Governance News

Weekly wrap up of key financial services, governance, regulatory, risk and ESG developments.

7 June 2023

Contents

Diversity, Equity and Inclusion

Workforce diversity: US academics conclude market forces aren't enough to persuade all firms to disclose their workforce diversity data, suggest that mandatory requirements may be necessary

Analysis of a sample of workforce diversity metrics in the form of EEO-1 reports (ie standardised workforce demographic information provided on a confidential basis by firms of a certain size to the US government) concludes that:

- there is a lack of racial diversity among US public firms (especially at managerial level)
- there is evidence that firms 'strategically disclose' diversity data based on their underlying level of diversity. According to the study, firms that appear more ethnically diverse are more likely than others to voluntarily disclose the data (though the paper found no evidence that gender diversity influenced firms' decision to voluntarily disclose).

In light of these findings, the writers conclude that market pressure may not be sufficient to persuade all firms to disclose their workforce diversity data voluntarily. They write:

> 'Overall, our results suggest that market forces are unable to achieve unravelling, and a disclosure mandate may be necessary for investors to observe the DEI practices of all firms, rather than just the more virtuous ones'.
>
> [Source: CLS Blue Sky Blog 31/05/2023' Full text paper: Bourveau, Thomas and Flam, Rachel and Le, Anthony, Behind the EEO Curtain (May 18, 2023). Available at SSRN: https://ssrn.com/abstract=4452298 or http://dx.doi.org/10.2139/ssrn.4452298]

Board Diversity: Bursa Malaysia says companies that have failed to meet minimum diversity requirements will face 'regulatory actions'

- Bursa Malaysia announced in January 2022, that:
  - large publicly listed companies (ie with market capitalisation of RM2 billion as at 31 December 2021) would need to include at least one woman director on their boards by 1 September 2022' and
  - other publicly listed companies would need to do so by 1 June 2023.
- The exchange has now published a list of the 24 companies that had not met the new board gender diversity requirement as at 1 June 2023.
- The exchange has also flagged its intention to 'take appropriate regulatory actions against non-compliant PLCs [publicly listed companies]'.

New diversity disclosure requirements

New mandatory diversity disclosure requirements will also shortly come into effect.

- Starting from financial year ending 31 December 2023, Main Market publicly listed companies will be required (under the enhanced Sustainability Reporting Framework) to disclose the policies/processes and initiatives they have in place to promote/support diversity within their organisation within their Sustainability Statement or Report.
- This disclosure will need to include both: the percentage of directors by gender and age group' and the percentage of employees by gender and age group, for each employee category.
- ACE Market publicly listed companies will be subject to these requirements from financial year ending 31 December 2025.

> [Source: Bursa Malaysia media release 02/06/2023]

Shareholder Activism

More shareholder ESG proposals (and anti-ESG proposals) filed this year, but support is down

Volume of 'anti-ESG' shareholder proposals is up this year, but they're not gaining traction

The volume of shareholder ESG proposals on a range of issues is up on 2022, according to analysis from The Conference Board, but support is lower than has previously been the case.

Similarly, it appears from The Conference Board's analysis (and separate analysis from the Sustainable Investment Institute) that the volume of conservative, or anti-ESG shareholder proposals, has also spiked, though the level of support remains very low.

2023 is a record year for shareholder proposals

According to The Conference Board's analysis, shareholders have filed 803 proposals on a range of issues at Russell 300 companies so far this year (up slightly on the 801 proposals for H1 2022).

The Conference Board found that:

- overall, environmental and social shareholder proposals are the largest categories of shareholder proposal with 482 E&S proposals filed in 2023 (up from 466 in 2022)
- there has been a spike in the volume of proposals concerning executive compensation (and within this, executive severance or 'golden parachute' arrangements), with the number of proposals filed at Russell 3000 companies jumping from 40 proposals in 2022 to 70 this year
- the number of governance proposals has dropped slightly this year to 224 proposals (down from 251 proposals in 2022)

The level of shareholder support is down on last year

The Conference Board found that the average level of support for shareholder proposals at Russell 3000 companies has fallen from 45% in 2022 to 24% in 2023. The Conference Board attributes this to a number of factors including:

> 'the proscriptive nature of some proposals, the steps companies have already taken to address the topics raised by proposals, and major institutional investors taking a more discerning, case-by-case approach in evaluating shareholder proposals as compared to a few years ago'.

Sharp drop in support for shareholder 'environmental' proposals

Looking at the level of support by topic, The Conference Board found that:

- governance proposals secured the highest levels of support (an average of 30% support in 2023, down from 37% in 2022)
- social proposals secured the lowest level of support (an average of 18% support in 2023, down from 22% in 2022)
- support for 'environmental' proposals has seen the sharpest drop in support - shareholder environmental proposals secured 21% average support in 2023 vs 34% in 2022. Support for specifically climate-related proposals has fallen from 35% on average in 2022 to 22% in 2023
- support for human capital management-related proposals has fallen 8% on 2022 to 20%. Looking at the level of support for racial equity and/or civil rights audit proposals, the level of support has fallen from 33% average support in 2022 to 15% support in 2023

Smaller companies are increasingly being targeted

- The number of S&P 500 companies targeted with shareholder proposals has increased this year. According to the Conference Board, 83% of shareholder proposals were filed at S&P 500 companies in 2023 (vs 79% in H1 2022). The Conference Board considers this is evidence that shareholders are targeting companies 'where they can get the most attention, not necessarily the companies that may merit the most attention, as smaller companies generally have less robust ESG programs'.

Rise in the volume of 'anti-ESG' or conservative proposals

According to The Conference Board's analysis, there has been a sharp spike in the volume of 'anti-ESG' proposals this year from 52 proposals filed at S&P 500 companies in 2022 to 88 in 2023.

The average level of support for these proposals has also fallen from 9% support in 2022 to 6% in 2023.

The Conference Board opines that:

> 'Even when their shareholder proposals do not go to a vote or receive significant support, anti-ESG groups continue to look for opportunities during the submission process to get their ideas in front of boards and make headlines. In so doing, they force companies to take a public stand that can serve as fodder for further anti-ESG activism. So…companies' strategy for dealing with anti-ESG shareholder proposals needs to go beyond narrowly responding to the proposal itself, but to explain how the company's position is "good for business."'

Separate analysis from the Sustainable Investment Institute also highlights an uptick in the volume of anti-ESG proposals. According to the Sustainable Investment Institute:

- the last three years has seen the volume of proposals from 'anti-ESG' filers more than double, growing tom 30 proposals in 2020 to 79 in 2023.
- more anti-ESG proposals are proceeding to a vote – in 2022 33 proposals of this kind went to a vote, in 2023 this has increased to 52
- the largest category (55% of all 'anti-ESG' proposals) are diversity related ie question the value of DEI in the boardroom/workplace, suggesting that such programs discriminate against conservative white people. Interestingly, relatively few anti-ESG proposals are environment related (10%).

[Source: Harvard Law School Forum on Corporate Governance 01/06/2023' Harvard Law School Forum on Corporate Governance 01/06/2023]

Plastic reduction proposal at Yum! Brands secures 36% support, lobbying proposal secures 41% support

Three shareholder ESG proposals went to a vote at the Yum! Brands Inc annual shareholder meeting with two others – Items 7 and 8 in the Notice - not proceeding to a vote.

Ahead of the meeting, the board recommended shareholders vote 'against' all shareholder proposals and none secured the necessary support to be carried, though as flagged two proposals secured well over 30% support.

The table below provides more detail around each of the proposals, the vote result in each case and an indication of how some investors voted.

