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The ATO has issued a media release stating that it welcomes the Federal Court decision in PepsiCo v FCT.

FINANCIAL SERVICES

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ASIC has registered an instrument that puts in place further interim measures to delay the requirement for relevant providers to be registered with ASIC.

APRA highlights importance of data management

APRA has released an insight article highlighting the results of its multi-year pilot study on data risk management.

SUPERANNUATION

Super balances above \$3m, other tax related measures Bill introduced

Government has introduced two Bills which will, among other things, reduce tax concessions applying to earnings on super balances above \$3m.

Super product performance data published

APRA has published new data on superannuation product performance, analysing fees and investment returns across MySuper and trustee directed products.

Proposal for SDT Phase 2: APRA

APRA has released a discussion paper SDT Phase 2 to "strengthen" its data collection in areas including trustee board governance and investment liquidity and valuations.

REGULATOR NEWS

ASIC News

Updates from ASIC in the past week including media releases, news, articles and speeches.

TAXATION

Government amendments to the making multinationals pay Bill

The Government has moved important technical amendments to the [Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share – Integrity and Transparency\) Bill 2023](#) in the Senate. These changes were previously touted in exposure draft legislation.

The amendments will commence at the start of the first quarter following assent and apply to assessments for income years beginning on or after 1 July 2023. However, Subdiv 820-EAA (the debt deduction creation rules) applies in relation to assessments for income years starting on or after 1 July 2024.

The main changes are dealt with in five broad headings, below.

Choices under Subdiv 820-AA

New s 820-47(4A) clarifies the ordering between a deemed choice under s 820-46(5) (third party debt test choice) and a choice under s 820-46(3) (group ratio test choice). In relation to a single income year, if a choice under s 820-46(5) is taken to have been made by the entity, the entity cannot subsequently make a choice under s 820-46(3) and any choice previously made under s 820-46(3) by the entity is revoked and taken never to have been made.

Obligor group

An amendment clarifies that a creditor does not need to have recourse to all the assets of an entity for that entity to be an "obligor entity". It is sufficient for recourse to be had to one or more assets of the entity.

Where a creditor only has recourse to the assets of an entity that are membership interests in the borrower, then that entity will not be an obligor entity. Lenders often have recourse to the membership interests in the entity they lend to. An amendment ensures that entities which merely hold membership interests in the borrower do not

become obligor entities.

Tax EBITDA

Paragraph 820-52(1)(c) requires entities to add the value of some of their deductions to their tax EBITDA calculation. Two new deductions are now included under this paragraph: (i) general deductions under s 8-1 that relate to forestry establishment and preparation costs; and (ii) deductions under s 70-120 (capital costs of acquiring trees).

A corporate tax entity may choose the amount of its tax loss that it deducts in an income year. To account for this choice, amendments clarify how corporate tax entities calculate their tax EBITDA. Broadly, in working out the taxable income or tax loss of a corporate tax entity for the purposes of s 820-52(1), it is assumed that the entity chooses to deduct, under s 36-17(2) or (3), all the entity's tax loss and s 36-17(5) does not apply to that choice.

Third party debt test

There are a number of changes made to the third party debt test. These include the following.

An interest rate swap cost that relates to multiple debt interests is now generally deductible under the third party debt test, to the extent s 820-427A(2) is satisfied in relation to the cost.

In conduit financier cases, an interest rate swap cost incurred by a borrower is now generally deductible under the third party debt test, to the extent s 820-427A(2) is satisfied in relation to the cost.

Paragraph 820-427C(1)(d) broadly requires the terms of a "relevant debt interest" that relate to costs to be same as the terms of the associated "ultimate debt interest" that relate to costs. This paragraph has been amended so that it only focuses on the terms of: (i) a relevant debt interest that relate to costs incurred by the borrower, rather than costs incurred by any entity; and (ii) the associated ultimate debt interest that relate to costs incurred by the conduit financier, rather than costs incurred by any entity.

Debt deduction creation rules

There are also a number of highly technical changes to the debt creation rules, including the following.

