fintech firms to promote the sector, including talent, capital, demand and the environment, in addition to policy (p.7).
- 18 On regulation and policy, the census identifies taxation issues and open banking as the highest priority topics. The regulatory framework



administered by ASIC has some references, but at a lower priority such as the operation of the sandbox (p.29).

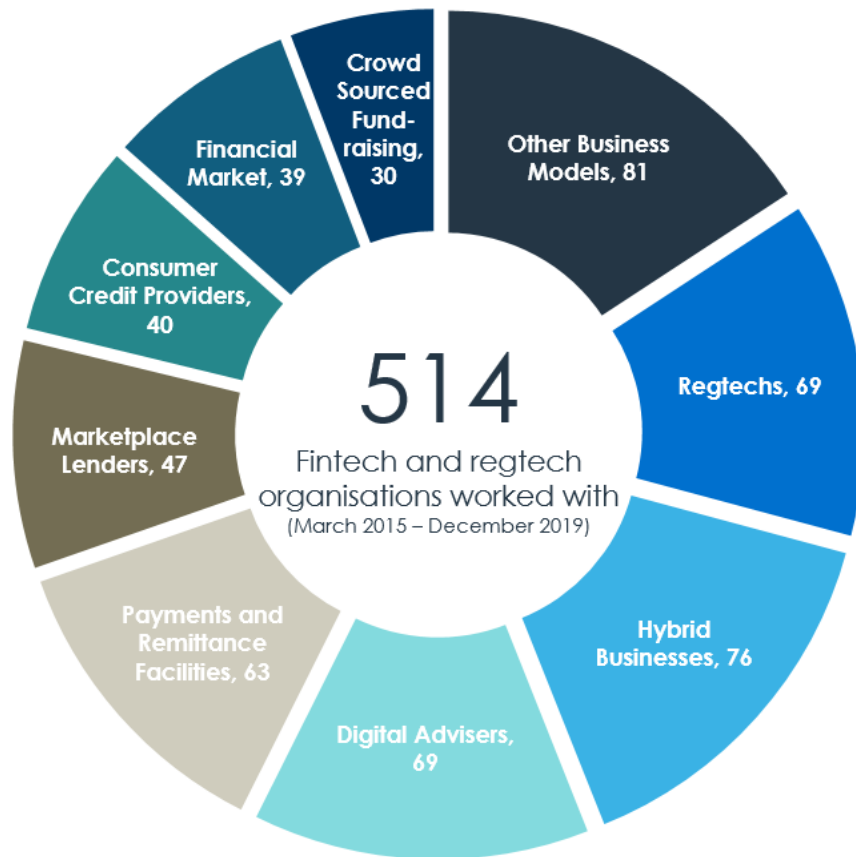
## Engagement

- 19 ASIC has established the following initiatives to engage with industry and promote information sharing:
- (a) Meet ups with fintech and regtech networks where senior ASIC staff meet with fintech and regtech representatives to provide updates on ASIC's work, as well as conducting Q&As and other discussions. Typically, ASIC strives to hold 3 or 4 of these meet ups a year. These occasionally include statements and updates from other regulators and authorities (e.g. Australian Taxation Office (ATO), ACCC, APRA, AUSTRAC, and the RBA).
  - (b) The ASIC Quarterly Regtech Liaison Forum – this event facilitates discussions surrounding developments and opportunities arising from the application of regtechs. This forum allows for Australian authorities and regulators (APRA, AUSTRAC) and industry networks (the RegTech Association) to present the latest developments within the regtech ecosystem.
  - (c) The ASIC Regtech Initiative series – ASIC has hosted a series of problem-solving demonstrations and symposiums in FY2018-19 focusing on key challenges regtech services have the potential to solve (more information in section D.51).

## Streamlining

### Informal Assistance and Licensing

- 20 Since March 2015, the Innovation Hub has met with over 514 organisations, 486 of which have received informal assistance to better understand their business models and ASIC's approach to fintech and regtech development more broadly.
- 21 In mid-2016, the Innovation Hub broadened its scope to include engagement with the regtech sector. Since then, ASIC has met with over 100 regtech service providers. A complete breakdown of all Innovation Hub engagements is available on figure B-1.
- 22 ASIC also engages in close collaboration and knowledge sharing with domestic and international regulators researching the sector (see section C.36 for more details on ASIC's international engagements).



**Figure B-1: Fintech and regtech organisations worked with from March 2015 to December 2019.**

- 23 On average, fintech businesses that engage with the Innovation Hub prior to submitting their application for approval for an Australian financial services (AFS) or credit license receive approval 22% faster (111 days) than those seeking these licenses without assistance (135 days).
- 24 A total of 96 licence applications (full and variation) have been approved to 86 innovative fintech service providers (out of 145 license applications from 124 fintechs) since March 2015. These consist of 78 full licences to 73 entities and the approval of 18 variations to 13 entities. A full breakdown of these statistics can be found below:
- (a) ASIC received a total of 145 licence applications from 124 entities. Of these:
    - (i) 96 were granted applications;
    - (ii) 12 were rejected;
    - (iii) 28 were withdrawn by the applicant; and
    - (iv) 9 are still in progress.
  - (b) Of the 96 granted applications:
    - (i) 20 were granted to marketplace lenders;

- (ii) 14 were granted to digital advisers;
- (iii) 19 were granted to consumer credit providers;
- (iv) 43 were received from crowd source funding (CSF) intermediaries (40 of these applications were received following the crowd source funding legislation – see appendix 3.108);
- (v) 21 were granted to a non-cash payment facility (NCP);
- (vi) 3 were granted to neo-banks; and
- (vii) 16 were granted to various other entities.