YUM! BRANDS INC		
SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
Plastic reduction: Item 5 (filed by As You Sow) called on the company to report on 'how the Company will reduce its plastics use by shifting away from single-use packaging in alignment with the findings of the Pew Report, or other authoritative sources, to feasibly reduce ocean pollution'. As You Sow filed a similar proposals at Restaurant Brands International and McDonalds. The proposal at McDonalds was withdrawn in exchange for agreement from the company to produce the report requested. The proposal at Restaurant Brands International secured 37% support.	▪ 36% support	▪ Legal and General Investment Management (LGIM) voted in support stating that: 'A vote in favour is applied as LGIM believes that improving the recyclability of products will have a positive impact on climate change and biodiversity'. ▪ Storebrand voted in support stating that: 'A vote FOR this proposal is warranted, as additional disclosure on the company's efforts to reduce its plastics use by shifting away from single-use packaging more aggressively would allow shareholders to better assess the company's related risk management'.

YUM! BRANDS INC		
SHAREHOLDER PROPOSAL	**APPROX. RESULT**	**HOW INVESTORS VOTED**
		▪ CalPERS voted in support ▪ New York City pension funds voted in support ▪ Norges Bank Investment Management (NBIM) voted against ▪ CalSTRS voted against
Lobbying disclosure: Item 6 (filed by SOC Investment Group) called on the company to report annually on: '1. YUM's policy and procedures governing its own lobbying, both direct and indirect, and grassroots lobbying communications. 2. Payments by YUM used for (a) direct or indirect lobbying or (b) grassroots lobbying communications, in each case including the amount of the payment and the recipient. 3. Description of management's decision-making process and the Board's oversight of this process'.	▪ 41% support	Given the result, it is perhaps unsurprising that a number of investors supported this proposal. ▪ NBIM voted in support stating that: 'The board should account for material sustainability risks facing the company, and the broader environmental and social consequences of its operations and products. Sustainability disclosures should be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities'. ▪ LGIM voted in support stating that: 'A vote in favour is applied as LGIM expects companies to provide sufficient disclosure on such contributions'. ▪ Storebrand voted in support stating that: 'A vote FOR this proposal is warranted, as additional disclosure of the company's direct and indirect lobbying payments would help shareholders better assess the risks and benefits associated with the company's participation in the public policy process'. ▪ CalPERS voted in support ▪ CalSTRS voted in support ▪ New York City pension funds voted in support
Paid sick leave: Item 9 (filed by United Church Funds) called on the company to issue a report: 'analysing the provision of paid sick leave among franchise employees and assessing the feasibility of inducing or incentivizing franchisees to provide some amount of paid sick leave to all employees'.	▪ 20% support	▪ NBIM voted in support stating giving the same explanation as provided for its support of proposal 7. ▪ LGIM also voted in support stating that: 'A vote in favour is applied because LGIM believes that offering paid sick leave is an important element of employee benefits and may improve productivity as well as general employee wellbeing'. ▪ Storebrand voted in support stating that: 'A vote FOR this proposal is warranted because the requested report would provide shareholders with a better

YUM! BRANDS INC		
SHAREHOLDER PROPOSAL	APPROX. RESULT	HOW INVESTORS VOTED
		understanding of the company's policies and practices regarding employee health and well-being. Additionally, the implementation of this proposal would allow shareholders to better assess whether the company is adhering to its stated commitment to colleague health and its management of related risks'. ▪ CalSTRS voted in support ▪ New York City pension funds voted in support ▪ CalPERS voted against

[Sources: Notice of Meeting' Results of Meeting]

Chevron shareholders vote down Scope 3 shareholder proposal, back directors at annual shareholder meeting

Chevron's annual shareholder meeting was held on 31 May 2023. An overview of the key votes is below.

Director elections

- Ahead of the meeting, Wespath Benefits and Investments urged investors to vote against the election of two Chevron directors on climate grounds. As the current and former Chairs of the Public Policy Committee, the two directors - Lead Independent Director Wanda Austin and Director Enrique Hernandez, Jr.- were considered to 'bear responsibility for governance oversight of Chevron's climate policy and lobbying activities'. The vote was flagged by the Climate Action 100+ initiative ahead of the meeting.
- Separately, Majority Action urged Chevron shareholders to vote against the entire board on climate grounds.
- Directors Austin and Hernandez were each elected with 94.9% and 92.4% support respectively.
- All other directors nominees standing for election were also duly elected, in line with the board's recommendation, and all secured over 92% support.

How did investors vote on the Climate Action 100+ flagged proposals?

Perhaps unsurprisingly given the vote result, a number of investors including NBIM, voted in line with the board's recommendation.

INVESTOR	DIRECTOR AUSTIN (PROPOSAL 1A)	DIRECTOR HERNANDEZ (PROPOSAL 1D)
▪ Norges Bank Investment Management (NBIM)	▪ voted in support	▪ voted in support
▪ CalSTRS	▪ voted in support	▪ voted in support
▪ Legal and General Investment Management	▪ voted in support	▪ voted in support
▪ CalPERS	▪ voted against	▪ voted against

- Two other investors –CoreCommodity Management LLC and EFG Asset Management - predeclared their intention to vote 'against' the two directors.
- Rothschild & Co Asset Management predeclared its support for the two directors.

Shareholder ESG Proposals

Chevron shareholders voted on eight shareholder ESG proposals at the 31 May 2023 annual shareholder meeting. The board recommended shareholders reject all eight proposals ahead of the meeting, and none were carried.

The conservative/'anti-ESG' proposals (Items 5 and 8 in the Notice) secured the lowest level of support (below 2% in each case).

PROPOSAL	CHEVRON RESULT	HOW INVESTORS VOTED
Rescind the 2021 shareholder Scope 3 GHG reduction proposal (anti-ESG proposal): Item 5 in the Notice, filed by Steven Milloy states: 'Shareholders rescind the 2021 proposal and thereby reject the policy embedded in it that insists the Company substantially reduce consumer use of its products'	▪ 1.3% support	▪ Norges Bank Investment Management (NBIM) voted against ▪ CalPERS voted against ▪ CalSTRS voted against ▪ Legal and General Investment Management voted against stating that: 'A vote AGAINST this resolution is applied as it is contrary to principles of corporate governance that encourage companies to be responsive to shareholder concerns'.
Adopt medium term scope 3 GHG reduction target: Item 6 in the Notice, filed by Follow This, calls on the company to: 'to set a medium-term reduction target covering the greenhouse gas (GHG) emissions of the use of its energy products (Scope 3) consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C'. ▪ This Follow This (backed by a €1.1 trillion investor coalition) filed similar resolutions at Shell (20% support), TotalEnergies (30% support), Exxon (11% support, down from 28% in 2022) and BP (17% support).	▪ 9.6 % support	▪ NBIM voted in support ▪ LGIM voted against stating that: 'LGIM expects companies to introduce credible energy transition plans, covering their direct and indirect emissions and consistent with the Paris objectives. A successful transition to a net zero emissions economy requires all sectors to align with those objectives and hence we place significant importance in our engagement and voting policies on Scope 3 emissions being integrated into a company's energy transition plan and decarbonisation efforts. Although we support the principles of this proposal, a vote AGAINST is applied as in our view, the wording of the proposal imposes inflexibility on the company that is challenging to justify at the present time, and could lead to unintended consequences as we transition to a net-zero emissions economy. For example, the non-linear nature of the energy transition and the importance of achieving real-world progress to cut emissions. Our approach to such resolutions will remain dynamic given the need for companies to demonstrate clearly how they will be net zero compliant in a transition'. ▪ CalPERS voted in support ▪ CalSTRS voted against
Recalculate GHG emissions baseline to exclude emissions from material divestures: Item 7 in the Notice, filed by As You Sow, calls on the company to disclose:	▪ 18.3% support	▪ NBIM voted in support citing 'Other concern regarding effective boards or shareholder protection' as its rationale.