New s 820-31 clarifies the ordering between Subdiv 820-EAA (debt deduction creation rules) and all other provisions in Div 820. An entity first works out if their debt deductions are disallowed under the debt deduction creation rules. To the extent their debt deductions are disallowed under those rules, the disallowed debt deductions are disregarded for the purposes of applying all other provisions in Div 820. The other provisions in Div 820 may further disallow the entity's debt deductions.

The exemption of certain special purpose entities from the thin capitalisation rules is extended to the debt deduction creation rules.

ADIs and securitisation vehicles are now also excluded from the debt deduction creation rules.

IGoT News! November 2023 edition released

The Inspector-General of Taxation has released [Edition 24](#) of its regular Newsletter IGot News!.

The edition includes updates on current review investigations:

The Exercise of the Commissioner's Remedial Power (CRP) - the IGTO is currently working through "final aspects" of the report and is aiming to finalise and publish the report before the end of the 2023 calendar year;

Administration and Management of Objections - Phase 2 - the IGTO is working through the information available and will be undertaking some case sampling and analysis that will focus on areas such as resourcing, independence and impartiality, and timeliness. The IGTO anticipates finalising and publishing the report in the first half of 2024.

The edition also serves as a recap of the latest reports that were published since the last edition, namely the:

report on the ATO's administration of the Small Business Litigation Funding Program;

report on the investigation into the exercise of the Commissioner's general powers of administration;

IGTO's FY23 annual report and corporate plan FY24-FY27.

Australia signs DTA with Portugal

Australia and Portugal signed a comprehensive DTA (the "Convention") on 30 November 2023 in Lisbon, the first tax treaty between the two nations. The Convention is accompanied by a Protocol which elaborates on, and forms an integral part of, the Convention.

The Convention covers the following taxes:

for Australia – income tax, resource rent taxes and FBT;

for Portugal – personal income tax (Imposto sobre o Rendimento das Pessoas Singulares – IRS), corporate income tax (Imposto sobre o Rendimento das Pessoas

Coletivas – IRC) and surtaxes on corporate income tax (derramas).

Withholding tax on dividends

The Convention will provide a general rate of 10% on dividends.

A 5% rate will apply for: (i) portfolio dividends derived by governments (including government investment funds), central banks, tax exempt Portuguese pension funds, and Australian superannuation funds or other Australian residents carrying on complying superannuation activities; and (ii) intercorporate dividends on non-portfolio holdings of at least 10%.

Withholding tax on interest

The Convention will provide a general rate of 10% on interest.

A 5% rate will apply to exempt Portuguese pension funds, Australian superannuation funds or other Australian residents carrying on complying superannuation activities, and independent financial institutions.

Withholding tax on royalties

The Convention will provide a rate of 10% (compared with the current default rates of 30% and 25% for Australia and Portugal respectively).

Tax certainty for pensions

The Convention provides that non-government periodic pension payments (superannuation) will be taxed only in the recipient's country of residence.

Non-discrimination

Australia and Portugal will be prevented from treating each other's nationals and businesses less favourably. This means that Australian businesses will not be subject to any discriminatory tax measures in Portugal and can compete on a level playing field with Portuguese businesses.

The non-discrimination article will not apply to any law of Australia that relates to a rate of taxation for working holiday makers.

Entry into force

The Convention will enter into force after both countries have completed their domestic requirements and instruments of ratification have been exchanged.

PepsiCo: Federal Court rules in favour of ATO

The ATO has issued a [media release](#) stating that it welcomes the Federal Court decision in *PepsiCo v FCT*. The release states that the decision confirms that PepsiCo is liable for royalty withholding tax and, in the alternative, diverted profits tax would apply.

The Court delivered an oral decision on 30 November 2023, however Moshinsky J has deferred general publication so that the taxpayer and a commercial counterparty have time to apply for suppression orders in relation to commercially sensitive information.

There are no details on the [Federal Court website](#) (ie as at the time of publication).

FINANCIAL SERVICES

Financial advice registration requirement extended

ASIC has registered the ASIC Corporations (Amendment) Instrument 2023/730 (the "Amending Instrument"). The Amending Instrument puts in place further interim measures to delay the requirement (the "Registration Requirement") for "relevant providers" to be registered with ASIC as a precondition for providing personal advice ("Financial Advice") to retail clients about relevant financial products.

