



ASIC
Australian Securities &
Investments Commission

**Commonwealth Government
COVID-19 Response Inquiry**

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

December 2023

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Executive summary

- 1 ASIC welcomes the opportunity to make a submission to the Commonwealth Government COVID-19 Response Inquiry (**Inquiry**).
- 2 ASIC is Australia's integrated corporate, markets, financial services, and consumer credit regulator. ASIC's role is to:
 - (a) maintain, facilitate and improve the performance of, and promote confident and informed participation in, Australia's financial system;
 - (b) efficiently and effectively administer, and take whatever action is necessary to enforce and give effect to, the laws of the Commonwealth that confer on ASIC functions and powers; and
 - (c) receive, process and store information efficiently and quickly and ensure that information is available to the public as soon as practicable.
- 3 ASIC's submission focuses on our regulatory experience of the impact of the COVID-19 pandemic (**pandemic**) and the actions we took to:
 - (a) keep the financial system operating efficiently and effectively;
 - (b) support Australia's financial services industry and our regulated population; and
 - (c) protect consumers.
- 4 ASIC's submission also outlines our key learnings from the pandemic. We hope these learnings will assist the Inquiry.
- 5 From the outset of the pandemic, ASIC was keenly aware of the very real risks and extraordinary demands the pandemic was placing on our markets, regulated populations and consumers. From March 2020, we focused on:
 - making sure that financial markets remained open and operated well in a challenging environment, including through issuing directions to large market participants to limit the number of daily trades when trading volumes were putting undue strain on market infrastructure;
 - overseeing that liquidity risks were being managed by fund managers, through our proactive monitoring of liquidity risk responses and the levels of redemptions requested by members;
 - supporting consumers suffering financial hardship, including granting relief to enable members to redeem from a registered scheme on hardship grounds and monitoring deferred loan repayment arrangements provided by financial institutions;

- ensuring businesses remained resilient, for example, we granted fundraising relief that assisted listed companies to raise over \$41 billion in secondary raisings;
- providing updated messages on our Moneysmart website on common pandemic issues faced by consumers, such as guidance on the implications of, and alternatives to, accessing the COVID-19 early release scheme (with our content viewed by over one million consumers a month); and
- safeguarding consumers from opportunistic scams and misconduct, for example, banning a Gold Coast director from providing financial services and engaging in credit activity for eight years for promoting illegal access to the COVID-19 early release scheme.

6 Notwithstanding prolonged lockdowns, based on our monitoring work we found that the Australian financial services sector weathered the pandemic well. Our markets remained stable. Banks, fund managers and superannuation trustees did not experience liquidity issues. Consumer confidence remained high. Borrowers continued to make loan repayments following permitted deferral periods by lenders and company insolvencies decreased. Government measures to financially assist businesses and consumers contributed to this resilience.

A ASIC's response to the COVID-19 pandemic

Key points

We quickly adjusted our regulatory priorities in response to the pandemic and redeployed our staff to address areas of immediate concern.

We focused on maintaining community confidence in the financial system, helping vulnerable consumers and assisting businesses to remain resilient.

We worked closely with Government on pandemic measures and coordinated our regulatory response with our domestic and overseas counterparts.

- 7 At the time the pandemic was declared as a national public health emergency on 16 March 2020, our regulated population included approximately 23,260 unlisted public companies, 2,085 listed companies, 437 responsible entities operating 3,712 registered schemes, 147 ADIs, 5,188 authorised credit licensees, 114 superannuation trustees, 26,793 financial advisers, 28 domestic and overseas financial markets, 82 general insurers and 29 life insurers.
- 8 As announced by ASIC in March 2020, we took urgent steps to redesign our strategic priorities to respond to the changing environment during the pandemic and to mitigate the impact on our regulated population and the financial system: see Media Release ([20-070MR](#)) *ASIC recalibrates its regulatory priorities to focus on COVID-19 challenges* (23 March 2020). Our priorities became:
- (a) protecting consumers from harm at a time of heightened vulnerability;
 - (b) maintaining financial system resilience and integrity;
 - (c) supporting Australian businesses to respond to the effects of the pandemic;
 - (d) continuing to identify, disrupt and deter the most harmful conduct, including through enforcement action; and
 - (e) continuing to build our organisational capability in challenging times.
- 9 These priorities addressed issues such as the challenges to market conditions, vulnerability of consumers to unscrupulous conduct and pressures faced by business, as we saw these to be some of the greatest threats and harms arising from the pandemic.
- 10 We held daily Commission Co-ordination Group meetings to monitor the impact of the pandemic. We also discussed emerging issues with Government and our co-regulators and ensured that we were taking a consistent approach. This included attendance at meetings with the Council

of Financial Regulators at a deputy-head level at least weekly to share information, intelligence and responses.