Note: Some entities have been granted licence applications or variations that cover more than one level of business model.

### **ASIC Sandbox and other waivers**

- 25 On 23 August 2017, ASIC released [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#) in response to the challenges faced by fintech start-up businesses to test the viability of their business model.
- 26 RG 257 contains information about Australia’s ‘regulatory sandbox’ framework. The sandbox is comprised of three mechanisms to support testing a new product or service without a licence:
- (a) existing flexibility in the regulatory framework (e.g. acting as a representative of a licensee), or exemptions already provided by the law or ASIC, which mean that a licence is not required;
  - (b) ASIC’s fintech licensing exemption, which allows eligible fintech businesses to test certain specified dealing or advising services without holding an AFS or credit licence for 12 months; and
  - (c) tailored, individual licensing exemptions from ASIC to facilitate product or service testing.
- 27 A total of seven entities have participated in the ASIC Sandbox. A further 44 entities have submitted preliminary notifications but do not meet the criteria necessary to qualify.
- 28 Separate from the ASIC sandbox, some of the other class waivers from licensing low value non-cash payment facilities further assist innovative businesses. In addition, some innovative businesses have applied for, and obtained from ASIC, individual exemptions from some provisions of the law – e.g. some marketplace lenders have received relief from aspects of the managed investment scheme laws not apt for their kind of business.

## Enhanced Communications

- 29 ASIC maintains a dedicated user-friendly website as a single source of truth to assist entities participate in the streamlining approach (outlined in section B.20 and section B.25). The website provides supplementary information on ASIC engagement throughout the year (section B.19), international work (section C.36), and an overview of the Digital Finance Advisory Panel (section B.32).
- 30 The Innovation Hub's internal leadership committee has spearheaded the development of regulatory guidance to help entities in new areas, available on the Innovation Hub website. In response to the growth of financial technology, ASIC has both adapted existing regulations and issued new guidance. Examples include the following:
- (a) [Regulatory Guide 255 Providing digital financial product advice to retail clients \(RG 255\)](#)
  - (b) [Information Sheet 213 Marketplace lending \(peer-to-peer lending\) products \(INFO 213\)](#)
  - (c) [Information Sheet 219 Evaluating distributed ledger technology \(INFO 219\)](#)
  - (d) [Regulatory Guide 257 Testing fintech products and services without holding an AFS or credit licence \(RG 257\)](#)
  - (e) [Information Sheet 225 Initial Coin Offerings and Crypto-Assets \(INFO 225\)](#)

## Coordination

- 31 The Innovation Hub serves as the central point-of-contact and support for innovation within ASIC. Requests and inquiries are directed to relevant teams depending on the specific needs of any requests. Regular senior committee meetings, internal working groups, staff onboarding, and external networking sessions are coordinated to keep the organisation up-to-date on developments.

## Digital Finance Advisory Panel (DFAP) (and domestic regulator coordination)

- 32 The Digital Finance Advisory Panel (DFAP) was established by ASIC to assist in informing how ASIC should focus its efforts within the fintech and regtech sector. DFAP meets quarterly to advise on its engagement with the sector.
- 33 DFAP members are drawn from a cross-section of the fintech and regtech community (the RegTech Association, FinTech Australia, regtech service providers), as well as academia (UNSW, ANU) and representatives with

consumer backgrounds. Panel members change periodically to ensure that a variety of views are received and considered by ASIC.

- 34 DFAP also has active observer members from the Australian Treasury, APRA, RBA, ACCC, OAIC, Austrade and AUSTRAC. This creates dialogue between industry and the public sector. Through the establishment of DFAP, ASIC and the other agencies have fostered a network of domestic departments and agencies that deal with innovative businesses. This network has promoted an efficient cross-agency and coordinated domestic approach to financial innovation and regtech.

## C ASIC's international engagement

- 35 Section C provides general information on ASIC's engagement with foreign regulators and agencies. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including (p.17):
- (a) What learnings and opportunities can Australia glean from international fintech and regtech industries?
  - (b) What innovations from other countries could have a positive impact on the Australian fintech industry?
  - (c) What measures can the Australia Government take to directly support fintech businesses to expand internationally?
  - (d) Should Australia seek more formal international fintech agreements? Are there particular countries that Australia should look to for partnership?

### ASIC bi-lateral cooperation agreement

- 36 ASIC has entered into over 16 cooperation and referral agreements with international regulators, including: The Monetary Authority of Singapore (MAS); the Financial Conduct Authority (FCA); and Ontario Securities Commission (OSC). Quarterly information sharing conference calls are held with these regulators by members of ASIC's Innovation Hub and International teams.
- (a) The complete list of Co-operation Agreements is available on the [Innovation Hub website](#).
  - (b) For a detailed overview of the referral and information sharing mechanism, see *Appendix 1: ASIC's international engagement – further detail*.