By way of background, the requirement for relevant providers to be registered was introduced by the Financial Sector Reform (Hayne Royal Commission Response -- Better Advice) Act 2021 ("Better Advice Act"). The registration provisions, as inserted by the Better Advice Act, staggered commencement dates so that Australian financial services ("AFS") licensees and relevant providers could continue providing Financial Advice without being registered up to 1 January 2023. Subsequent steps were taken by the Government to delay the Registration Requirement to 1 October 2023.

The Amending Instrument provides for a further delay to the Registration Requirement to 1 February 2024 in order to allow:

- parliament to further consider the Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 ("TLAB 1"), which gives ASIC the power to use assisted decision-making systems when processing registration applications and facilitate multiple registration of relevant providers;
- ASIC to implement TLAB 1 if TLAB 1 is enacted;
- industry to understand its rights and obligations concerning the Registration Requirement; and
- AFS licensees to register their relevant providers with ASIC prior to the Registration Requirement commencing.

APRA highlights importance of data management

APRA has released an [insight article](#) highlighting the results of its multi-year pilot study on data risk management. While improvements in data practices has been observed,

APRA said that progress is slow and the gap between current and better practice in data risk management remains wide.

By way of background, APRA initiated an exercise in 2019 seeking a select group of authorised deposit-taking institutions (ADIs) to identify 100 of their most critical data elements (eg customer name, account number and interest rate) and enhancing the control environment over those data elements. Known as the 100 Critical Risk Data Elements (CRDE) Pilot, the aim was to understand data management practices. What followed was a series of in-depth data risk prudential reviews that assessed the implementation of each bank's data risk management frameworks. Similar questionnaires were sent to a group of life insurers and superannuation entities in 2022 to better understand their risk practices following concerns surrounding incorrect regulatory submissions.

The article, a result of the pilot study, shares "better practice examples" observed by APRA which are applicable to all APRA-regulated entities. The article also highlights six factors for businesses to consider when improving data management:

- establish data governance with a unified data strategy;
- provide clarity on roles and responsibilities for ownership of critical data elements and processes across the data lifecycle;
- simplify the technology and data architecture environment through improved platform solutions and by decommissioning legacy assets;
- identify critical data elements and create a consistent set of data controls;
- establish mechanisms to monitor data quality and timely remediation of errors based on business requirements; and
- integrate data management risk into risk management frameworks.

APRA also said that it intends to continue its focus on data risk management through CPS 230 Operational Risk Management.

SUPERANNUATION

Super balances above \$3m, other tax related measures Bill introduced

The Government has introduced the following two Bills into Parliament:

[Treasury Laws Amendment \(Better Targeted Superannuation Concessions\) Bill 2023](#) (the "Bill"); and

[Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023](#).

Note that the Bill also includes amendments to the Payment Systems (Regulation) Act 1998 which is not covered below.

Super balances above \$3 million

From the 2025-26 income year onwards, the headline concessional tax rates applying to superannuation earnings are:

up to 15% on earnings on superannuation balances \$3 million and below; and

up to an overall 30% on a percentage of earnings equal to the percentage of the individual's total superannuation balance ("TSB") above \$3 million.

This will be done by inserting a new Div 296 into the ITAA 1997.

The amendments reduce the tax concessions by imposing a tax of 15% on certain earnings based on the percentage of the TSB exceeding the \$3 million threshold. The tax is imposed directly on the individual and is separate from the tax arrangements of the superannuation fund or scheme.

This change is expected to apply to around 80,000 people, or approximately 0.5% of Australians with a superannuation account in the 2025-26 income year.

The Bill were released in draft form in October 2023 and will enact the changes announced in the 2023-24 Budget. The amendments will commence on 1 July 2025 and apply to the 2025-26 income year and onwards.

Secrecy provisions reform in ACNC Act

Schedule 4 to the Bill proposes to amend the Australian Charities and Not-for-profits Commission Act 2012 ("ACNC Act") to allow for the disclosure of information about ongoing ACNC investigations, subject to a safeguard of a public harm test.