- 11 We redeployed significant organisational resources to focus on our pandemic priorities and an overview of our core work is outlined below. Importantly, the key functions of our normal day to day operations, including registry operations and services, breach and misconduct reports, and contact points for industry, remained available throughout the pandemic.

Our work to maintain confidence in the financial system

- 12 The pandemic, and shut-down measures to contain it, caused a sudden and severe global economic shock. This resulted in a number of heightened risks to the financial system which we worked to stabilise.

Intervention to assist the resilience of financial markets

- 13 We worked closely with exchanges to make sure that financial markets operated effectively and remained open. When trading initially spiked in response to the pandemic, we took urgent action to issue interim directions to large equity market participants to limit the number of trades they executed each day: see Media Release ([20-062MR](#)) *ASIC takes steps to ensure equity market resiliency* (16 March 2020). This avoided trading volumes putting a strain on the processing and risk management capabilities of market infrastructure and market participants, while still facilitating trades by retail clients.
- 14 We provided early guidance to assist market intermediaries to adjust quickly to alternative working arrangements whilst maintaining robust monitoring and supervision controls, including setting out our expectations as to the supervision of staff working remotely. We also regularly engaged with market intermediaries, such as investment banks, securities dealers and issuers of OTC derivatives, to understand and assess the ongoing impact of the pandemic and the effectiveness of their business continuity and supervision arrangements.¹

Early and ongoing engagement with stakeholders on liquidity and obligations to consumers

- 15 We identified our stakeholder population that would be most vulnerable to liquidity issues and/or dealing with consumers facing financial hardship in response to the pandemic and took proactive steps to liaise with them to message our expectations.

¹ See: [Market Integrity Update - COVID-19 Special Issue - 31 March 2020](#) on the ASIC website.

Engagement with responsible entities

16 Given the approximate \$1.5 trillion in funds under management, we reminded responsible entities of registered managed investment schemes of their obligation to manage scheme liquidity and requested that they notify us if a scheme became non-liquid or if redemptions were suspended: see [ASIC letter to responsible entities of registered schemes in the current COVID-19 environment](#) (8 April 2020).

17 We also undertook a targeted review of the impact of the pandemic on scheme liquidity and asset values. Our review found that the selected schemes did not face serious investor liquidity challenges and that the responsible entities were responsive to valuation risks.

Engagement with superannuation trustees

18 With increased demand for access to superannuation funds supported by Government reforms to introduce the COVID-19 early release scheme, we worked jointly with APRA to remind trustees of the need to act in accordance with their best interests duty and to monitor fund liquidity and trustee communications: see [ASIC and APRA letter to superannuation trustees on impact of COVID-19](#) (1 April 2020). Our work included reviewing the websites of 50 trustees and seeking amendments to communications as appropriate (see paragraph 29(a) below).

Engagement with lenders

19 As lenders reacted quickly to the pandemic, deferring repayments on more than 500,000 home loans, we worked jointly with APRA to provide clarity on issues of hardship and responsible lending: see, for e.g., [ASIC responds to lenders' request for clarification on lending during the COVID-19 pandemic](#) (29 April 2020). We regularly met with lenders and consumer advocates to understand key issues and continued to monitor lenders responses to borrowers facing repayment difficulties and the status of temporary loan deferrals offered to borrowers.

20 Our ongoing oversight focused on ensuring that lenders offered borrowers assistance that genuinely met their needs and that borrowers were contacted in advance of any loan deferral expiring to outline available options. The vast majority of borrowers that exited a temporary deferral continued to make repayments and loans returned to a performing status.²

Engagement with insurers

21 We set out our expectations for general and life insurers to handle claims with utmost good faith and to deal with complaints genuinely, promptly,

² See: [APRA's loan repayment deferral data: Shining a light on credit risk](#) on the APRA website.

fairly and consistently. We also monitored insurers responses to consumers facing financial hardship. Where consumers were no longer able to pay premiums in full due to reduced income, we prompted insurers to implement measures to assist customers to maintain coverage: see [ASIC sets expectations of life and general insurers following a review of insurers' responses to consumers experiencing financial hardship during the COVID-19 pandemic](#) (22 April 2021).