### Different mandates and frameworks of international regulators

- 37 ASIC notes that the approach of international regulators to financial innovation and regtech is formed by the mandates, powers and environmental drivers that they work within. This means international regulators vary in their approach to financial innovation given the context they operate in. For example:
- (a) Many regulators that have similar mandates to ASIC to promote good consumer, investor and market integrity outcomes focus their approach on the provision of informal assistance and information sharing (e.g. Canadian securities regulators; the Commodity Future Trading Commission (CFTC), USA; the US Securities and Exchange

Commission (SEC); European regulators like France’s Autorité des marchés financiers (AMF – “Financial Markets Regulator”) and Germany’s Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin – “Federal Financial Supervisory Authority”) and regulators from the Asian region such as Hong Kong’s Securities and Futures Commission (SFC)).

- (b) Some regulators have mandates and drivers to develop the financial services sector (e.g. the MAS and some regulators in the Middle East).
- (c) Some regulators have a mandate and powers to promote competition in financial services (e.g. the FCA in the UK has concurrent competition powers with the Competition and Markets Authority (CMA) of the UK).

38 For a useful summary on the varying approaches of international regulators and authorities, please see: [UNSGSA FinTech Working Group and CCAF. \(2019\). Early Lessons on Regulatory Innovations to Enable Inclusive FinTech: Innovation Offices, Regulatory Sandboxes, and RegTech.](#)

## UK-Australia FinTech Bridge

39 As part of the ASIC–FCA Fintech Cooperation Agreement, a commitment has been made to consider opportunities for quicker licensing as part of the UK-Australia FinTech Bridge (the FinTech Bridge) (see Appendix 1.74). The Licensing team and the Innovation Hub continue to hold discussions with the FCA on each other’s authorisation process to explore:

- (a) whether there are any opportunities to enable more efficient licensing of fintech businesses that are already licensed by the FCA; and
- (b) whether any recognition of elements of the licensing application could occur.

## International Organization of Securities Commissions (IOSCO) Fintech Network

40 ASIC is a member of the steering committee for the International Organization of Securities Commissions (IOSCO) Fintech Network. The network is an exercise in members collaborating to determine areas of consistency across innovative sectors.

41 The IOSCO Fintech Network is chaired by the FCA. ASIC is represented in each of the four major streams:

- (a) distributed ledger technology (DLT) with a sub stream focused on stable coins;

- (b) regtech;
- (c) innovation engagement experience or innovation support functions; and
- (d) artificial intelligence (AI) and machine learning (ML).

## Global Financial Innovation Network (GFIN)

- 42 The Global Financial Innovation Network (GFIN) was formally launched in January 2019 by an international group of financial regulators and related organisations. ASIC was a founding member of the GFIN and is a member of its steering committee. The GFIN commits to supporting financial innovation in the interests of consumers and is comprised of 43 members and 7 observers from 38 jurisdictions.
- 43 The GFIN seeks to provide a more efficient way for innovative firms to interact with regulators, helping them navigate between countries as they look to scale new ideas. This includes a pilot for firms wishing to test innovative products, services or business models (including regtech models) across more than one jurisdiction (cross-border trials).
- 44 The GFIN plans to issue an update early in 2020 on its experience with the first pilot inviting applicants for potential cross-border trials and how it can improve the processes for businesses and regulators in future initiatives for cross-border trial applicants.



## D ASIC's approach to regulatory technology

- 45 Section D provides general information on ASIC's approach to regulatory technologies (regtech). It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Do you have any suggestions on how the Australian Government can best facilitate the continuing growth of the fintech and regtech industries in Australia? (p.12)
  - (b) Do current regulatory settings support the growth of local fintech and regtech companies in Australia? (p.13)
  - (c) How can public sector data be made more accessible and useful for fintech and regtech companies seeking to deliver innovative products and services? (p.14)
  - (d) How can public sector data be made more accessible and useful for fintech and regtech companies seeking to deliver innovative products and services? (p.14)
  - (e) How can technology solutions be used to improve access to financial and other services for geographically isolated or other marginalised groups in Australia? (p.15)

### ASIC general approach to regulatory technology

- 46 ASIC considers that the regtech sector has enormous potential to help organisations build a culture of compliance, identify learning opportunities, and save time and money relating to regulatory matters. ASIC notes that, in some use cases, regtech has already been making a valuable contribution in promoting regulatory compliance across consumer and market integrity outcomes (e.g. monitoring of trading and regulatory reporting).
- 47 Since being integrated into the Innovation Hub's remit in mid-2016, the Innovation Hub have met with over 150 regtech entities, more than 60 of which received informal assistance to better understand their business models and regtech development within the sector more widely (see section B.20). As part of this work, ASIC engaged in close collaboration and knowledge-sharing with domestic and international regulators (see section C.36).
- 48 In May 2017, ASIC released [Report 523 ASIC's Innovation Hub and our approach to regulatory technology \(REP523\)](#) on its current and future approach to regtech. In response (in part) to feedback received on the approach in the report, ASIC has taken a leading role in promoting networking and collaboration in the regtech sector.

