

Questions on notice from Senator O'Neill

First report of the Financial Regulator Assessment Authority

- 1. The Financial Regulator Assessment Authority made four recommendations to improve ASIC's effectiveness and capability. What is the ASX's view on:**
 - a. How ASIC data and technology capability should be improved?**
 - b. How should ASIC enhance the quality of its engagement with stakeholders?**
 - c. How ASIC should measure its own effectiveness and capability and communicate the outcomes of such assessments transparently, both internally and externally?**
 - d. How should ASIC broaden its mix of skill sets to ensure it can meet the current and future needs?**

The FRAA conducted an Effectiveness and Capability Review of ASIC in 2022, and this review led to the recommendations mentioned in the question. ASX made a submission to that review and a copy of that submission is attached for reference. The relevant points from the submission are included in ASX's responses below.

With respect to the FRAA's recommendations:

- a) The FRAA recommended that ASIC requires a substantial uplift in data and technology capabilities. ASX agrees that it is important for ASIC to receive sufficient funding to facilitate appropriate investment in and enhancements to its data and technology capabilities. We note that other regulators have recently improved or are improving their capabilities in this area. For example:
 - APRA has been working on enhancements to data collection, analysis and reporting across its mandate, culminating in a five-year strategy set out in March 2022. APRA aims to collect richer and deeper data, through a modern data collection system and reduce the duplication of data collection from entities across multiple regulators; and
 - the RBA has a major program underway that aims to:
 - increase the maturity of its data governance and data management processes;
 - refresh and enhance the RBA's strategic platforms and tools for storing and analysing data; and
 - migrate data from legacy systems.

ASIC has made improvements in relation to data and technology and it is important this process continues so that it has capabilities which are equivalent to other regulators both domestically and internationally.

As mentioned in our submission to the FRAA review, ASIC uses surveillance software called First Derivatives, which is similar to the Nasdaq surveillance system called SMARTS used by ASX. The ASIC Surveillance team appear to get similar alerts to ASX regarding unusual movements in the markets, and this allows for real time monitoring. There is extensive information sharing between ASX and ASIC. ASX is continually looking to improve its

surveillance systems given the ever-evolving sophistication of the market. ASIC's ability to continue to improve its technology capabilities will ensure it is able to make the best use of surveillance technology.

- b) ASX has a close relationship with ASIC and a unique perspective, given we are a body that is both regulated by ASIC and also engage with ASIC as a quasi-regulator with responsibilities that overlap or adjoin in a number of areas. ASX considers this engagement to be of a high quality.

We see an opportunity for enhancements to the coordination of information requests from ASIC. We have seen some examples of requests for similar information from different parts of ASIC or requests which could be more targeted. This suggests there could be better coordination between different arms of ASIC. Suggestions for improvement may include:

- improving the capability of ASIC to process and analyse data (systems, tools and processes) and improving its cataloguing to facilitate greater awareness of the information held by ASIC with respect to the industry and individual firms (supported by appropriate legal powers), and
 - improving industry understanding by non-oversight arms of ASIC. This can be achieved through greater engagement between different areas within ASIC, and by facilitating greater engagement by non-oversight teams with the industry on an ongoing basis.
- c) ASX understands that ASIC has risk and compliance frameworks in place which allows ASIC to assess its performance against its key obligations such as its legislative mandate. It would be useful to the industry to see the results of this self-assessment, at an appropriately high level of detail.

ASX is not in a position to comment on internal ASIC communications or analysis.

- d) Skill shortages are a challenge that all organisations face in the current economic environment with tight labour force conditions.

ASX encourages ASIC to seek to recruit from a broad range of areas including business development, technology and operations as well as legal and compliance. This will provide a broad range of perspectives and contributions and position ASIC well to respond to changing conditions and new developments in executing its mandate.