Assistance to listed companies

- 22 We recognised that listed companies may need to raise funds urgently to address the impact of the pandemic. To assist fundraising, we granted relief to enable listed companies to make 'low doc' offers (including rights offers, placements and share purchase plans), even if they did not meet all the usual eligibility requirements: see Media Release ([20-075MR](#)) *Facilitating capital raisings during COVID-19 period* (31 March 2020). As a result, **over \$41 billion** was generated from secondary raisings by 240 listed companies in the period from March to October 2020.³

Monitoring solvency issues

- 23 We actively monitored companies facing solvency issues due to the pandemic and provided guidance to companies on the process for closing, winding-up or restructuring a company: see [COVID-19: closing a company and where to get help](#) (22 June 2020). We also published weekly updates on insolvency statistics to provide transparency on pandemic developments.⁴
- 24 We observed that the total number of companies entering an external administration or controller appointment for the first time was 7,362 for the year ended 30 June 2020 and this dropped to 4,235 for the year ended 30 June 2021.⁵ This coincided with support measures introduced by Government, such as a temporary insolvent trading moratorium,⁶ as well as other support measures provided by financial institutions.
- 25 Further details of the work we undertook are set out in **Annexure A**.

³ See: [Senate Economics References Committee Treasury Laws Amendment \(2021 Measures No. 1\) Bill 2021: Submission by the Australian Securities and Investments Commission](#), June 2021, p 23.

⁴ See: [Insolvency statistics \(up to 31 July 2022\)](#) on the ASIC website.

⁵ See: [Insolvency statistics - Series 1 Companies entering external administration and controller appointments](#) on the ASIC website.

⁶ See: Treasury, [Providing temporary relief for financially distressed businesses](#) [fact sheet].

Our work to assist consumers

- 26 Issues faced by consumers during the pandemic included the need for information on how to navigate decisions regarding their finances, such as whether to access their investment or superannuation, and what resources were available if they were facing financial hardship. In the low interest rate environment, consumers were also more vulnerable to scams or riskier investments promoting high returns.

Messages and resources

- 27 We focused on improving consumers' financial skills, knowledge and efficacy and providing them with information and tools to help them make informed financial decisions during the pandemic. For example, we:
- (a) Issued media alerts warning consumers to be alert to scammers taking advantage of the pandemic environment. For instance, we warned consumers not to transfer money to a suspicious investment opportunity from Cash FX Group (which was not licensed to provide financial services in Australia) that advertised investors could earn over 20% per month and was accepting payment via crypto assets: see [Alert: Suspicious investment 'opportunity' from 'Cash FX Group' | ASIC](#) (6 October 2021). We directed consumers to tools to help them stay safe online and protect themselves from misinformation: see, for e.g., [Scammers talking advantage of COVID-19 to target small business](#) (26 May 2021).
 - (b) Continually updated our Moneysmart website to reflect the common financial decisions many consumers were navigating. This included guidance on the COVID-19 early release scheme with messages for consumers to consider alternatives, such as Government financial assistance that may be available, and to take into account the long-term financial impacts of accessing superannuation early: see [Information for consumers during COVID-19](#) (11 September 2020).⁷ Over **one million** consumers visited ASIC's Moneysmart website each month during the pandemic.⁸
 - (c) Established an expert group on the financial wellbeing of young people to identify and explore key issues affecting the financial lives of young Australians: see [Young people and money](#) on the Moneysmart website.⁹
 - (d) Ran targeted communications through our Moneysmart social media. For instance, throughout September 2020, given the high levels of

⁷ Once the COVID-19 early release scheme ceased, ASIC's guidance on the scheme was archived from the Moneysmart website.

⁸ See: [ASIC Corporate Plan 2020-24: Focus 2020-21](#), p 2.

⁹ A summary of the ideas and themes arising from the work of ASIC's Expert Group on the financial wellbeing of young people is set out in its report, [Young people and money](#) (December 2021).

temporary consumer loan deferrals, we reminded consumers to engage with lenders in relation to their repayment obligations and financial circumstances.¹⁰

Refocused supervisory work

- 28 We changed our supervisory approach to focus on new areas of risk to consumers and conducted targeted surveillance activities.
- 29 We completed over 1,250 surveillances in the year ended 30 June 2020 and over 1,080 surveillances in the year ended 30 June 2021.¹¹ Examples of the surveillance work we undertook to protect consumers included:
- (a) Reviewing superannuation trustee websites to ensure that trustees acted promptly to improve communications to members. The review covered 50 trustees that were collectively responsible for approximately 94% of the \$1.87 trillion in APRA-regulated superannuation industry assets under management at that time. All the problematic communications we identified were removed or amended quickly: see [Review of how superannuation trustees supported their members during COVID-19](#) (22 March 2021).
 - (b) Monitoring buy now pay later products and the response by the sector to the pandemic. The use of buy now pay later by consumers increased **by approximately 43%** by number and value of transactions when comparing June 2019 and June 2020.¹² Our work included engaging with consumer representatives on the use of alternative credit products, especially by vulnerable consumers.
 - (c) Responding to reports of investment scams. Reports of misconduct received by ASIC from March to May 2020 increased by 20% compared to the same period in 2019 and this grew to **over 200%** in early 2021 compared with the same time the previous year: see Media Release ([20-147MR](#)) Rise in investment scams during COVID-19 pandemic (24 June 2020) and [Financial scams double in 2021: reporting up more than 200%](#) (12 March 2021).