- 49 ASIC's approach to regtech is guided by a set of basic principles that include:
- (a) working towards outcomes in regtech that align with our strategic priorities and approach to innovation;
  - (b) undertaking a number of focused initiatives that will deliver outcomes in the near term; and
  - (c) learning from industry input, good international case studies and our own experience from engaging with the regtech sector.
- 50 As part of ASIC's approach to regtech, and in response to the 2017 consultation, ASIC convenes quarterly Regtech Liaison Forums to promote networking, collaboration and information-sharing. To date, ASIC has hosted eight forums with attendance of approximately 200 people per session. APRA, AUSTRAC, ASIC, the RegTech Association and FinTech Australia regularly provide insights into their regtech initiatives and the state of the sector at these forums.

## ASIC's Regtech Initiative Series

- 51 The Government announced on 7 August 2018 that ASIC would receive \$6 million of new policy proposal (NPP) funding over two financial years, 2019-20 and 2020-21 to promote Australia as a world leader in the development and adoption of regtech solutions for the financial services industry.
- 52 These initiatives build on the existing ASIC engagement with the regtech sector, including its quarterly Regtech Liaison Forum (section B.19(b)).
- 53 In response to this NPP funding, ASIC developed a series of four regtech initiatives for FY2019-20 with the aims to:
- (a) increase the awareness and understanding amongst industry of the current state and future potential of regtech as applied to the financial services and insurance industries;
  - (b) demonstrate how technology can be used to assist in the provision of compliance and monitoring; and
  - (c) identify the opportunities and challenges of using advanced technology and other regtech approaches to improving compliance and monitoring outcomes for consumers.
- 54 The initiatives included:
- (a) **Financial Promotions Demonstration and Symposium.** The inaugural event, 2 August 2019, was a problem-solving event focused on five demonstrators analysing financial promotional material (both

traditional and non-traditional media) to extract key features to identify potential risk and noncompliance characteristics.

- (b) **Financial Advice Files Demonstration and Symposium.** ASIC's second event, 22 August 2019, set a challenge for 6 demonstrators to investigate how regtech can be used to improve compliance in Australia's financial industry and advice outcomes for consumers.
- (c) **Voice Analytics Symposium.** 24 September 2019, this event presented ASIC's findings from a tender run in April 2019 looking at how voice analytics, applied to over 1700 insurance calls, can assist in analysing selling behaviour falling short of community expectations.
- (d) **Technology-assisted Guidance (TAG) Tool.** ASIC set out to design, develop and implement a chatbot in prototype form to help businesses navigate the credit and financial services licensing regulatory framework. ASIC procured a technology and law firm to design a tool to provide user-friendly licensing guidance.

### **Report 653 ASIC's Regtech Initiative Series, 2018-19 (REP 653)**

55 ASIC published [Report 653 ASIC's Regtech Initiatives, 2018-2019 \(REP 653\)](#) on 20 December 2019. This report covers:

- (a) ASIC's approach to regtech;
- (b) A summary of the regtech initiative event series; and
- (c) An outline of ASIC's next steps regarding regtech.

56 A summary of REP 653 can be found from D.57 to D.61.

57 In the report, ASIC outlines the following primary findings:

- (a) Regtech solutions demonstrated during the Financial Promotions Symposium and Financial Advice Files Symposium were capable of detecting potential breaches relating to mandatory disclosure requirements with high rates of accuracy.
- (b) Voice analytics and voice-to-text (VA&VT) displayed the future potential of using voice signalling to identify cases of poor sales practices in stored, non-compressed, life insurance phone call recordings.
- (c) ASIC developed a viable, proof-of-concept chatbot to provide guidance for whether a business needs an AFS or credit licence. The project was developed for ASIC by two procured regtech vendors.

58 The report also outlines some primary observations from the events, including:

- (a) The need for improved standards on data capture and storage. Data quality is critical and the principle of 'garbage in, garbage out' applied

to data quality at each event. Demonstrators and panellists stated a need for improving practices and setting standards around data capture and storage.

- (b) Regtech enables analysis of large, high data volumes at speed, and in real time. Related to the challenges of the growing size of data collected, regtech allows for real-time monitoring of vast expanses of information with greater efficiencies in evaluating sales practices, the provision of advice, promotions, and other business practices.
- (c) Australian firms are experimenting, but resourcing is a challenge. There is a great deal of activity within the regtech sector, but there are limits to how much resourcing flows from firms towards its development due to the experimental nature of new forms of regtech.
- (d) There will always be a role for humans. Regtech applications will not replace humans in risk management and compliance roles. However, regtech will instead augment the role of these professionals so that they can focus on more significant compliance matters identified from a larger, more complete sample size of financial services provided to consumers, rather than file reviews of small sample sizes.

59 ASIC intends to implement a range of further regtech initiatives during the remainder of FY2019–20. The design and implementation of these further initiatives have been informed by the initiatives undertaken during FY2018–19.