CHEVRON		
PROPOSAL	RESULT	HOW INVESTORS VOTED
'a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year Chevron uses to baseline its emissions'. A similar proposal, also filed by As You Sow at Exxon secured a similar level of support.		▪ LGIM voted in support, stating that: 'A vote FOR this proposal is applied. While we note that divestitures and asset acquisitions form a critical part over the life cycle of the business, we believe investors would benefit from further disclosure around the role of divestments in the company's climate commitments. As the proposal is only calling for disclosure, we don't deem it to be overly prescriptive'. ▪ CalPERS voted against ▪ CalSTRS voted against
Establish board committee on decarbonisation risk: Item 8 in the Notice, filed by the Bahnsen Family Trust, calls on the board to: 'charter a new Board Committee on Decarbonisation Risk to evaluate Chevron Corporation's (the Company) strategic vision and responses to calls for Chevron decarbonisation on activist-established deadlines. The charter should require the committee to engage in formal review and oversight of corporate strategy, above and beyond matters of legal compliance, to assess the company's responses to demands for such decarbonisation schedules, including the potential impacts on the Company from flaws in activists' climate models, the possibility that the US will not force decarbonisation according to such schedules, thus obviating "stranded asset" calculations, the possibility that other countries will not adopt similar targets, thus making Company efforts meaningless, concerns about technological or economic infeasibility, and other relevant considerations'.	▪ 1.6% support	▪ NBIM voted against ▪ LGIM voted in against stating that: 'A vote against is applied as LGIM expects companies to be taking sufficient action on the key issue of climate change'. ▪ CalPERS voted against ▪ CalSTRS voted against
Just transition (report on social impact from plant closure or energy transition): Item 9 in the Notice filed by United Steelworkers, calls on the company to: 'create a report regarding the social impact on workers and communities from closure or energy transition of the Company's facilities, and alternatives that can be developed to help mitigate the social impact of such closures or energy transitions. The report should be prepared at reasonable cost, omitting proprietary information, and be available	▪ 18.6% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote FOR is applied as we believe investors would benefit from further quantifiable disclosure on goals and time-bound commitments associated with the company's approach to a just transition'. ▪ CalPERS voted in support ▪ CalSTRS voted in support

PROPOSAL	CHEVRON RESULT	HOW INVESTORS VOTED
on the Company's website by the 2024 Annual Meeting of Shareholders'		
Report on a racial equity audit: Item 10 in the Notice, filed by the American Baptist Home Mission Society, calls on the board to: 'commission and publicly disclose the findings of an independent racial equity audit, analysing the adverse impacts of Chevron's policies and practices that discriminate against or disparately impact communities of colour, above and beyond legal and regulatory matters.'	▪ 9.8% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'a vote in favour is applied as LGIM supports proposals related to diversity and inclusion policies as we consider these issues to be a material risk to companies'. ▪ CalPERS voted against ▪ CalSTRS voted in support
GRI aligned tax disclosure: Item 11 in the Notice, filed by Oxfam America, calls on the board to: 'issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the Global Reporting Initiative's (GRI) Tax Standard' A similar proposal filed at Amazon (Item 11 in the Notice), filed by Missionary Oblates of Mary Immaculate – United States Province) secured 18% support.	▪ 14.6% support	▪ NBIM voted in support citing 'Other concern regarding effective boards or shareholder protection' as its rationale. ▪ LGIM voted in support stating that: 'A vote FOR this proposal is applied as we believe investors would benefit from detailed disclosure around tax payments to mitigate potential regulatory and reputational risk'. ▪ CalPERS voted in support ▪ CalSTRS voted in support
Independent chair: Item 12 in the Notice, filed by Newground Social Investment calls for the board to: 'adopt a policy (amending the bylaws as necessary) which requires that the Chair of the Board of Directors be an independent member of the Board whenever possible'. The new policy would commence with the next CEO transition. Compliance with the new policy 'may be suspended for up to six months if no independent director is available and willing to serve as Chair'. A number of similar proposals have been filed with financial institutions this year. Similar proposals filed at Goldman Sachs, Bank of America, Citigroup and Berkshire Hathaway also failed to be carried.	▪ 19.9% support	▪ NBIM voted in support stating that: 'The board should exercise objective judgement on corporate affairs and be able to make decisions independently of management. The roles of chairperson and CEO should not be held by the same individual. Where a company founder combines both roles, we may support this for a limited period, provided the board has put in place measures to mitigate any conflicts of interest'. ▪ LGIM voted in support stating that: 'A vote in favour is applied as LGIM expects companies to establish the role of independent Board Chair'. ▪ CalPERS voted in support ▪ CalSTRS voted in support

[Sources: Notice of meeting' Results of meeting]

Exxon shareholders reject all three Climate Action 100+ flagged proposals :

Exxon Mobil shareholders voted on 12 shareholder ESG proposals at the 31 May 2023 annual shareholder meeting (all of which were opposed by the board).

Three of the proposals (Items 8. 12 and 16 in the Notice) were flagged by the Climate Action 100+ initiative.

> [Note on 'flagging': For clarity, investor signatories to Climate Action 100+ are not bound to/required to vote against 'flagged' resolutions – they vote on shareholder proposals in their individual capacity and not on behalf of the Climate Action 100+ initiative. Nor does Climate Action 100+ 'take a formal position on shareholder voting'. Rather, 'flagging' a resolution considered to be aligned with the goals of the initiative is intended to highlight/draw attention to the resolution and help ensure it receives due consideration from investor signatories to the initiative. Climate Action 100+ publishes a list of 'flagged' proposals (which is regularly updated) here]

None of the 12 shareholder proposals secured sufficient support to be carried. The three Climate Action 100+ flagged proposals secured 36.4% support (methane measurement), 16% (report on asset retirement obligations under IEA NZE Scenario) and 16.6% support (report on the social impact of the energy transition).

The table below provides an overview of each of the 12 proposals, the vote result in each case and an indication of how some investors voted.

EXXON MOBIL CORPORATION		
PROPOSAL	**RESULT**	**HOW INVESTORS VOTED**
Request for new board committee on decarbonisation risk (anti-ESG Proposal): Item 5 in the Notice (filed by the Bahnsen Family Trust) called on the board to: 'charter a new Board Committee on Decarbonisation Risk…to assess the company's responses to demands for such decarbonisation schedules, including the potential impacts on the Company from flaws in activists' climate models, the possibility that the US will not force decarbonisation according to such schedules, thus obviating "stranded asset" calculations, the possibility that other countries will not adopt similar targets, thus making Company efforts meaningless, concerns about technological or economic infeasibility, and other relevant considerations'.	▪ 1.6% support	▪ Norges Bank Investment Management (NBIM) voted against ▪ Legal and General Investment Management (LGIM) voted against stating that: 'A vote against is applied as LGIM expects companies to be taking sufficient action on the key issue of climate change'. ▪ Engine No 1 voted against ▪ CalPERS voted against ▪ CalSTRS voted against
Executives to retain significant stock: Item 6 in the Notice (filed by Kenneth Steiner) called on the company to: 'adopt a policy requiring senior executives to retain 50% of stock acquired through equity pay programs until reaching normal retirement age [ie 60 (or older)] and to report to shareholders regarding the policy in our Company's next annual meeting proxy'	▪ 2.2% support	▪ NBIM voted against ▪ LGIM voted against 'The company current compensation policy requires 50% of awards to vest 10 years after grant. Therefore, a significant proportion of awards will still be subject to vesting'. ▪ Engine No 1 voted against ▪ CalPERS voted against ▪ CalSTRS voted against
Additional carbon capture and storage (CCS) report (conservative proposal): Item 7 in the	▪ 5.2% support	▪ NBIM voted against ▪ LGIM voted against stating that:

EXXON MOBIL CORPORATION		
PROPOSAL	**RESULT**	**HOW INVESTORS VOTED**
Notice (filed by Steve Milloy) called on the company to report annually on: 'the net amount of carbon dioxide (CO2) stored underground as a result of the company's enhanced oil recovery (EOR) activities'.		'A vote AGAINST this proposal is warranted because the company provides sufficient information and metrics related to its carbon capture and storage efforts'. ▪ Engine No 1 voted against ▪ CalPERS voted against ▪ CalSTRS voted against
Reliability of methane disclosure: Item 8 in the Notice (filed by Sisters of St. Francis Charitable Trust) calls for the company to report on: 'the reliability of its methane emission disclosures. The report should: – Be made public, omit proprietary information, and be prepared expeditiously at reasonable cost' and – Summarise the outcome of efforts to directly measure methane emissions, using recognized frameworks such as OGMP' and whether those outcomes suggest a need to alter the Company's actions to achieve its climate targets'. This proposal was flagged by Climate Action 100+ ahead of the meeting.	▪ 36.4% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote in favour is applied as LGIM expects companies to be taking sufficient action on the key issue of climate change. While we acknowledge the steps taken by the company to identify and reduce methane emissions, we believe that shareholders would benefit from enhanced disclosure concerning the reliability of the Company's methane emissions disclosures and global targets'. ▪ Engine No 1 voted in support ▪ CalPERS voted in support ▪ CalSTRS voted in support ▪ Anima Sgr, Vida Caixa and Rothschild & Co Asset Management also predeclared their support ahead of the meeting.
Scope 3 target request: Item 9 in the Notice (filed by Follow This) calls on the company to: 'set a medium-term reduction target covering the greenhouse gas (GHG) emissions of the use of its energy products (Scope 3) consistent with the goal of the Paris Climate Agreement: to limit global warming to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C'. A similar proposal filed by Follow This at Exxon in 2022 secured 28% support. A similar proposal filed at Chevron this year also failed to carry with 10% support (down from 33% in 2022) Proposals at BP, Shell and Total Energies also failed to be carried this year securing 17%, 20% and 30% support respectively.	▪ 10.5% support	▪ NBIM voted in support ▪ LGIM voted against stating that: 'LGIM expects companies to introduce credible energy transition plans, covering their direct and indirect emissions and consistent with the Paris objectives. A successful transition to a net zero emissions economy requires all sectors to align with those objectives and hence we place significant importance in our engagement and voting policies on Scope 3 emissions being integrated into a company's energy transition plan and decarbonisation efforts. Although we support the principles of this proposal, a vote AGAINST is applied as in our view, the wording of the proposal imposes inflexibility on the company that is challenging to justify at the present time, and could lead to unintended consequences as we transition to a net-

EXXON MOBIL CORPORATION		
PROPOSAL	**RESULT**	**HOW INVESTORS VOTED**
		zero emissions economy. For example, the non-linear nature of the energy transition and the importance of achieving real-world progress to cut emissions. Our approach to such resolutions will remain dynamic given the need for companies to demonstrate clearly how they will be net zero compliant in a transition'. ▪ Engine No 1 voted against ▪ CalPERS voted in support ▪ CalSTRS voted against
Additional report on worst case spill and response plans: Item 10 in the Notice (filed by Mercy Investment Services Ince) calls on the company to report: 'evaluating the economic, human, and environmental impacts of a worst-case oil spill from its operations offshore of Guyana. The report should…clarify the extent of the Company's clean-up response commitments given the potential for severe impact on Caribbean economies'.	▪ 13.3% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote FOR is applied as we believe shareholders would benefit from further disclosure on how such risks are being mitigated in Guyana'. ▪ Engine No 1 voted against ▪ CalPERS voted in support ▪ CalSTRS voted against
GHG reporting approach: Item 11 in the Notice (filed by Andrew Behar (of As You Sow)) calls on the company to: 'disclose a recalculated emissions baseline that excludes the aggregated GHG emissions from material asset divestitures occurring since 2016, the year ExxonMobil uses to baseline its emissions'. As You Sow filed a similar proposal at Chevron. The Chevron proposal secured a similar level of support.	▪ 18.4% support	▪ NBIM voted in support ▪ LGIM voted in support stating that: 'A vote FOR this proposal is applied. While we note that divestitures and asset acquisitions form a critical part over the life cycle of the business, we believe investors would benefit from further disclosure around the role of divestments in the company's climate commitments. As the proposal is only calling for disclosure, we don't deem it to be overly prescriptive'. ▪ Engine No 1 voted in support ▪ CalPERS voted against ▪ CalSTRS voted against
Report on asset retirement obligations under IEA NZE Scenario: Item 12 in the Notice (filed by Legal and General Investment Management) calls on the board to provide an audited report 'estimating the quantitative impacts of the IEA NZE scenario on all asset retirement obligations'. This proposal was flagged by Climate Action 100+ ahead of the meeting. As You Sow filed similar proposals at Comcast, FedEx, Netflix and Amazon. The proposal at	▪ 16% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'The low-carbon transition is expected to shorten the productive lifespan of oil and gas infrastructure – bringing forward the timing of Asset Retirement Obligations (AROs) – and increasing the risks of stranded assets and stranded liabilities to companies, shareholders and other stakeholders. As the co-lead filers of this

EXXON MOBIL CORPORATION		
PROPOSAL	**RESULT**	**HOW INVESTORS VOTED**
Amazon (Item 6 in the Notice) secured 7% support. A proposal on a similar topic was also filed at BlackRock.		resolution, LGIM believes that complete disclosure on AROs is critical from investment perspective and would provide decision-useful information to investors'. ▪ Christian Brothers Investment Services, British Columbia Investment Management Corporation, Anima Sgr, VidaCaixa, Irish Life Investment Managers and Rothschild & Co Asset Management also predeclared their support. ▪ Engine No 1 voted in support ▪ CalPERS voted in support ▪ CalSTRS voted against
Plastic reduction: Item 13 in the Notice (filed by Meyer Memorial Trust) calls on the board to issue an audited report on: 'whether and how a significant reduction in virgin plastic demand, as set forth in Breaking the Plastic Wave's System Change Scenario for reducing ocean plastic pollution, would affect the Company's financial position and assumptions underlying its financial statements'. A number of shareholder proposals have been filed this year on the issue of cutting plastic waste/plastic reduction – many of which have been filed by As You Sow. A plastic reduction shareholder proposal at Amazon (Item 22 in the Notice filed by The George Gund Foundation, represented by As You Sow) secured 32% support.	▪ 25.3% support	▪ NBIM voted in support ▪ LGIM voted in support stating that: 'A vote in favour is applied as LGIM believes that improving the recyclability of products will have a positive impact on climate change and biodiversity'. ▪ Engine No 1 voted in support ▪ CalPERS voted in support ▪ CalSTRS voted against
Report on environment-related litigation risk: Item 14 in the Notice (filed by Anna Marie Lyles) calls on the company to issue an 'actuarial assessment, omitting confidential information and prepared at a reasonable cost, of the potential cumulative risk to Exxon Mobil Corporation from current environment-related litigation against the company and its affiliates'.	▪ 9.1% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote FOR this proposal is applied as we believe investors would benefit from further disclosure around litigation risks'. ▪ Engine No 1 voted against ▪ CalPERS voted against ▪ CalSTRS voted against
GRI-aligned tax reporting: Item 15 in the Notice (filed by Oxfam America) calls on the board to: ' issue a tax transparency report to shareholders, at reasonable expense and excluding confidential information, prepared in consideration of the indicators and guidelines set forth in the	▪ 13.6% support	▪ NBIM voted in support ▪ LGIM voted in support stating that: ' A vote FOR this proposal is applied as we believe investors would benefit from detailed disclosure around tax payments to mitigate potential regulatory and reputational risk.'