Targeted enforcement work

- 30 We shifted our enforcement priorities to protect consumers from misconduct arising from behaviour seeking to exploit the pandemic environment and opportunistic conduct such as scams, unlicensed conduct, and misleading and deceptive advertising.¹³

¹⁰ See: ASIC's [Annual Report 2020–21](#), p 75.

¹¹ See: ASIC's [Annual Report 2020–21](#), p 31.

¹² See: Report 672 *Buy now pay later: An industry update* ([REP 672](#)), p 11.

¹³ See: Report 666 *ASIC Enforcement Update: January to June 2020*, ([REP 666](#)), P 5.

- 31 We commenced 134 investigations, 41 new criminal litigations and 50 new civil litigations in the year ended 30 June 2020 and 110 investigations, 53 new criminal litigations and 83 new civil litigations in the year ended 30 June 2021.¹⁴
- 32 Examples of the enforcement work we undertook to protect consumers included:
- (a) an investigation leading to the arrest of a man who operated an alleged scam and raised at least \$370,000 from unsuspecting victims who believed they were investing in legitimate investment companies: see Media Release ([20-422MR](#)) *Man arrested following suspected financial investment scam* (15 October 2020);
 - (b) commencing civil proceedings against Membo Finance Pty Ltd and its credit representative for failure to act efficiently, honestly and fairly when dealing with debtors in financial hardship: see Media Release ([23-037MR](#)) *ClearLoans penalised \$6 million for financial hardship misconduct and other Credit Act breaches during COVID-19* (23 February 2023); and
 - (c) banning a Gold Coast director from providing financial services and engaging in credit activity for eight years for promoting illegal access to the COVID-19 early release scheme: see Media Release ([23-099MR](#)) *ASIC bans Gold Coast director for eight years for promoting illegal early release of super* (17 April 2023).

Our work to assist business

- 33 Industry faced significant uncertainty on how to comply with compliance obligations in a disrupted pandemic environment. We received feedback from industry that certain regulatory obligations were unduly burdensome to comply with or strict compliance would be practically difficult in the circumstances.

Granting relief and no-action positions to assist industry to comply and meet the needs of clients

- 34 Throughout the pandemic, we used our discretionary powers to issue targeted relief and no-action positions to industry to remove the impact of certain compliance obligations that were onerous or created barriers for industry to respond to the needs of their clients. For instance, during the initial period of April 2020 to October 2020, we dedicated resources to

¹⁴ See: ASIC's [Annual Report 2020–21](#), p 32.

urgently issue nine legislative instruments and granted various individual relief instruments.

35 Examples of our work include:

Relief and no-action position to assist companies to meet their obligations – We granted relief for listed and unlisted companies to have an additional month to lodge audited financial reports and adopted a ‘no action’ position for public companies to have an additional two months to hold their AGMs. This recognised that companies and auditors were focused on responding to the pandemic and required additional time to comply: see Media Release ([21-061MR](#)) *ASIC adopts ‘no-action’ position and re-issues guidelines for virtual meetings* (29 March 2021).

Relief to assist consumers to access their funds – We granted relief to make it easier for lenders to issue debit cards to existing customers. This responded to the difficulties that consumers faced in accessing cash and approaching institutions during the pandemic and the need for online purchasing: see *ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401*. We also granted relief for operators of registered managed investment schemes that had become frozen (i.e., that had suspended promoted redemptions) to permit members to exit the scheme on hardship grounds, such as where members needed to access their money for living or medical expenses: see *ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778*.

Relief and no-action position to assist access to financial advice – We granted relief in respect of the COVID-19 early access scheme to allow advisers not to give a statement of advice to clients (using instead a simpler record of advice) and to permit registered tax agents to give advice to existing clients. We also adopted a ‘no action’ position for superannuation trustees to provide intra-fund advice on the COVID-19 early access scheme. This assisted the provision of affordable and timely advice to clients on accessing superannuation: see Media Release ([20-085MR](#)) *ASIC grants relief to industry to provide affordable and timely financial advice during the COVID-19 pandemic* (14 April 2020).