60 ASIC plans to have initiatives on the following topics in FY2019–20:

- (a) The use of regtech (such as machine learning) to monitor compliance with the responsible lending obligations by credit providers.
- (b) The state of play and potential future for digital record-keeping of financial services being the foundation for good regtech.
- (c) The potential benefits to markets and investors resulting from improved access to structured financial information of public companies.
- (d) A second phase of developing ASIC’s technology-assisted licensing guidance tool (building on the FY2019-20 initiative to develop a proof-of-concept chatbot).

61 ASIC is also considering other regtech initiatives in FY2019–20 depending on available resources and managing competing demands on scheduling the regtech initiatives set out in D.60.

## E Government's Enhanced Sandbox

- 62 Section E provides general information on ASIC's approach to the Government's Enhanced Sandbox bill. It also provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) What are the key reform priorities that will enable fintech and regtech innovations to flourish in Australia? (p.13)
  - (b) Is ASIC's fintech regulatory sandbox useful for start-ups? Will the recently proposed expansion to the sandbox be sufficient to support growth in the sector? (p.14)
- 63 ASIC issued its regulatory sandbox exemption in December 2016, going as far as it can in balancing facilitation and consumer protection within our regulatory remit as set out in section B.25.
- 64 The enhanced regulatory sandbox put forward by the Government in October 2017 proposes to replace and extend the scope of the "ASIC Sandbox" in a number of key areas. For example, to cover a broader range of services by a broader range of providers, including licensees, over a longer two-year testing period. All of this would be subject to a similar condition as under the "ASIC Sandbox".
- 65 In February 2018, the Senate referred the [Treasury Laws Amendment \(2018 Measures No. 2\) Bill 2018](#) (the enhanced sandbox bill) to the Senate Economics Legislation Committee for inquiry and ASIC attended the Committee's public hearing. In March 2018 the Committee recommended the Bill should be passed. The details of how the enhanced regulatory sandbox is implemented will be largely contained in the associated regulations, that are to be finalised.
- 66 The Government has re-introduced the Sandbox related legislation in the new sittings (early July 2019). At present, the Bill is before the Senate.
- 67 ASIC's resourcing requirements for the new legislative sandbox will depend on the exact nature of the regulatory changes passed by Parliament (particularly any relevant regulations) and also the extent of supervisory intensity that is expected for the sector.

## Appendix 1: ASIC's international engagement – further detail

- 68 ASIC has a total of 16 co-operation agreements with 13 jurisdictions. These agreements provide opportunities for authorities to share information on emerging market trends and regulatory issues pertaining to innovative businesses.
- 69 13 of these agreements include referral opportunities where Australian innovative businesses can receive assistance to enter new markets, as well as providing international scale-ups opportunities to enter Australia.

### Referral mechanism

- 70 Agencies subject to the referral mechanisms can refer innovative businesses interested in operating in another eligible jurisdiction to each other.
- 71 The referrals can be made informally and in writing. A referral should demonstrate that the innovative business seeking to operate in the receiving authority's jurisdiction meets the referring authority's Criteria for Support.
- 72 The Criteria for Support for referrals include the following:
- (a) The innovative business should offer innovative financial products or services that benefit the financial consumer, investor and/or industry;
  - (b) The innovative business should demonstrate that they have conducted sufficient background research on regulations as they might apply to them;
  - (c) The innovative business is a start-up or an authorised financial services provider in its first year of operation since obtaining its authorisation.
- 73 Following referral, the receiving authority's innovation function should offer support to the innovative business.

### UK-Australia FinTech Bridge

- 74 The United Kingdom and Australia established a UK-Australia FinTech Bridge ('the FinTech Bridge') on 22 March 2018. This builds on the existing co-operation agreements signed between ASIC and the FCA.
- 75 The FinTech Bridge establishes a framework for individual arrangements between relevant government and private sector parties from the UK and Australia to support further cooperation on fintech activities (these are described in this FinTech Bridge as 'Pillars').

- 76            **The FinTech Bridge:**
- (a) enables closer and stronger collaboration on fintech between governments, financial regulators and the industry; and
  - (b) encourages fintech firms to use the facilities and assistance available in the other jurisdiction to explore new business opportunities and reduce barriers to entry.
  - (c) Sets out the framework for the ongoing cooperation between the UK and Australia on fintech issues, covering four inter-related Pillars:
    - (i) Government-to-government
    - (ii) Regulator-to-regulator
    - (iii) Trade and investment
    - (iv) Business-to-business

### **Government-to-government**

- 77            HM Treasury and the Australian Treasury commit to maintaining regular and ongoing dialogue on fintech policy developments and provide timely notification of relevant fintech related announcements. These discussions can include other relevant agencies from each jurisdiction, as well as facilitate dialogue between governments, regulators, and the industry to help identify emerging fintech trends and policy issues.

### **Regulator-to-regulator**

- 78            Under the FinTech Bridge, the FCA and ASIC have committed to:
- (a) Facilitating the entry of fintech start-ups from each other’s jurisdictions into their respective regulatory sandboxes.
  - (b) Exploring opportunities to enable quicker processing of licensing innovative businesses that are already licensed/authorised in the other jurisdiction, which would reduce the regulatory burden on these businesses looking to expand to the other jurisdiction.
  - (c) Consider developing shared approaches towards technologies that require research and testing. Outcomes would be published from the benefit of industry, regulators, and consumers (e.g. REP 653).