EXXON MOBIL CORPORATION		
PROPOSAL	**RESULT**	**HOW INVESTORS VOTED**
Global Reporting Initiative's (GRI) Tax Standard'. A similar proposal (Item 11 in the Notice, filed by Missionary Oblates of Mary Immaculate – United States Province) at Amazon secured approximately 18% support at the 2023 shareholder meeting.		▪ Engine No 1 voted in support ▪ CalPERS voted in support ▪ CalSTRS voted in support
Energy Transition Social impact report: Item 16 in the Notice (filed by United Steelworkers) calls on the board to report on: 'the social impact on workers and communities from closure or energy transition of the Company's facilities, and alternatives that can be developed to help mitigate the social impact of such closures or energy transitions'. The report is requested to be made available on the company's website by the 2024 annual meeting of shareholders. This proposal was flagged by ClimateAction 100+ ahead of the meeting.	▪ 16.6% support	▪ NBIM voted against ▪ LGIM voted in support stating that: 'A vote FOR is applied as we believe investors would benefit from further quantifiable disclosure on goals and time-bound commitments associated with the company's approach to a just transition'. ▪ Shroders predeclared its intention to support the proposal. ▪ Engine No 1 voted against ▪ CalPERS voted in support ▪ CalSTRS voted in support ▪ CoreCommodity Management LLC, Anima Sgr, VidaCazia, Irish Life Investment Managers and Rothschild & Co Asset Management also predeclared their support.

Director elections

Ahead of the meeting, Majority Action called on shareholders to vote 'against' the election of three Exxon directors - Darren W. Woods (CEO and Chair), Joseph L. Hooley (Lead Independent Director) and Susan K. Avery (Chair of the Environment, Safety and Public Policy Committee) - on climate grounds.

Mr Hooley was elected with 91.% support (9% of votes against). Mr Woods was elected with 92.7% support (7.3% votes against). Ms Avery was elected with 93.3% support (6.7% votes against).

For context, this is well down on the 96% (or more) support the other directors standing for election received.

[Source: ExxonMobil Notice of Meeting' Results of meeting]

Disclosure and Reporting

Top Story | ASIC Chair warns against 'Greenhushing'

ASIC Chair says ESG disclosure expectations will only increase, reiterates ASIC's continued focus on tackling greenwashing ahead of the expected introduction of new requirements

Key Takeouts

- ASIC Chair Joe Longo has reiterated that ASIC's continued focus on:
  - maintaining high disclosure standards
  - helping to strengthen and improve standards of ESG governance and disclosure (including through tackling greenwashing)
  - preparing for 'the broader evolution of the ESG space'
- A key message in Mr Longo's address is that ASIC expects ESG disclosure/governance expectations will continue to shift, but that the regulator does not see this as an excuse for failure to meet existing disclosure obligations and/or failing to prepare for/position for change.
- Mr Longo also warned companies against responding to increased regulatory scrutiny/monitoring by ceasing all voluntary ESG disclosure ('greenhushing'), which ASIC considers to be another form of greenwashing

Our key takeaways from Australian Securities and Investments Commission (ASIC) Chair Joe Longo's 5 June 2023 keynote address to the AFR ESG Summit are below.

Mandatory climate disclosure is 'only the beginning, not the end'

The starting point for Mr Longo's address is that 'ESG is not a trend' but, but rather 'the next stage in a long series of important moves towards greater transparency and higher disclosure standards' that are/will continue to evolve, especially when it comes to 'environmental' reporting.

On the expected evolution of climate/sustainability reporting, Mr Longo underlined that uncertainty around future requirements is no excuse for poor disclosure in line with existing requirements, or for failure to prepare for upcoming changes. Mr Longo said:

> 'The 'E' of ESG will likely expand over time, with mandatory disclosures around climate being only the beginning, not the end…
>
> changes in ESG reporting tomorrow don't excuse complacency today. Looking ahead to uncertainty doesn't excuse inaction. Some firms are making good progress, but we cannot let standards slip as we prepare for the major changes ahead'.

Against this background, Mr Longo spoke about three areas on which ASIC is currently focused. Namely:

- good governance – ensuring ESG is integrated into existing governance frameworks – in preparation for upcoming changes
- tackling greenwashing (including greenhushing)
- preparing for the growth in sustainable financing.

Good governance

Mr Longo emphasised that 'good disclosure depends on good governance'.

He observed that while it is 'reassuring' that many larger companies are already engaging on ESG, there is no room for complacency.

In light of the expected introduction of mandatory, internationally aligned disclosure requirements in this country, and the global push towards disclosure into 'new' ESG areas (eg impact on nature/biodiversity), Mr Longo said that companies 'need to be thinking about' integrating ESG into their governance frameworks/structures.

In order to prepare for upcoming changes, Mr Longo suggested companies should be asking themselves the following 'three fundamental questions':

- 'How can sustainability and financial reporting work together to function as an integrated whole?'

- 'How can we ensure that marketing and advertising teams work with the legal and risk teams to ensure cohesion around sustainability-related claims?'
- 'What assurances and processes can be put in place to ensure that the board is appropriately informed and confident about the information that is being put out?'

Greenwashing (including greenhushing)

Mr Longo reiterated that greenwashing remains a key enforcement priority for ASIC (and for regulators globally) and that ASIC is actively monitoring for, and stands ready to take action to address, instances of suspected greenwashing. Mr Longo pointed to ASIC's recent report (REP 763, summarised) detailing the main issues identified across the 35 greenwashing actions taken by the regulator during the period 1 July 2022 to 31 March 2023 in support of this.

Mr Longo also reiterated that the regulator has 'further surveillances and investigations afoot'.

Mr Longo also touched on the issue of 'greenhushing' – where companies cease all voluntary ESG-disclosure out of purported concern about the regulatory response to such disclosures. Mr Longo made clear that ASIC does not consider this response to be justified, and in fact considers it to constitute another form of greenwashing. Mr Longo said:

> 'Domestically, we've observed some commentators and firms saying, in effect, "we have such a good ESG policy, but we can't say anything about it because the regulators won't let us". The reality is the critics are right: this kind of response is just another form of greenwashing' an attempt to garner a 'green halo' effect without having to do the work'.

Preparing for the 'biggest change in the financial services sector in a generation'

Mr Longo described the growth in sustainable finance as 'the biggest change in the financial services sector in a generation'.

In light of this global shift, Mr Longo said ASIC is engaging 'heavily at both the domestic and global level to ensure that what we're doing in Australia is informed by what is happening overseas' and that ASIC 'continues to be positioned to meet the challenges ahead'. This includes for example, through participation in the Council of Financial Regulators Climate Working Group (domestically) and as a member of the International Organisation of Securities Commissions' Sustainable Finance Taskforce (internationally).

Guidance for boards

- ASIC has released an information sheet (INFO 271) offering guidance on how to avoid greenwashing.
- MinterEllison has also produced a guide on the topic: Navigating the rising tide of greenwashing - Insight - MinterEllison
- Ahead of the introduction of new mandatory ISSB-aligned sustainability reporting requirements in Australia, the AICD, in conjunction with Deloitte and MinterEllison, have produced a new guide outlining what is known about the forthcoming requirements, the questions yet to be determined by government, and the steps boards can take now in preparation.

[Source: Speech by ASIC Chair Joe Longo at the AFR environmental, social, and governance (ESG) Summit, 05/06/2023]

ASIC flags key areas of focus for 30 June 2023 Financial Reporting, flags that auditors 'may need to report' suspected greenwashing

The Australian Securities and Investments Commission (ASIC) has identified some key focus areas for reporting by companies for the reporting period ending 30 June 2022. The key points are summarised below.

Areas of particular focus highlighted by the regulator include:

- asset values
- provisions
- solvency and going concern assessments
- events occurring after year end and before completing the financial report
- disclosures in the financial report and Operating and Financial Review (OFR).
- the impact of a new accounting standard for insurers.

ASIC has also underlined the need for directors, preparers of financial reports and auditors to assess the impact of uncertain market and economic conditions. ASIC makes clear that reports are expected to address how the company's current and future performance may be impacted by changing circumstances and risks. ASIC Commissioner Danielle Press commented:

> 'Directors should ensure that investors are properly informed on the impact of changing and uncertain economic and market conditions, "net zero" targets and other developments on financial position and future performance. Impacts on asset values and provisions should be assessed, and uncertainties, key assumptions, business strategies and risks disclosed.'