36 Further details of the relief and no-action positions we issued are set out in **Annexure B**.

Release of guidance

37 We released sector-specific guidance to assist industry to understand their compliance obligations and to direct them to resources to respond to the issues they were facing during the pandemic, including:

- (a) ongoing guidance on the appropriate approach to calling and holding company meetings using virtual technology, in order to assist

companies to comply with their obligations under temporary pandemic measures and to promote continued investor engagement in meetings: see [ASIC guidelines for investor meetings using virtual technology](#) (18 August 2021);

- (b) lists of frequently asked questions (**FAQs**) for stakeholders, including financial advisers, companies, directors and auditors (with respect to financial reporting and audit), superannuation trustees and responsible entities: see Information Sheet 262 *FAQs: COVID-19 information for advice licensees and financial advisers* ([INFO 262](#)), [COVID-19 implications for financial reporting and audit: Frequently asked questions](#) (FAQs) and [COVID-19 – Information for superannuation trustees](#) on the ASIC website, and [Operating a managed investment scheme during COVID-19](#) (7 July 2020).¹⁵ These FAQs provided guidance on ASIC’s areas of focus, ASIC’s expectations when dealing with the impacts of the pandemic and practical tips to help stakeholders overcome challenges caused by the pandemic;
- (c) guidance to help small business operators to make financial decisions to protect their business and to understand available resources, including the insolvency reforms introduced by the Government and loan repayment relief offered by lenders: see [Information for small business during COVID-19](#) (2 June 2020); and
- (d) the release of Information Sheet 245 *Board oversight and discretion in executive variable pay schemes* ([INFO 245](#)) to assist boards and remuneration committees of listed entities to make decisions on executive pay in the challenging context of the pandemic: see Media Release ([20-133MR](#)) *Info sheet 245: Board oversight and discretion in executive variable pay schemes* (12 June 2020).

Postponement of non-essential work

38 To enable industry to focus on immediate priorities and the needs of consumers during the pandemic, we postponed the commencement of certain work that would have imposed a significant regulatory burden and was not time critical. This included:

- (a) taking a facilitative approach to compliance with ASIC policy guidance in respect of various legislative reforms arising out of recommendations from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including new design and distribution obligations and breach reporting obligations; and
- (b) deferring areas of supervisory work requiring the collection of data, to reduce the reporting obligations on industry, including the recurrent

¹⁵ The FAQs for responsible entities have been archived from the ASIC website.

managed funds data collection pilot, our work on grandfathered conflicted remuneration and our review of life insurance advice.

Our collaborative approach with Government and regulators

- 39 Our work in response to the pandemic was influenced and supported by the work of Government and our engagement with local and overseas regulators.
- 40 We worked closely with Government on temporary measures aimed at supporting businesses and consumers, such as the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*, which facilitated the use of virtual technology to hold company meetings and electronic execution of company documents.
- 41 We coordinated our domestic pandemic responses with the Council of Financial Regulators Crisis Management Working Group, ensuring that each regulator took a consistent approach. We also regularly liaised with local regulators during the pandemic. For example, we worked closely with APRA to assess the short and long term impacts of the pandemic on our jointly regulated industry sectors and co-ordinated our supervisory work to reduce the burden on industry (see paragraphs 18 and 19 above).
- 42 On the global front, we participated in joint initiatives and sharing information on market developments, regulatory approaches and consumer protection measures, including:
- engagement with international standard-setting bodies, including IOSCO, the IAIS, the IFIAR, the OECD and the Financial Stability Board and counterpart overseas agencies in a coordinated approach to international issues related to consumer protection, market integrity and financial stability;
 - working with IOSCO's Asia-Pacific Regional Committee to bring emerging concerns to the regional level; and
 - co-leading the newly established IOSCO Retail Market Conduct Task Force examining measures to address misconduct, as well as retail investor and consumer protection issues.

B Lessons learned

Key points

Our work and engagement during the pandemic reinforced:

- the importance of being flexible and refocussing our priorities as needed;
- the benefits of a collaborative and consistent response to domestic and global issues;
- the resilience of our regulated population to changes in market conditions;
- the significance of technologically neutral compliance obligations in the present climate.

We consider that additional data gathering powers and digital reporting would enable us to better monitor and respond to potential significant market disruption in the future.