The proposed amendment will allow the Commissioner to authorise an ACNC officer to disclose information about an ongoing investigation where the disclosure would prevent or minimise the risk of significant harm.

Draft legislation was released in September 2023. The measures will take effect from the day after the Bill receives assent.

Frequency of FRAA reviews of APRA and ASIC reduced: from 2 years to 5

The Bill proposes to amend the Financial Regulator Assessment Authority Act 2021 to reduce the frequency of FRAA's reviews of ASIC and APRA to every five years. Such reviews are currently carried out on a rolling two-year basis. The intended outcome is to lessen the regulatory burden on ASIC and APRA and allow for more comprehensive reviews by the FRAA.

This change was flagged in the 2023-24 Federal Budget. There was no draft legislation

and the measures will take effect from the day after assent.

Attribution of input tax credits; deductibility of reverse charge GST

The Bill contains measures that impact GST contained in Sch 6 under the heading "miscellaneous and technical amendments".

First, the decision in *FCT v Travelex Limited* [2021] HCA 8 (and the preceding Federal Court decisions) confirmed that there could not be an amended GST return. This was relevant where a taxpayer's GST return period for a tax period did not take into account a claim for input tax credits that would otherwise be attributable to that period. It meant that the ATO's administrative practice of allowing taxpayer to lodge an amended GST was no longer possible. It further meant that a claim for input tax credits can only be attributable to a later tax period though it being accounted for in a GST return for a later period – which is then subject to the entitlement time limit rules in Div 93.

The Bill proposes measures that will enact the previous administrative practice by repealing s 29-10(4) and replacing with s 29-10(4) to (6). The Bill will also make similar changes to the attribution rules in s 29-25(1) for acquisitions, ie to take account of the interaction with Div 93.

Second, there are amendments to ensure consistent outcomes to the deductibility of GST amounts between how GST is generally charged and for GST that is reverse charged. Currently under s 27-15(1) of the ITAA 1997, a taxpayer is not able to claim an income tax deduction for the payment of GST, subject to certain exceptions. Reverse charge GST is not listed as an exception. The amendments seek to change this by ensuring that a taxpayer is able to deduct the amount of GST payable by way of reverse charge, to the extent that: (i) the GST amount is greater than any input tax credits or reduced input tax credits they are entitled to; and (ii) the requirements for income tax deductions in the ITAA 1997 are satisfied.

Licensing exemptions for foreign financial services providers

The Bill is proposing to amend the Corporations Act to ensure regulatory oversight of activity by foreign financial services providers in Australian financial markets while facilitating provision of cross-border financial services by:

providing an exemption from the requirement to hold an AFS licence for persons that provide financial services from outside Australia to professional investors (the "professional investor exemption");

providing an exemption from the requirement to hold an AFS licence for persons regulated by comparable regulators and that provide financial services to wholesale clients (the "comparable regulator" exemption);

providing an exemption from the requirement to hold an AFS licence for persons that

provide financial services that involve making a market for derivatives that are able to be traded on a specified licensed market (the "market maker exemption"); and

fast-tracking the licensing process for persons seeking to establish more permanent operations in Australia by providing an exemption for persons regulated by comparable regulators from the fit and proper person test when applying for an AFS licence to provide financial services to wholesale clients (the "fit and proper person test" exemption).

Super product performance data published

APRA has [published](#) new data on superannuation product performance, analysing fees and investment returns across MySuper and trustee directed products ("TDPs"), a subset of the choice sector. The publication includes:

Insights Paper - 2023 Performance Test which draws upon the [2023 superannuation performance test data](#) (published on 31 August 2023) to deliver additional insights into the areas of investment performance and fees charged across MySuper and TDPs; and

Expanded Performance Test 2022-23 Results which presents each product's numerical results for this year's performance test, showing how products performed relative to the tailored benchmarks beyond the "pass" and "fail" results from the 2023 superannuation performance test data.