ASIC suggests that companies may wish to consider the following non-exhaustive list of risks (in additional to other risks specific to the particular entity):

- 'the availability of skilled staff and expertise, which can impact on revenue and costs
- the impact of rising interest rates on future cash flows and on discount rates used in valuing assets and liabilities
- inflationary impacts that may differ between costs and income
- increases in energy and oil prices
- geopolitical risks, including the Ukraine/Russia conflict
- impacts of climate change, climate related events and transitioning to 'net zero'
- technological changes and innovation
- COVID-19 conditions and restrictions during the reporting period
- changes in customer preferences and online purchasing trends
- the discontinuation of financial and other support from governments, lenders and lessors
- legislative and regulatory changes

- other economic and market developments'.

ASIC observes these factors may be of particular relevance for the construction industry, owners of commercial property, large carbon emitters and the agriculture industry.

Directors expected to exercise oversight

ASIC comments that:

> 'Directors are primarily responsible for the quality of the financial report. This includes ensuring that management produces quality financial information on a timely basis for audit. Companies must have appropriate processes, records and analysis to support information in the financial report.

In terms of documentation, ASIC's expectation is that 'the circumstances in which judgements on accounting estimates and forward-looking information have been made and the basis for those judgements' is 'properly documented at the time and disclosed as appropriate'.

Operating and Financial Review

ASIC expects the Operating and Financial Review (OFR) to:

> 'complement the financial report and tell the story of how the entity's businesses are impacted by both COVID-19 and non-COVID-19 factors'.

This includes explaining the 'underlying drivers' of the results and the company's financial position as well as the risks that could impact the achievement of the disclosed financial performance/outcomes eg material climate change or cyber risk. ASIC underlines that 'forward-looking information should have a reasonable basis and the market should be updated through continuous disclosure if circumstances change'.

The regulator points to ASIC Regulatory Guide 247 Effective disclosure in an operating and financial review as a useful source of further guidance around ASIC's expectation in this context.

Asset values

ASIC lists the following as examples of matters that 'may require the focus of directors, preparers and auditors in relation to asset values in the current environment':

- Impairment of non-financial assets
- Values of property assets: factors that could adversely affect commercial and residential property values should be considered eg online shopping trends, changes in tenants' office space requirements)
- Expected credit losses on loans and receivables
- Financial asset classification
- Value of other assets

Provisions

ASIC observes that

> 'consideration should be given to the need for and adequacy of provisions for matters such as onerous contracts, leased property make good, mine site restoration, financial guarantees given and restructuring'.

Subsequent events

ASIC expects that events occurring after year-end and before completing the financial report should be reviewed as to whether they: a) affect assets, liabilities, income or expenses at year-end' or b) relate to new conditions requiring disclosure.

Scope of disclosure

Some of the 'considerations' companies should take into account, flagged by the regulator include:

- 'General considerations':
  - ASIC's expectation is that when considering what information should be disclosed, directors/preparers 'put themselves in the shoes of investors and consider what information investors would want to know'.
  - ASIC expects disclosures to be 'specific to the circumstances of the entity and its business, assets, financial position and performance'

- Any changes from the previous period should be considered and disclosed.

- Disclosures in the financial report:
  - ASIC states that 'uncertainties, changing key assumptions and sensitivities' should be disclosed in order to assist investors to understand the approach the company is taking and the potential future impacts. Where uncertainties have changed since the previous full year and half year report, this should be explained.
  - ASIC also highlights the importance of considering 'the appropriate classification of assets and liabilities between current and non-current categories on the statement of financial position'.

- Non-IFRS Financial Information: ASIC states that 'Any non-IFRS profit measures (ie measures not in accordance with all relevant accounting standards) in the OFR or market announcements should not be presented in a potentially misleading manner'. ASIC points to the guidance in RG 230 for additional guidance on this point.

- Disclosure in half-year reports: ASIC underlines that disclosure is also important for half-year financial reports and directors' reports. half year reports are expected to disclose information on significant developments/changes in circumstances sine 31 December 2022.

New insurance accounting standard

- Accounting Standard AASB 17 Insurance Contracts (AASB 17) is effective for reporting periods beginning on or after 1 January 2023.

- ASIC underlines that insurers are expected to 'continue to disclose the impact of the new insurance accounting standard in the notes to financial statements'. More particularly, ASIC considers it is 'reasonable to expect that insurers will be in a position to quantify the impact of the new standard in the notes to their full year 30 June 2023 financial reports'.

- ASIC expects insurers with half years ending 30 June 2023 to 'follow the recognition and measurement requirements of the new standard and make disclosures on changes in accounting policies on the adoption of that standard'.

Private health insurers

- ASIC expects private health insurers to consider 'the impacts on the deferred claims liability for changes in the backlog of delayed procedures in financial reports for the year ending 30 June 2023'. ASIC observes that: 'A liability may be required for a commitment to return premiums to existing policyholders for savings during the pandemic'.

- Private health insurers reporting for half-years ending 30 June 2023 are also expected to ensure that the treatment of deferred claims is consistent with the new standard.

Other matters

- Among other things, ASIC reminds large proprietary companies that were previously 'grandfathered', that they need to lodge financial reports for years ending on or after 10 August 2022.

Audit focus areas

- ASIC comments that 'the financial reporting focus areas outlined…are also important focus areas for auditors' and that auditors are expected to comply with new auditing standards on risk identification and assessment, firm quality management, engagement quality reviews and quality control for financial report audits.

- Auditors are also expected to flag 'materially inadequate or misleading' disclosures with ASIC. ASIC's expectation is that auditors:

  > 'bring the knowledge of a business, risks and strategies obtained in the process of auditing the financial report in reviewing the OFR. While auditors do not form an opinion on the OFR, they are required to read the OFR for material misstatements of fact and material inconsistencies with the financial report. Auditors should document their consideration of disclosures on matters such as the underlying drivers of results, material risks, strategies and future prospects. The auditor may need to report a suspected contravention of the Corporations Act 2001 to ASIC where, for example, disclosures are materially inadequate or misleading, including where there is possible "greenwashing".'

  [Source: ASIC media release 06/06/2023]

New GHG reporting guidance for accounting and finance professionals released

- In preparation for the expected release of new international sustainability reporting standards (ISSB standards expected to be released in June 2023), the International Federation of Accountants (IFAC) and the We Mean Business Coalition (WMBC) (in partnership with Accounting for Sustainability (A4S), Global Accounting Alliance (GAA) and World Business Council for Sustainable Development (WBCSD)) have released new guidance to assist Chief Financial Officers, accountants and financial professionals to 'deliver robust greenhouse gas (GHG) reporting'.
- The guidance is divided into two parts.
  - The first focuses on how to engage with internal stakeholders on the preparations of GHG emissions reporting requirements aligned to financial reporting processes
  - The second provides technical guidance on the collection of data at individual entity and group levels (including data related to all scopes of GHG emissions)

[Source: We Mean Business Coalition media release 30/05/2023]

Paving the way for new sustainability requirements: Senate Committee report into Treasury Laws Amendment (2023 Measures No 1) Bill 2023

Treasury Laws Amendment (2023 Measures No 1) Bill 2023 was introduced into the House of Representatives on 16 February 2023 and is currently before the Senate, having passed the House of Representatives without amendment.

The Bill was referred to the Senate Economics Legislation Committee for report. The final report was released on 2 June 2023.

Schedule 2 of the Bill proposes to:

- provide the AASB with functions to develop and formulate sustainability standards (and clarifies the AUASB's function to develop and maintain relevant auditing and assurance standards for sustainability purposes).
- empower the FRC to provide strategic oversight and governance functions in relation to the AASB's and AUASB's sustainability standards functions.

The senate report recommends:

- the passage (without amendment) of schedules:
  - 1 (changes to smooth implementation of financial adviser registration requirements)
  - 2 (sustainability reporting requirements)
  - 3 (implementation of the government's response to certain recommendations of the Tax Practitioners Board)
  - 4 (aligning the tax treatment of off market share buy backs undertaken by listed public companies with the tax treatment of on market share buy backs).
- a rethink of the proposed changes in Schedule 5 (franked distributions funded by capital raisings) to 'ensure it appropriately targets the identified behaviour and addresses feedback provided to the committee'.