### **Trade and investment**

- 79            Both the UK and Australian Governments will work to raise the profile of the FinTech Bridge, as well as its benefits to UK and Australian fintech firms.

- 80 The Department for International Trade (DIT) and the Australia Trade and Investment Commission (Austrade) (the Trade and Investment Implementing Authorities) also intend to support the success of this FinTech Bridge.

### **Business-to-business**

- 81 Both the UK and Australian Governments will support active engagement between fintech industry bodies (such as Innovate Finance (UK) and FinTech Australia). This includes the curation of regular business-to-business summit discussions involving industry representative groups, co-chaired for the UK by the Prime Minister's envoy for FinTech and a FinTech Australia nominee.



## Appendix 2: Options around digital financial product advice

- 82 Appendix 2 provides general information on the Australian digital financial product advice market. It also provides context on some of the questions from the Senate Select Committee’s Issues Paper, including:
- (a) Can Australian regulators do more to support fintech and regtech companies to develop digital advice services? How can the Australian digital advice sector be supported to grow? (p.14)

### Digital advice

- 83 Digital advice (also known as 'robo-advice' or 'automated advice') is the provision of automated financial product advice (using algorithms and technology) without the direct involvement of a human adviser.
- 84 ASIC is supportive of digital advice and believes that digital advice could play a role in satisfying unmet demand for certain types of financial advice.
- 85 ASIC have met with industry to discuss on proposed models covering a range of advice topics, including:
- (a) risk profiling and investment advice;
- (b) superannuation strategy, contributions, investments and projections;
- (c) life insurance, including needs analysis;
- (d) SMSF establishment and trustee compliance; and
- (e) holistic advice, covering a range of topics at one time.
- 86 The speed at which these different models come to market has varied. Like the US, scaled investment digital advice has featured most prominently. As such, ASIC has focused much of its initial industry engagement in this area.
- 87 Different types of digital advice models face different challenges in meeting their obligations, and this is likely to affect the trends in digital advice in Australia.
- 88 The digital advice industry is constantly evolving, and ASIC will continue to engage with digital advice providers to better understand their businesses.
- 89 ASIC expects digital financial advice providers to comply with the law like any other advice provider. ASIC has pursued intervention action in relation to a digital financial advice provider after raising concerns “...about the quality of advice being generated by the online tools” as well as the organisation’s “...ability to monitor the advice”. For more information, see [19-286MR Lime FS Pty Ltd agrees to shut down digital advice tools](#).

## Regulatory Guide 255 Providing digital financial product advice to retail clients (RG 255)

- 90 In response to the general interest in digital advice in Australia, ASIC published [Regulatory Guide 255 Providing digital financial product advice to retail clients \(RG 255\)](#) in August 2016.
- 91 Our guidance brings together some of the issues that digital advice providers need to consider when providing advice to retail clients in Australia – from the licensing stage (i.e. obtaining an AFS licence) through to the actual provision of advice.
- 92 RG 255 generally builds on existing ASIC guidance and does not introduce new regulatory concepts as Australian law is technology neutral and the obligations applying to the provision of traditional (i.e. non-digital) financial product advice and digital advice are the same.
- 93 There are, however, some issues that are unique to digital advice providers. These are discussed below.

### Best interests duty

- 94 One of the issues that ASIC has considered is how digital advice providers can comply with the best interests duty. In RG 255, ASIC outlines its minimum expectations for digital advice providers offering scaled advice.
- 95 For instance, digital advice providers should, at a minimum:
- (a) explain to the client what advice is being offered and what is not being offered (i.e. the scope of the advice);
  - (b) require the client to demonstrate that they understand that the advice they are seeking is within the scope of what is being offered by the digital advice model;
  - (c) inform the client about the limitations and potential consequences of the scope of advice; and
  - (d) filter out clients for whom the offered advice is not suitable, or who seek advice on a topic outside the scope of advice being offered;
  - (e) at key points in the advice process, inform the client about the limitations and potential consequences of the scope of advice;
  - (f) throughout the advice process, inform the client of key concepts and the relevant risks and benefits associated with the advice being provided;
  - (g) inform the client about the upfront and ongoing costs of the advice before the advice is given or implemented;
  - (h) inform the client about how they can withdraw from the advice being provided, and any associated costs, before the advice is implemented;

- (i) explain what dispute resolution processes are available to the client if they wish to make a complaint; and
- (j) explain why the client is likely to be in a better position if they follow the advice.

### **Training and competence**

96 RG 255 also explains how digital advice providers can meet the minimum training and competence standards for advisers.

97 Natural persons who provide financial product advice to retail clients are required to meet the minimum training and competence standards for advisers in Australia.

98 In a digital advice context, the financial product advice is often generated by algorithms. Therefore, a natural person is often not directly involved in the provision of the advice.