The findings show:

there is significant variance in the administration fees paid by fund members within each of the product segments. This indicates considerable scope for fee reductions across the industry, particularly for trustee directed products;

trustee directed products offered through platforms generally have the highest fees. Trustees should review whether the additional services provided to justify the higher fees are delivering value for money to members;

larger funds tend to charge lower administration fees, which reinforces the efficiency and cost-savings benefits of scale that exist in superannuation; and

while most MySuper products and non-platform trustee directed products are outperforming the investment component of the performance test, more than half of all platform trustee directed products are failing to meet the benchmark.

The two publications replace this year's heatmaps as APRA transitions to a "more aligned approach" to fund performance scrutiny. ASIC also said that starting next year, a comprehensive transparency package covering investment returns, fees and performance test metrics will be published soon after the annual performance test.

Proposal for SDT Phase 2: APRA

APRA has released a discussion paper, [Superannuation Data Transformation Phase 2](#), where APRA proposes to "strengthen" its data collection in areas including trustee board governance and investment liquidity and valuations.

The Superannuation Data Transformation (SDT) project was launched in November 2019 to upgrade the breadth, depth and quality of APRA's superannuation data collection. Under the first phase of the project, APRA addressed the most urgent data gaps in its collection, leading to greater transparency of the choice product sector, insurance outcomes and how trustees are using members' monies.

The discussion paper proposes additional data to be collected, under Phase 2 of the SDT project, to further APRA's supervision of the industry in areas including the following.

Trustee profile - enhanced data on the business model and structure of trustees, trustee boards and board committees to provide greater insights into the governance practices and effectiveness of superannuation trustees.

Superannuation fund profile - additional data to provide APRA with a more detailed understanding of product distribution arrangements between funds and intermediaries such as employer sponsors and promoters, as well as complex product features such as lifecycle strategies.

Investments - collecting new and enhanced investments data, including data to inform assessments of investment governance and exposure to liquidity and valuation risk. This is in line with APRA's Prudential Standard SPS 530 Investment Governance and Prudential Practice Guide SPG 530 Investment Governance.

Indirect investment costs - data on total annual indirect investment costs associated with each investment manager. The proposal will address a key gap in APRA's data on investment expenses.

Financial statements - collecting trustees' financial statements data. The data will help APRA understand the flow of monies within superannuation trustees and the superannuation system, and support assessments of financial resilience.

The discussion paper includes draft reporting standards and the proposed reporting tables - mapping to current collections.

Submissions are due by 31 March 2024.

REGULATOR NEWS

ASIC news

ASIC has released the following updates in its Newsroom section:

- [01 December 2023 – SPEECH Opening statement at the Rural and Regional Affairs and Transport References Committee’s Inquiry into bank closures in regional Australia](#) - Opening statement by ASIC Commissioner Alan Kirkland, 1 December 2023. ASIC’s formal submission lodged with the inquiry focused on the insights and activities of ASIC’s Indigenous Outreach Program. Our submission covers the relevance of key learnings outlined in ASIC’s Indigenous Financial Services Framework, and ASIC’s understanding of the impact of branch closures in regional and remote areas through the work of our Indigenous Outreach Program.
- [01 December 2023 - NEWS ITEM AAT affirms ASIC decision to disqualify SMSF auditor for breaching independence requirements](#) - The Administrative Appeals Tribunal (AAT) has upheld ASIC's decision to disqualify Ms Janette Townshend from being an approved self-managed superannuation fund (SMSF) auditor for breaching independence requirements. "Suspending or disqualifying Ms Townshend would send a clear message to the rest of the audit profession that independence is crucially important. The need for general deterrence makes that essential", Deputy President McCabe said. [Read the AAT’s decision and reasons for the decision.](#)
- [01 December 2023 - MEDIA RELEASE 23-324MR ASIC issues infringement notices to Morningstar for statements regarding exposure to weapon investments](#) - Morningstar has paid \$29,820 to comply with two infringement notices issued by ASIC in which ASIC alleged its investor funds were exposed to controversial weapons investments, despite Morningstar’s Environmental, Social and Corporate Governance (ESG) Policy stating that such investments would be excluded. The Product Disclosure Statement for the Morningstar International Shares (Unhedged) Fund stated that it would exclude certain securities or sectors based on environmental, social or governance factors, as listed in the ESG Policy. The ESG Policy said the Fund would not have exposure to investments in controversial weapons companies.
- [30 November 2023 - MEDIA RELEASE 23-323MR RACQ to pay \\$10 million for pricing discount failures](#) - RACQ Insurance Limited (RACQ), has been ordered to pay a \$10 million penalty by the Federal Court for potentially misleading customers in its product disclosure statements (PDS) about the pricing discounts available for certain types of insurance cover. The Court found that RACQ sent out the misleading PDSs on at least five million occasions between March 2017 and March 2022. Approximately 458,746 customers missed out on approximately \$86,476,339 in discounts they should have received. ASIC