It is unclear what impact this will have on the passage of the Bill. The government may elect to drop Schedule 5 from the Bill and attempt to push Schedules 1-4 through the Senate (though to be clear, there is no indication that this is planned to occur).

The Senate is due to resume sitting on 13 June 2023. The Bill is included for consideration in the latest Notice Paper (however this does not guarantee that the Bill will be considered (or passed) during the June sittings).

[Source: Senate Standing Committee on Economics: Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 [Provisions] Report]

In Brief | The Science Based Targets Network has released the first science-based targets for nature, together with accompanying guidance. A pilot group of 17 companies are planning to set the first nature targets this year

[Source: SBTN media release 24/05/2023]

ESG

GFANZ consults on draft guidance on financing coal phaseout transactions in the Asia Pacific

- The Glasgow Financial Alliance for Net Zero's (GFANZ) APAC Network has released a consultation paper seeking feedback on its proposed approach to new (voluntary) guidance on how financial institutions should approach the financing of coal phaseout transactions in the Asia-Pacific (ie how they should approach financing the early retirement of coal-fired power plants).
- Broadly, it's envisioned that the new, principles-based guidance will set out 'practical steps that financial institutions committed to net zero can independently take' in this context 'to strengthen the credibility of these transactions in the eyes of relevant stakeholders'.
- The new guidance is planned to build on existing frameworks for the managed phaseout of coal-fired power plants (GFANZ's Managed Phaseout of High-Emitting Assets guidance released last year).
- Announcing the consultation GFANZ Vice Chair Mary Schapiro underlined that once finalised, it's hoped that the guidance will support a 'just and inclusive' transition. Ms Schapiro said:

  > 'The early retirement of coal is critical for decarbonizing the global economy to net zero and in Asia-Pacific. As this guidance takes shape, it will become a practical tool for financial institutions to support plans to wind down the use of coal, help identify and implement clean energy projects, and support them to create positive environmental and economic impact. This will add to the growing toolkit of resources developed by GFANZ to ensure a transition that is global, just, and inclusive.'

Proposed timing/next steps

- The due date for submissions to the consultation is 4 August 2023.
- It's envisioned that feedback will inform the development of the guidance with the aim of delivering a final report ahead of COP28 in December 2023.

  [Source: GFANZ media release 04/06/2023]

Net zero transition: IIGCC releases new ten point net zero standard and assessment framework for banks

- Following consultation, the Institutional Investors Group on Climate Change (IIGCC), together with the Transition Pathway Initiative (TPI) Centre, have released two new resources to support engagement with banks on their transition planning:
  - a net zero standard for banks setting out investor expectations of banks' net zero transition (Standard)' and
  - a net zero assessment framework (Assessment Framework).
- Announcing the release of the new resources Stephanie Pfeifer, CEO, IIGCC commented:

  > 'Due to the nature of their activities, banks have an outsized role to play in whether the global economy successfully decarbonises or not. For investors with net zero commitments, many of which will include investments in banks, it will therefore be vital to engage with banks over their transition plans in order to fulfil their own commitments. I am delighted that IIGCC has today published the Net Zero Standard for Banks alongside TPI Centre's Net Zero Banking Assessment Framework. As a result, investors will be better placed to assess how prepared banks are for the transition and to shape their engagement strategies accordingly.'

New Net Zero Standard

- The intended aim of the new Standard is to support 'constructive engagement' with banks on implementation of their transition plans.
- The Standard is structured around ten areas: 1) bank commitments' 2) targets' 3) exposure and emissions disclosure' 4) emissions performance' 5) decarbonisation strategy' 6) climate solutions' 7) policy engagement (lobbying)' 8) climate governance' 9) just transition' and 10) annual reporting and accounting disclosures.
- It is intended to complement the Net Zero Investment Framework.

New Paris alignment/progress assessment framework

Separately, as flagged the TPI Centre has launched a Net Zero Banking Assessment Framework, which is described as:

> 'a set of measurable indicators, sub-indicators, and scoring guidance for assessing the alignment of banks against the goals of the Paris Agreement'.

The IIGCC has flagged that this new framework will be used to conduct an annual assessment of the progress 26 global banks' have made to date and the ongoing implementation of their planned climate-related policies/plans. The full list of banks to be assessed is at p6 of the 2022 pilot study (with the exception of Credit Suisse)

The first round of assessments are planned to be published in 'summer 2023'.

[Source: IIGCC media release 05/06/2023]

Investor support for a global campaign calling on high emitters to disclose through the CDP continues to gain traction

- A global coalition of 288 financial institutions across 31 countries, holding nearly US$29 trillion in assets, has called on the world's 1607 most carbon intensive companies to disclose environmental data through CDP.
- The companies being targeted have a market capitalisation of US$21 trillion (as of February 2023), and account for an estimated +4,200 megatonnes (Mt) of carbon dioxide equivalent (CO_2e) annually. According to the CDP's statement, this is 'almost equivalent to the GHG emissions of the United Kingdom, the European Union and Canada combined'.
- Companies are being asked to disclose on at least one of three priority themes of climate change, forests, water, and for the first time a new module of plastics in the water questionnaire – as relevant to their operations. For the first time, the questionnaire also includes questions on plastics in waterways.
- Since the campaign first launched in 2017, participation by financial institutions has increased by an average of 33% every year.

[Sources: CDP media release 30/05/2023]

Lifting board ESG capabilities: Lifting board ESG capabilities: New mandatory sustainability training requirement introucted for directors of companies listed on Bursa Malaysia

- The Securities Commission Malaysia (SC) and Bursa Malaysia have announced that directors of publicly listed companies (PLCs) on Bursa Malaysia will need to undertake mandatory sustainability training as part of/in addition to existing director training requirements.
- The training aims to strengthen directors' ability to oversee the effective management of sustainability-related risks and opportunities. The focus of the training is on:

  'the baseline knowledge and key considerations surrounding sustainability, including questions which boards should direct towards management in the effort to ensure a more robust and effective oversight of sustainability risks and opportunities of the company.'