99 For digital advice licensees to meet the organisational competence obligation in [RG 105 Licensing: Organisational competence \(RG 105\)](#), ASIC requires that a licensee has at least one responsible manager who meets the training and competence standards. This will ensure that at least one responsible person within a digital advice licensee holds this level of competence.

### **Monitoring and testing**

100 In addition, RG 255 discusses the importance of digital advice providers having adequate processes in place to monitor and test the algorithms underpinning the advice being provided.

101 ASIC expects digital advice providers to regularly monitor and test their algorithms and to conduct advice reviews and record result, especially when changes are made

102 When a problem with an algorithm are detected, digital advice licensees should take immediate steps to rectify the problem and, in some cases, where the error may result in client loss, suspend provision of advice.

103 ASIC is does not presently require digital advice licensees to self-certify or engage an independent third-party to monitor and test their algorithms.

104 ASIC believes self-certification is likely to result in an additional burden on industry without necessarily providing a corresponding regulatory benefit. ASIC also believes requiring digital advice licensees to engage an independent third party to monitor and test their algorithms would not be practical and would hinder start-up businesses from being competitive.

## Appendix 3: Capital raising

- 105 Appendix 3 provides general information on capital raising options available to fintech and regtech businesses in Australia. It provides context on some of the questions from the Senate Select Committee's Issues Paper, including:
- (a) Are there measures that can be taken to support the fintech sector's ability to raise capital from other types of institutional investors (e.g. superannuation funds)? (p.14)

### Raising funds at early stages

- 106 The *Corporations Act* 2001 (Cth) (Act) regulates fundraising activity, including all financial products that are offered in Australia.
- 107 Many early stage fintech and regtech companies commence operations as a proprietary (Pty) company. Proprietary companies are generally prohibited from having more than 50 non-employee shareholders and commonly raise funds from founders. However, proprietary companies can also raise funds from other investors if the fundraising is exempt from the requirement for a disclosure document or by equity-based crowd-sourced funding. The main types of offers that a tech company can make without a disclosure document are:
- (a) personal offers accepted by less than 20 investors, which raise no more than A\$2 million in aggregate in any rolling 12-month period (s708(1));
  - (b) offers where the amount paid (or topped up) results in a total investment by a person of at least A\$500,000 in the class of securities;
  - (c) offers to sophisticated investors (who have a certificate from a qualified accountant saying that the investor has net assets of at least A\$2.5 million or gross income of at least A\$250,000 per year for each of the last 2 financial years) (s708(12));
  - (d) offers to a senior manager (or their family) (s708(8)); and
  - (e) offers to professional investors (such as superannuation funds, ASX listed entities, persons controlling gross assets of at least A\$10 million or ASX listed entities or their related bodies corporate).

### Crowd source equity fundraising

- 108 Since September 2017, Australia has maintained an equity-based crowd-sourced funding (CSF) regime which aims to facilitate access to capital for small to medium sized unlisted Australian public companies (and since October 2018, Australian proprietary companies) by reducing the regulatory

and disclosure requirements for making public offers of shares, while seeking to ensuring adequate protections for retail investors.

109 CSF offers provide an avenue for early-stage growth as shares issued under a CSF offer do not count towards the 50 shareholder limit for non-listed entities.

110 The CSF regime allows Australian eligible companies (those with less than A\$25 million of consolidated gross assets and less than \$A25 million of annual revenue) to raise up to A\$5 million in a 12-month period. One example is the ridesharing company Shebah Pty Ltd, which recently raised \$3 million via a CSF offer and maintained its proprietary status whilst expanding its register to include more than 2,000 individuals.

111 Figure A3-1 provides the last reported statistics into CSF offers (complete and incomplete), the amounts raised, and the investor breakdown of these offers. More information can be found in [ASIC Report 616 Survey of crowd-sourced funding intermediaries 2017-18 \(REP 616\)](#), 12 April 2019. At the time of writing the report, ASIC is compiling up-to-date figures subject to their collection and availability.