- 43 As an organisation, we reassessed our planned priorities and redeployed resources to address the greatest threats and harms arising from the pandemic environment, while still providing business and consumers access to our critical functions. Our workload significantly increased, given the heightened risk of significant consumer harm, and challenges in ensuring market integrity and the continued viability of companies and the economy. Ensuring that we remain agile and flexible as an organisation will safeguard our ability to respond effectively to future shocks.
- 44 We observed that the tools we implemented to respond to the pandemic were effective in maintaining financial stability and confidence in the financial system. We worked with exchanges and market participants to ensure that financial markets remained open and effective. We assisted industry through targeted relief and guidance. We protected consumers with messages, warnings and our supervisory and enforcement outcomes. Significantly, our pandemic responses received positive public feedback from the legal, governance, superannuation, insurance and restructuring sectors.¹⁶
- 45 Throughout the pandemic, we benefited from sharing insights and learnings with our stakeholders and peers. Our response to the pandemic was supported by our collaborative work with our regulated population, Government and our domestic and international counterparts. Our continuing regular liaison with Government, and relationships with our regulated

¹⁶ See: Financial Regulator Assessment Authority, *Effectiveness and Capability Review of the Australian Securities and Investments Commission* [report], July 2022, paragraphs 3.60 and 3.85.

population and counterparts, will allow us to respond to future events and minimise the regulatory burden on industry.

- 46 Overall, based on our monitoring work, we found that our regulated population was resilient in response to the pandemic.¹⁷ Our markets remained stable. Banks, fund managers and superannuation trustees did not experience liquidity issues. Consumer confidence remained high. Borrowers continued to make loan repayments following permitted deferral periods by lenders and company insolvencies decreased. Measures introduced by the Government to financially assist businesses and consumers during the pandemic contributed to this resilience.
- 47 In the early stages of the pandemic, it was clear that industry was faced with significant disruption and uncertainty due to the absence of technological neutrality in the Corporations Act. For example, due to pandemic restrictions on public gatherings, companies were unable to hold annual general meetings in person and directors could not sign documents using wet signatures as required. Interim and subsequent reforms by Government have largely resolved these issues. However, this demonstrated the importance of technology neutral compliance obligations for industry.
- 48 Inevitably, we found that opportunistic scams and misconduct targeting vulnerable consumers increased during the pandemic and continue to be prevalent. It was necessary to focus our supervisory and enforcement work on protecting consumers from this harm. In response, we have retained scams and cyber and operational resilience among ASIC's core strategic projects and introduced new technology to disrupt investment scam and phishing websites from targeting consumers.
- 49 Our ability to identify the key pandemic risks faced by industry and consumers, and monitor industry's response, was impeded by the absence of data on our regulated population. For example, we do not receive recurrent data from issuers of unlisted financial products and had to seek targeted information from a selection of industry participants using our formal notice powers to monitor the impact of the pandemic. The absence of data on our broader population limits our ability to make more holistic observations about the impact of the pandemic on industry and consumers.
- 50 Based on our experience, additional data gathering powers would enhance our capacity to monitor and respond to domestic and global issues. This is an issue that we are continuing to engage with Government on. For instance, our recent public submission to the Government's *Review of the regulatory framework for managed investment schemes* includes recommendations to increase our data capabilities through the introduction of a legislative

¹⁷ See: [ASIC Corporate Plan 2021–25: Focus 2021–22](#), p 7.

framework for the recurrent collection of data on the funds management sector.¹⁸

- 51 Our ability to use the data we do collect to gain meaningful insights and inform our regulatory responses during the pandemic was made more challenging and resource intensive due to the absence of compulsory digital financial reporting (i.e. reporting in a machine-readable format). For example, we were required to manually review company financial reports to assess whether they reflected the impact of the pandemic. In contrast, in other jurisdictions such as the United States, digital financial reporting is mandatory. Mandating lodgement of documents, such as financial reports, in digital format would allow us to make greater use of the data we collect. It would also improve transparency in capital markets, thereby reducing systemic risk.¹⁹
- 52 In conclusion, the Australian financial services sector fared well during the pandemic, aided by our actions throughout the pandemic to readjust our regulatory priorities and work to stabilise markets, protect and inform consumers and minimise the regulatory burden on industry. Crucially, we collaborated closely with Government and counterparts to ensure an informed and consistent regulatory response. We continue to monitor emerging issues and market changes, and use our experiences gained during the pandemic to assist us to respond to future domestic or global events.

¹⁸ See: [Review of the regulatory framework for managed investment schemes: Submission by the Australian Securities and Investments Commission](#), September 2023, p 46-47.

¹⁹ This issue was highlighted in [Productivity Commission Inquiry into Data Availability and Use: Submission by the Australian Securities and Investments Commission](#), August 2016, p 7-8.