Assessment of the effectiveness and capability of ASIC's strategic prioritisation, planning and decision making

Key Questions	Suggested Responses
1. Does ASIC have a clear and effective framework for setting strategic priorities and making decisions consistent with those strategic priorities?	
2. How effective is ASIC's process for identifying risks, and addressing these risks through its strategic prioritisation and decision-making? How effectively is data and technology utilised to inform these processes?	It is implicit in ASIC's Corporate Plan that ASIC does not have the resources to investigate and pursue every potential breach or form a view on every policy issue that may fall within its broad supervisory and enforcement remit.
3. How effective is ASIC in implementing its strategic priorities and decisions, and allocating resources to give effect to them?	ASIC's stated approach to resourcing is to 'direct resources to address key priorities' (Corporate Plan, p 31). However ASX feels, at times, ASIC can focus on issues that are topical but not inherently risky. A more risk-based approach to ASIC's supervisory activities and allocation of its limited resources would be warranted in those cases.
4. Are there processes and systems in place to effectively monitor and oversee ASIC's decision-making to ensure decisions give effect to the direction and strategic priorities set by ASIC? Do these processes and systems result in appropriate consistency of decision-making across all levels of ASIC decision makers?	
5. Is ASIC's strategic prioritisation and decision-making framework clearly communicated to and understood by ASIC staff and external stakeholders?	<p>ASIC externally communicates its strategic priorities through its Corporate Plan which is welcomed.</p> <p>ASX is not in a position to assess the effectiveness of ASIC's Corporate Plan or ASIC's performance against it or whether ASIC staff have an understanding of this.</p>

Assessment of the effectiveness and capability of ASIC's surveillance function

Key Questions	Suggested Responses
1. How does ASIC make decisions about the prioritisation and resourcing of surveillance activities?	
2. To what extent are ASIC's surveillances targeted, efficient, and proportionate? Are those surveillances effective?	<p>ASIC Surveillance performs real time monitoring of the market in a similar way to ASX with the use of specific software that targets unusual price and volume movements. ASX believes this to be appropriate.</p> <p>Information between ASX and ASIC is shared where appropriate in a timely manner including where the matter is time critical involving potential continual disclosure breaches.</p>
3. To what extent does ASIC have the appropriate data, technology, and systems to allow it to detect risk, harm and misconduct, prioritise issues, and conduct surveillances?	<p>ASIC use a software called First Derivatives which is a similar software to the ASX Nasdaq system called SMARTS. The ASIC Surveillance team appear to get similar alerts regarding unusual movements in the markets which allow for real time monitoring. There is also extensive information share between ASX Surveillance and ASIC. ASX enforcement also are regularly in touch with ASIC with referrals of market misconduct.</p>
4. How effectively does ASIC use data and technology to reduce the regulatory impost of its surveillance activities?	
5. Has ASIC appropriately prioritised investment and focus on enhancing its data and technology capabilities in its surveillance activities?	

Additional General Comments

- There is constructive collaboration and co-operation between ASIC and ASX in relation to surveillance activities, resulting in identification of potential market misconduct issues. There is always room for improvement and ASX would offer to share our thoughts on where this can occur of that is of interest to Members.
- Numerous factors can influence when and what type of enforcement action ASIC takes, however a common theme is that typically there are long lead times between identification of a potential issue and any subsequent enforcement action.

Assessment of the effectiveness and capability of ASIC's licensing function

Key Questions	Suggested Responses
1. How does ASIC's licensing function support its regulatory mandate i.e. ASIC's statutory objectives, legislative requirements, risk appetite and strategic priorities?	<p>As a general statement, ASX holds numerous licences that are supervised by the Market Infrastructure function within the Markets Division of ASIC. These questions seem more relevant to Licencing under Financial Services & Wealth division of ASIC.</p> <p>If the Members of FRAA are interested in any perspective on the licencing of our Financial Market Infrastructure please let us know.</p>
2. Are licensing and registry application decisions timely and consistent? Does ASIC ensure that clear guidance for applicants is made available and that stakeholders are engaged appropriately?	
3. Does ASIC have the appropriate data, technology, and systems to efficiently manage licensing and registrations?	
4. How effectively does ASIC use data and technology to reduce the regulatory impost of its licensing activities?	