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Dear Sir

ASIC self-assessment 2019-20

Thank you for providing ASIC's draft self-assessment and inviting our response. Overall, we think there is much to be commended in ASIC's performance over the relevant period, especially in its agile response to the challenges presented by the COVID-19 pandemic. We expand on this and set out some respects in which we think ASIC's performance could be enhanced, below.

KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

KPI 6: Regulators actively contribute to continuous improvement of regulatory frameworks

Response to pandemic

We appreciate that ASIC, along with other government agencies, demonstrated responsiveness and sensitivity to some of the challenges presented to the financial sector by the COVID19 pandemic. We also appreciate ASIC's prompt response and cooperation with industry on projects designed to address the circumstances of the pandemic. A key example of this was ASIC's response to the ABA's application for regulatory relief to enable banks to rapidly distribute debit cards to customers who at the time only had access to passbook accounts, to make sure that they had the ability to do their banking, pay their bills and buy things safely – either online, by telephone, or by using cashless and contactless technology in stores.

We consider that ASIC's decision to realign its priorities to enable it and industry to focus on addressing the challenges posed by the pandemic was appropriate. The regulatory reform agenda in the financial sector has been intense. Adjusting commencement dates for parts of that agenda to allow entities to focus on responding to the pandemic was the right decision, in our view.

We would note that, even where commencement dates have been adjusted, it remains important that ASIC release documents such as regulatory guidance at the earliest possible opportunity. For this reason, delay of consultation on regulatory guidance for major regulatory reform projects such as the product design and distribution obligations, and the recast breach reporting framework needs to be carefully considered. These initiatives present major implementation challenges for banks and other licensees, and early insight on ASIC's approach can significantly ease this burden.

ASIC's decision to reprioritise some of its work such as on data collection and onsite supervision also reflects good judgment in the circumstances in our view.

Regulatory portal

We note that ASIC continues to expand the suite of functions conducted via its regulatory portal. We support technological innovations such as this and recognise their potential to increase efficiency and save time and expense for both ASIC and its regulated population. We would, however, also observe that such technological solutions sometimes achieve their optimal level of efficiency only after they have been finely tuned with the benefit of trial and error.



In our assessment, parts of the regulatory portal work better than others. In particular, the breach reporting function of the portal, in our view, has not achieved its potential. In this respect the portal currently lacks functionality and is awkward to use. This is particularly problematic in light of a large increase in breach reporting volumes expected as government reforms come into effect later this year. We encourage ASIC to engage further with industry on ways to improve the breach reporting functionality of the portal in advance of the new reforms taking effect.

A facility that allowed secure uploading of documents would be a useful addition to the portal. We note that APRA offers this facility, for example.

KPI 2: Communication with regulated entities is clear, targeted and effective

KPI 5: Regulators are open and transparent in their dealings with regulated entities

Consultation

Generally speaking, ASIC's processes for consultation are conducted well and time allowed for responses is usually reasonable. In this regard ASIC sets a positive example for other government agencies which in more recent times have often allowed only very short periods in which to respond to highly significant reforms.

While ASIC's processes, once commenced, are generally good, we note that their commencement has sometimes been delayed or held back until relatively close to commencement dates for relevant legislation. For example, ASIC delayed finalising its consultation process for the DDO regulatory guide until early this year. We note that this was partly a result of the decision to delay the commencement of the DDO. However, as noted above, early insight into ASIC's approach is critical to industry's ability to implement such significant reforms programs effectively. Breach reporting is another example. With significant reforms to the regime taking effect in October, ASIC is yet to update its regulatory guide (though we note consultation on this has now commenced).

More broadly, we find ASIC's annual Corporate Plan to be a very useful document. Early release of this each year helps industry understand ASIC's priorities.

Transparency

Transparency is an important regulatory characteristic for a regulator such as ASIC. Broad access to understanding of ASIC's approach contributes to consistency and gives the regulated population confidence in knowing what to expect. We note and endorse ASIC's commitment to:

"taking a proportionate approach to enforcement, including being transparent about how we approach our enforcement role and why we respond to particular types of breaches of the law in different ways."¹

While ASIC generally demonstrably strives to achieve this goal, there are some instances in which we think it could do better. An example is ASIC oversight of various remediation processes. In our view this has, to some extent, been siloed and insular. ASIC has sometimes engaged bilaterally and shared methodology and assumptions in that context, without conveying this to the broader regulated community. Better communication of these matters would enhance knowledge and give entities engaged in remediation confidence to move ahead swiftly, with the likely result that the process is concluded faster, and customers are remediated consistently across industry.

¹ Paragraph 107



KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

KPI 4: Compliance and monitoring approaches are streamlined and coordinated

Cooperation with other regulators

ASIC's engagement across a broad range of regulators – domestic and international – is to be commended. Such engagement helps to ensure consistency and efficiency among domestic regulators, who sometimes have overlapping remits. We see a continuing need for this engagement, and believe that there is room for even better co-ordination between domestic regulators. Better communication could reduce duplication and enhance efficiency where, for example, regulators make data requests of industry, or where two regulators conduct overlapping supervisory activity.

Close engagement with international regulators gives ASIC insight into international best practice and helps to ensure it brings any lessons learned on that front to its approach domestically.

Industry reviews

Early engagement

ASIC's industry reviews are a useful means to assess compliance and identify current and emerging issues. In order to maximise the usefulness of these reviews, and to minimise administrative impact on industry, we would encourage ASIC to engage with industry at an early stage. Responding to requests from ASIC in relation to these processes can be resource intensive for banks and other regulated entities. Engagement at an early enough stage to allow industry to have input into the design of notices and setting of timeframes, for example, would be a welcome step.

Clarity of purpose / publication

On occasion, ASIC has conducted reviews on a less formal basis and apparently without a view towards publishing its conclusions. An example was ASIC's approach in respect of powers of attorney in mid 2019 / early 2020. ASIC undertook reviews of the practices of 6 banks and had discussions with the ABA. While feedback was provided to individual banks and some high-level informal conclusions were conveyed to the ABA, and a literature review prepared by Melbourne University academics for ASIC, no document was published, rendering the project of limited utility.

We would be pleased to discuss any of the above points if this would be helpful.

Yours faithfully

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