Appendix A

Examples of other measures in response to the pandemic

Date	ASIC action	Details
April 2020	Released guidance to liquidators on dealing with challenges of the pandemic ASIC Corporate Insolvency Update - Issue 15 ASIC	Set out the ability for liquidators to apply for a no-action position if they faced compliance issues and that we would waive late fees arising from the pandemic
6 May 2020	Released our observations about initial pandemic trading by retail client 20-102MR Retail investors at risk in volatile markets ASIC	Highlighted that we had observed that retail investors were engaging in short term trading strategies unsuccessfully attempting to time price trends (which had contributed to our initial directions to market participants 20-062MR ASIC takes steps to ensure equity market resiliency ASIC)
7 May 2020	Released reminder to directors on trading during the COVID-19 pandemic Reminders on director trading during COVID-19 ASIC	Set out important considerations for directors (including directors of the responsible entity of a listed managed investment scheme) regarding the acquisition and disposal of securities and other financial products issued by their listed entity
14 May 2020	Issued correspondence to market participants Letter to all equity market participants (asic.gov.au)	Outlined that while we had lifted relevant directions on market participants, we expected all equity market participants to take reasonable steps to ensure the number of trades matched from their orders are capable of being handled by their internal processing and risk management systems and support the fair and orderly operation of Australian equity markets

<p>12 June 2020</p>	<p>Released INFO 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic</p> <p>20-133MR Info sheet 245: Board oversight and discretion in executive variable pay schemes ASIC</p>	<p>Helped boards and remuneration committees navigate decisions on executive variable pay, in the context of COVID-19</p>
<p>June to November 2020</p>	<p>Monitored buy now pay later products and the response by the sector to the COVID-19 pandemic. Released Buy now pay later: An industry update: Report 672</p> <p>Buy now pay later: An industry update (asic.gov.au)</p>	<p>The use of buy now pay later increased by approximately 43% by number and value of transactions from June 2019 to June 2020. We engaged with consumer representatives and closely monitored the use of small amount and alternative credit products, especially by vulnerable consumers</p>
<p>June 2020</p>	<p>Established the Corporate Governance Consultative Panel in 2020 to enable ASIC to gain a deeper understanding of developments and emerging issues in corporate governance practices.</p> <p>Members of this Panel include listed company directors, industry association representatives, institutional investors and academics</p>	<p>The Panel met once in 2019–20 and twice in 2020–21 to discuss the impact of the COVID-19 pandemic; environmental, social and governance issues; cyber resilience; and insolvency reforms</p>
<p>November 2020</p>	<p>Released an update on the impact of the pandemic on our assessment of licensees and professional registrants</p> <p>REP 671 Licensing and professional registration activities: 2020 update ASIC</p>	<p>Since April 2020, we made additional requisitions of all AFS and credit licence applicants to clarify the impact of the COVID-19 pandemic on their businesses</p>
<p>30 April 2021</p>	<p>Released our findings on our review of registered managed investment schemes and liquidity</p> <p>21-091MR ASIC review finds retail managed funds responded well to COVID-19 challenges in 2020 ASIC</p>	<p>Our review found that the selected retail managed funds did not face serious investor liquidity challenges during the height of COVID-19 market disruption, and that their liquidity frameworks were generally adequate</p>

<p>10 August 2021</p>	<p>Released our findings on our review of the valuation practices of responsible entities of registered schemes</p> <p>21-212MR ASIC finds good practices from COVID-19 review of managed funds' valuation of illiquid assets ASIC</p>	<p>Our review found the selected responsible entities were responsive to the increased valuation risks during the review period. They continued to provide timely valuations of their illiquid assets, including by increasing the frequency of valuations, expanding the sources of information to benchmark valuations and assumptions. They also continued to be able to obtain and rely on external valuations.</p>
<p>26 August 2020</p>	<p>Released INFO 249: <i>Frozen funds – Information for responsible entities</i>, and Revised RG 136: <i>Funds management: Discretionary powers</i></p> <p>Frozen funds – Information for responsible entities ASIC</p>	<p>Updated guidance on new relief measures for operators of frozen funds to facilitate withdrawals by members facing financial hardship during the COVID-19 pandemic</p>
<p>22 April 2021</p>	<p>Wrote to general insurers and life insurers setting out our expectations responding to consumers in financial hardship</p> <p>Letter to general insurers and Letter to life insurers</p>	<p>Outlined our expectations for dealing with consumers during the pandemic, including that a range of support options should be offered and that there should be prominent disclosure of key pandemic exclusions and limitations</p>
<p>9 December 2021</p>	<p>Released guidance on areas of focus for financial reporting given the impact of COVID 19</p> <p>21-342MR ASIC highlights focus areas for 31 December 2021 financial reports under COVID-19 conditions ASIC</p>	<p>Outlined our expectations for financial reports to assess and explain the impact on COVID-19 on valuations and provisions and that assessments of solvency and going concern were appropriate</p>