Deputy Chair Sarah Court said, “Consumers need to be able to rely on the pricing promises made to them by insurers, and insurers need to make sure that they pass on those promises in full”.

- [30 November 2023 - MEDIA RELEASE23-322MR Director charged with breach of director duty offences](#) – Sole director of Equitable Financial Solutions Pty Ltd, Usman Siddiqui, of Brighton-Le-Sands, NSW has appeared in the Downing Centre Local Court charged with breaches of director duties. Mr Siddiqui has been charged with four counts of dishonestly using his position as a director of Equitable Financial Solutions to gain an advantage by allegedly causing \$1.75 million of company funds to be diverted away from Equitable Financial Solutions for his own benefit. Mr Siddiqui was arrested by NSW Police on 2 November 2023 after ASIC charged him with offences for contravening section 184(2)(a) of the Corporations Act 2001 and sought a warrant for his arrest. Mr Siddiqui was granted bail on the date of his arrest with conditions imposed preventing him from leaving Australia. The charges have been listed for a further mention before the Downing Centre Local Court on 20 February 2024. The matter is being prosecuted by the Commonwealth Director of Public Prosecutions following a referral from ASIC.
- [30 November 2023 - MEDIA RELEASE23-321MR ASIC cancels AFS license of Remi Investment Services](#) - ASIC has cancelled the Australian financial services (AFS) licence of Remi Investment Services Pty Ltd (RIS). The licence was cancelled because RIS is no longer carrying on a financial services business. The cancellation took effect on 27 November 2023. Under the Corporations Act, ASIC may cancel an AFS licence held by a body corporate if it ceases to carry on a financial services business under s915B. RIS may apply to the Administrative Appeals Tribunal for a review of ASIC’s decision.
- [29 November 2023 - MEDIA RELEASE23-320MR OnePath Custodians penalised \\$5 million for fees for no service misconduct](#) – The Federal Court has ordered superannuation trustee OnePath Custodians Pty Ltd (OnePath) to pay a \$5 million penalty for making false or misleading representations about its right to continue charging fees, and for failing to provide services to members efficiently, honestly and fairly due to its misleading conduct and by deducting fees when not entitled to do so. This is the second fees for no service-related penalty decision obtained by ASIC within a week after Mercer Financial Advice was penalised \$12 million for charging fees to customers it was not entitled to charge ([23-314MR](#)).
- [29 November 2023 - MEDIA RELEASE 23-319MR Fong Financial Planners sentenced for dishonest conduct](#) - Fong Financial Planners Pty Ltd has been convicted and sentenced in the District Court of Western Australia for three counts of dishonest conduct while carrying on a financial services business. Fong Financial Planners was sentenced to a fine of \$100,000. Between 24 September 2014 and 18 December 2014, Fong Financial Planners, an

authorised representative of AMP, acted dishonestly by recording information it knew to be false on forms submitted to AMP as part of client insurance applications. Fong Financial Planners intentionally failed to disclose all relevant information relating to the personal circumstances of the clients, including details of their health and medical history. The incomplete disclosure of the information by Fong Financial Planners meant the duty of disclosure owed by the clients to the insurer had not been met and they risked not being covered by AMP policies.