#### **ASIC guidance on crowd source equity fundraising**

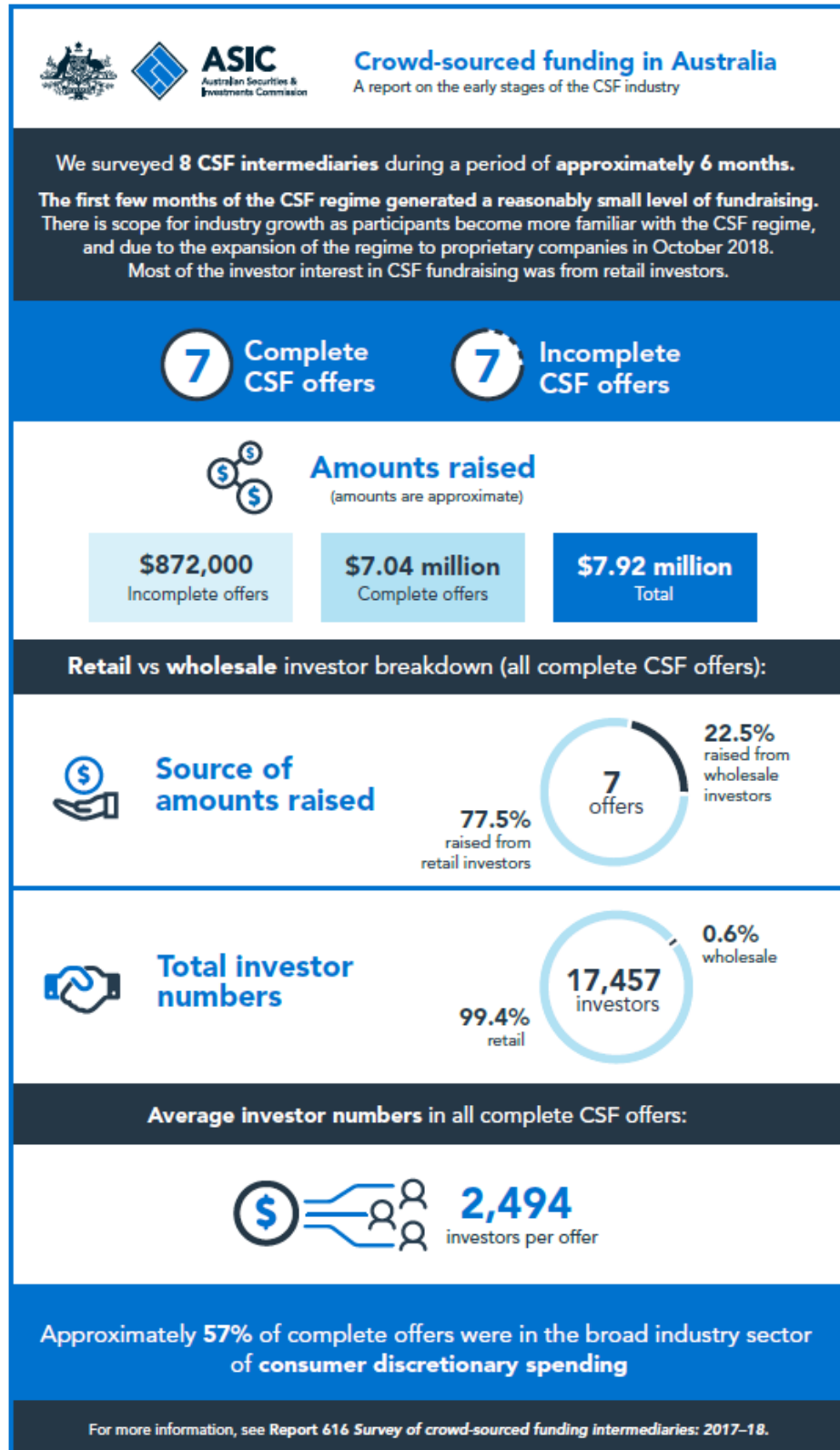
112 As the regulator responsible for fundraising activities and financial services, ASIC has engaged with Treasury and Government in the development of the CSF regime.

113 To further assist with the development of a CSF industry, ASIC has published updated regulatory guidance for intermediaries seeking to provide CSF services and for companies seeking to raise funds on a platform of a CSF intermediary.

114 [Regulatory Guide 261 Crowd-sourced funding: Guide for companies \(RG 261\)](#) will assist companies seeking to raise funds through crowd-sourced funding to understand and comply with their obligations in the new regime, particularly as many of these companies will not have experience in making public offers of their shares. ASIC has also published a template CSF offer document to help companies prepare their CSF offers.

115 [Regulatory Guide 262 Crowd-sourced funding: Guide for intermediaries \(RG 262\)](#) will assist intermediaries seeking to provide CSF services, particularly as this is a new type of financial service and there are unique gatekeeper obligations for operating platforms for CSF offers.

116 ASIC has also provided relief for intermediaries and eligible public companies from certain requirements under the Corporations Act to help facilitate crowd-sourced funding.



**Figure A3-1:** Crowd-sourced funding in Australia, A report on the early stages of the CSF industry. (Source: [REP 616](#)) Statistics reflect the period between 29 September 2017 till 30 June 2018.

## Growing the business

- 117 A start-up business transitioning into a public company may raise funds from the public through disclosure documents. These documents contain certain key pieces of information that allow prospective investors to judge the merits of a particular offer.
- 118 If the company has audited accounts for at least a 12-month period, it can use an 'offer information statement' to raise up to \$10million.
- 119 Another option is using an initial public offer with a prospectus. A start-up company can raise funds using a prospectus and list on ASX.

## Capital raising once listed

- 120 Once a company is listed, it can take advantage of a number of fundraising opportunities, including secondary raisings from existing investors (including pro rata offers under s708AA and offers up to \$30,000 per investor under ASIC's exemption for Share and Interest Purchase Plans in LI 2019/547). These secondary raisings are an important source of revenue for start-ups that are still commercialising their technology or seeking to expand their work in related areas.

### Employee incentive schemes

- 121 ASIC has issued class waivers for employee incentive schemes (LI 14/1000 and LI 14/1001) that enable companies to incentivise employees with equity-based remuneration. This is popular among tech companies that require highly skilled staff but are unable to offer competitive salaries.
- 122 Treasury recently consulted on law reform that will make it easier for companies, particularly unlisted companies, to raise funds from employees.