Appendix B

Key pandemic related instruments and no-action positions

Date	Legislative instrument/No action position	Benefit to business
20 March 2020	20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements ASIC	Provided a temporary no-action position to facilitate an additional two months for companies to hold the AGM
2 April 2020	ASIC Corporations (Trading Suspensions Relief) Instrument 2020/289	Facilitated capital raisings by allowing listed entities suspended for up to 10 trading days (compared to previous 5) to access low-doc capital raisings
14 April 2020	Temporary no-action position for expanded intra-fund advice on early release of superannuation relating to COVID-19 ASIC	Provided a temporary no-action position to facilitate the provision of intra-fund advice on the COVID-19 early release scheme
15 April 2020	ASIC Corporations (COVID-19—Advice-related Relief) Instrument 2020/355	Facilitated retail clients receiving timely and affordable financial product advice
25 April 2020	ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395	Allowed unlisted entities up to one additional month to complete financial reports and have those reports audited
25 April 2020	ASIC Corporations (COVID-19 – Distribution of Debit Cards) Instrument 2020/401	Facilitated ADIs providing their existing customers with debit cards
28 April 2020	ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451	Allowed listed entities up to one additional month to complete financial reports and have those reports audited
27 May 2020	ASIC Corporations (Deferral of Design and Distribution Obligations) Instrument 2020/486	Provided relief in relation to the commencement of the design and distribution obligations (DDO) for six months

28 May 2020	ASIC Credit (Deferral of Mortgage Broker Obligations) Instrument 2020/487	Provided relief in relation to the commencement of the mortgage broker reforms for six months
24 June 2020	ASIC Corporations (COVID-19 Email Lodgment Service—ASIC Corporations (Wholly-owned Companies) Instrument 2016/785) Instrument 2020/612	Facilitated the electronic lodgement of documents for the purposes of relief under ASIC Corporations (Wholly-owned Companies) Instrument 2016/785
28 August 2020	ASIC Corporations (Hardship Withdrawals Relief) Instrument 2020/778	Facilitated REs of registered schemes making withdrawal payments to members on hardship grounds
21 October 2020	ASIC Market Integrity Rules (Securities Markets) Class Waiver Instrument 2020/870	Relieved market participants from the requirement to have accreditations of their advisers renewed on 30 November 2020
14 January 2021	Letter to the Insurance Council of Australia outlining no-action position	Provided a temporary no-action position from provisions that require documents to be given to clients within five business days of specified events for the duration of the temporary adjustment in Australia Post's performance standards
29 March 2021	21-061MR ASIC adopts 'no-action' position and re-issues guidelines for virtual meetings ASIC	Provided a temporary no-action position for the holding of virtual meeting pending Government reforms
1 April 2022	ASIC Corporations (Virtual-only Meetings) Instrument 2022/129	Facilitated listed companies, unlisted companies together with listed and unlisted registered schemes, to hold virtual-only meetings of their members for an extended period beyond the expiry of the current temporary relief measures introduced by the <i>Treasury Laws Amendment (2021 Measures No. 1) Act 2021</i>

Key terms

Term	Meaning in this document
ADI	Authorised deposit-taking institution
ASIC	Australian Securities and Investments Commission
APRA	Australian Prudential Regulation Authority
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Council of Financial Regulators (CFR)	The CFR is the coordinating body for Australia's main financial regulatory agencies. There are four members: APRA, ASIC, the Australian Treasury and the Reserve Bank of Australia
COVID-19 early release scheme	Eligible Australian and New Zealand citizens and permanent residents were able to apply online through myGov to access up to \$10,000 of their superannuation before 1 July 2020. They were also able to access up to a further \$10,000 from 1 July 2020 until 31 December 2020
COVID-19 pandemic	A global outbreak of coronavirus – an infectious disease caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)
Financial hardship	When a consumer has difficulty making loan and debt payments or meeting their other basic financial needs
IOSCO	International Organization of Securities Commissions
IAIS	International Association of Insurance Supervisors
IFIAR	International Forum of Independent Audit Regulators
Managed investment scheme	Has the meaning given in s9 of the Corporations Act
Moneysmart website	ASIC's website for consumers and investors
No-action position	A no-action letter in which we state to a particular person that we do not intend to take regulatory action over a particular state of affairs or particular conduct
OECD	Organisation for Economic Co-operation and Development
OTC	Over the counter
Relief	The exercise of ASIC's exemption or declaration powers in the form of an instrument

Term	Meaning in this document
Responsible entity	A responsible entity of a registered managed investment scheme as defined in s9 of the Corporations Act
Retail client	Has the meaning given in s9 of the Corporations Act