- [28 November 2023 - MEDIA RELEASE 23-318MR Former BBY employee charged with aiding and abetting BBY's dishonest conduct](#) – Ms Yat Nam (April) Yuen, of Sydney, New South Wales, has been charged with aiding and abetting former stockbroking firm BBY Limited (BBY) to engage in dishonest conduct in relation to a financial service. Ms Yuen, who held various roles at BBY including Manager – Strategy, is charged with two offences contrary to sections 1041G(1) and 1311 of the Corporations Act 2001 (Cth) and section 11.2 of the Criminal Code (Cth). ASIC alleges that on about 13 June 2014, Ms Yuen instructed St George Bank, a division of Westpac Banking Corporation, to transfer \$6,800,000 of client money out of BBY's Futures client segregated account, a client money account, and then to other accounts. ASIC alleges these instructions had the intention of funding a margin payment to ASX Clear Pty Ltd, in breach of BBY's obligation to hold that client money on trust. ASIC further alleges that on about 31 March 2015, Ms Yuen instructed St George Bank to transfer \$350,000 of client money out of BBY's Futures client segregated account and \$1,600,000 of client money out of BBY's Saxo Buffer account, also a client money account, to BBY's Operating Account held with National Australia Bank Ltd. ASIC alleges these instructions had the intention of funding a corporate payment, in breach of BBY's obligation to hold those client monies on trust. Ms Yuen appeared in the Downing Centre Local Court on 28 November 2023. The matter was adjourned for further mention on 6 February 2024. The matter is being prosecuted by the Commonwealth Director of Public Prosecutions.
- [28 November 2023 - NEWS ITEM ASIC releases guidance on the registration of financial advisers](#) – ASIC has released Information Sheets 276 and 277 to provide guidance to financial advisers and AFS licensees about the new requirement for financial advisers to be registered, following the [Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023](#) receiving Royal Assent on 27 November 2023. From 1 February 2024, financial advisers, excluding provisional relevant providers, who provide personal advice to retail clients on relevant financial products (Relevant Providers) must be registered with ASIC. This includes time-share advisers. Information Sheet 276 FAQs: Registration of Relevant Providers ([INFO 276](#)) provides guidance to AFS licensees and Relevant Providers about registration requirement and process, registrations ceasing and multiple registrations. Information Sheet 277 Registration of Relevant Providers: Guidance on Making Declarations ([INFO 277](#)) provides guidance to AFS licensees about the declarations they are required to make

when applying to register their Relevant Providers. AFS licensees can apply to register their Relevant Providers using [ASIC Connect](#) and are encouraged to do so as early as possible to ensure their Relevant Providers are registered before 1 February 2024.

- [28 November 2023 – SPEECH The Evolving Regulatory Landscape and the Implications for Australasian Listed Entities](#) – ASIC Chair Joe Longo addressed investor relation professionals at the AIRA 2023 forum with a key focus on the evolving regulatory landscape and the implications for Australian listed entities. Transparency and engagement are at the heart of investor relations, and help build a strong, fair, and efficient financial ecosystem. ASIC is calling on these professionals to focus on areas fundamental to maintaining market integrity, including continuous disclosure, sustainable finance reporting, and shareholder responsibility and activism. ASIC will take action against poor practices in these areas.
- [27 November 2023 - MEDIA RELEASE 23-317MR Customer advocate found not guilty of managing a corporation while disqualified](#) – Geoffrey Anthony Shannon, of Port Macquarie, NSW, has been found not guilty of managing a corporation while disqualified. The Southport Magistrates Court delivered its decision on 22 November 2023. In his decision, Magistrate Bamberry found that he could not be satisfied to the requisite standard that Mr Shannon acted in a way which breached s206A(1) of the Corporations Act. The matter was prosecuted by the Commonwealth Director of Public Prosecutions following a referral from ASIC.
- [27 November 2023 - MEDIA RELEASE 23-316MR ASIC acknowledge ASX's release of the Portfolio, Program and Project Management Special Report and Audit Report](#) – ASX Limited has released a Special Report, along with an external Audit Report, on its Portfolio, Program and Project Management Frameworks (PPPM Reports). The PPPM Reports are relevant to ASX's delivery, implementation and governance of the recently announced CHES replacement solution design. ASX has now published all three of the special reports and accompanying audit reports it was required to provide to ASIC under notice. ASIC will now consider all of the reports to determine if further regulatory action is required.