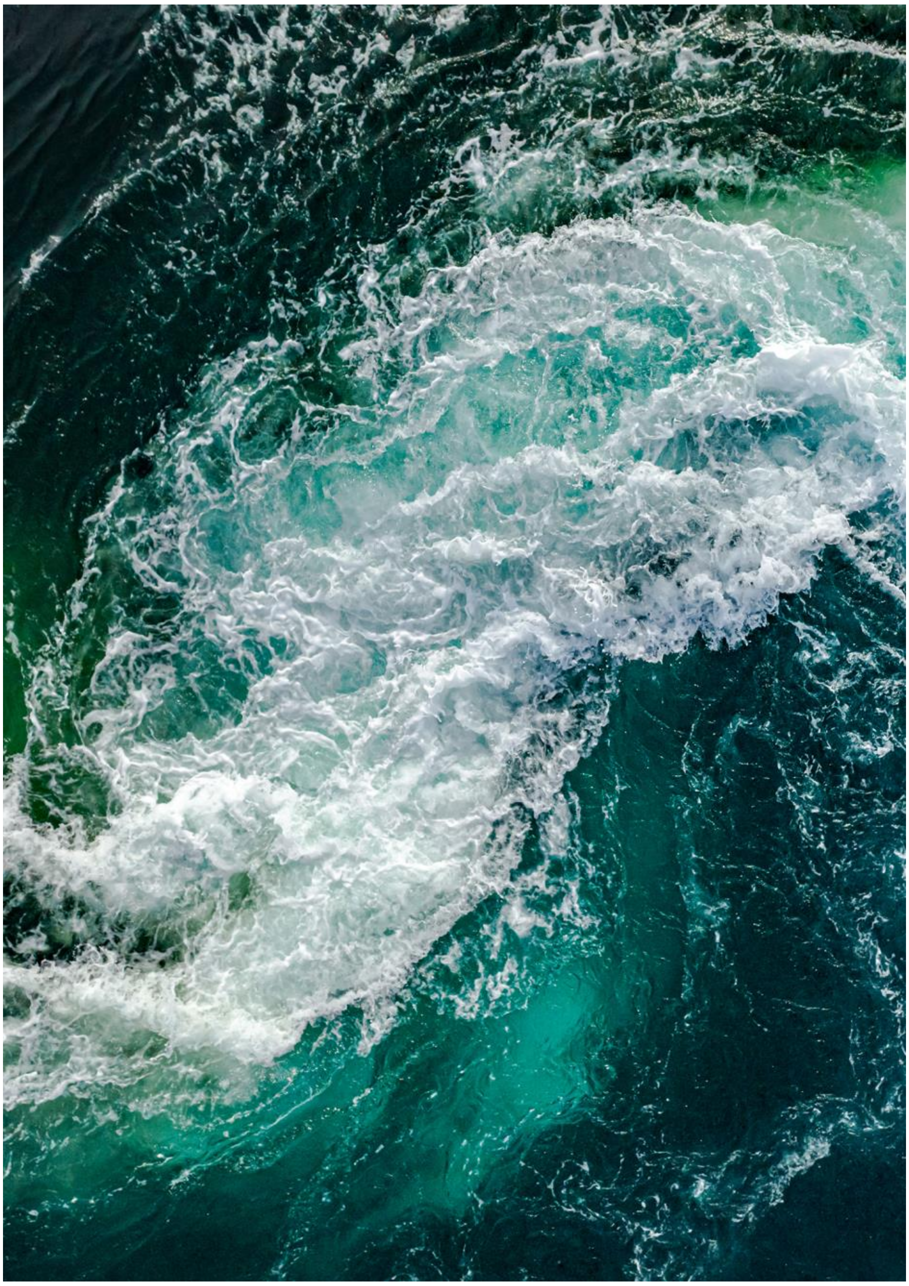
- The new training requirement will come into effect from 1 August 2023.
  - First time directors (ie all first time directors of publicly listed companies on the Main and ACE Market of Bursa Malaysia and directors of listing or transfer applicants) appointed/admitted after 1 August 2023 will need to complete the training within 18 months of the new requirement coming into effect ie by February 2025.
  - Existing directors of publicly listed companies on the Main and ACE Market of Bursa Malaysia will need to have completed the training within 24 months of the new requirement coming into effect (ie by August 2025)

[Source: Joint media release: The Securities Commission Malaysia and Bursa Malaysia 06/06/2023]

Global search for head of Environment Information Australia commences

- The government has commenced a global search for the new head of Environment Information Australia (EIA) - Australia's first independent, national environmental data and information office.

- The EIA is planned to provide environmental information to the independent Environment Protection Australia, the government, and to the public. This is expected to increase both the speed with which decisions are able to be made, and increase transparency.



- Announcing this, Minister for the Environment and Water Tanya Plibersek commented:

  'I'm on the hunt for the world's best biodiversity brain. We're talking about an exciting chance to combine data and drones to protect dugongs. If you want to picture it, think an Australian Bureau of Statistics for nature. An agency that will survey, monitor and publicise local information on threatened species, vulnerable ecosystems, and the state of our environment. Currently businesses and project proponents are losing time and money sourcing the same information over and over again. It's time consuming and wasteful. We want to manage nature better for the future, and we need to give people early warning of areas where development should be avoided. That means making sure we are keeping and using the best information possible. It will help us better protect our precious plants, animals and places, and make faster, clearer decisions. It's better for the environment and better for business.'

- The Federal Budget allocated $51.5 million over four years to set up Environment Information Australia.

  [Source: Minister for the Environment and Water Tanya Plibersek 02/06/2023]

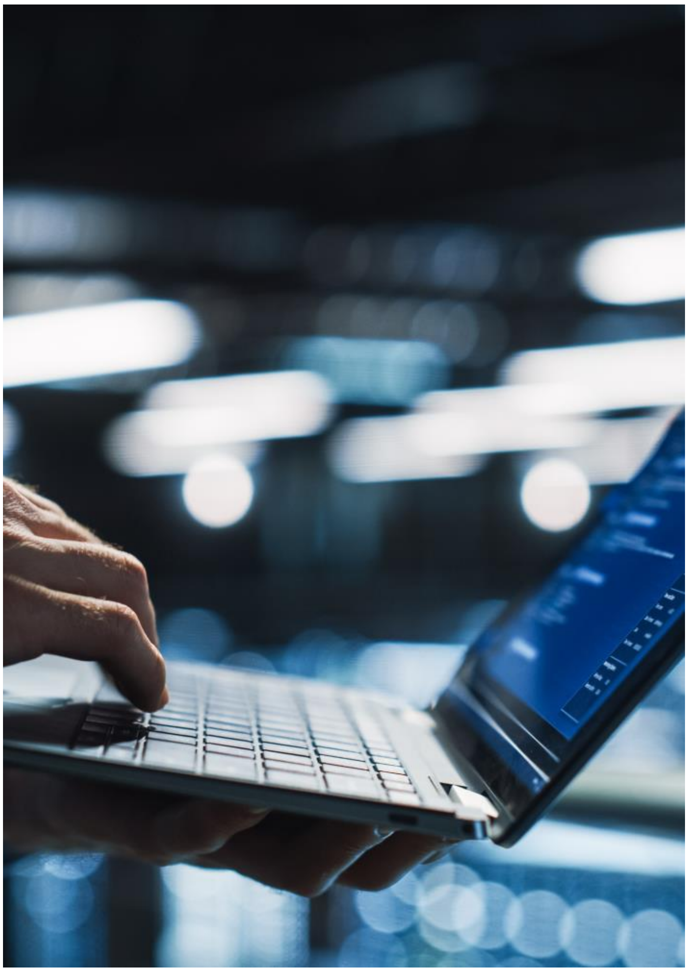
In Brief | Ocean protection: Environment Minister, Tanya Plibersek has announced that an extra 385,000 square kilometres of Australia's oceans will be placed under high protection (ie completely closed to fishing, mining and other extractive activities), tripling the size of Macquarie Island Marine Park and bringing 48% of Australia's oceans under protection

[Source: Minister for the Environment and Water Tanya Plibersek media release 05/06/2023]

Markets and Exchanges

CHESS replacement update | ASX releases reports into how it will support existing CHESS, confirms it is still planning to announce the 'final solution design' for the CHESS replacement program by Q4 2023

- The ASX has released public versions of a special report and audit report, providing a detailed view of the arrangements it has in place for the continuing support and maintenance of the existing CHESS - the clearing and settlement system for Australia's securities market - to ensure it 'remains operationally reliable' until the implementation of a replacement solution.
- The special report outlines 27 initiatives to ensure and support the ongoing operation of current CHESS. The special report was independently audited by EY. The audit report concludes that:
  - 'ASX has addressed the matters raised by ASIC in relation to the support and maintenance of CHESS.
  - The work undertaken by ASX supports the outcomes documented in the special report.
  - ASX has conducted sufficient governance arrangements for the production of the special report'.
  - The EY audit report also makes three recommendations (at p3 of the audit report) which ASX has said it will address.



- The Australian Securities and Investments Commission (ASIC) (and the Reserve Bank of Australia (RBA)), requested ASX to prepare the reports, following the scrapping of the planned CHESS replacement program and the ensuing delay.
- In terms of the progress being made on the CHESS replacement solution, ASX Managing Director and CEO Helen Lofthouse commented that:

  'We are making good progress on the CHESS replacement solution design and our intention remains to announce the solution design by the final quarter of this calendar year'.

ASIC investigation ongoing, further regulatory action possible

- ASIC has issued a statement confirming the reports will assist with its' assessment of whether any further regulatory action is required' in connection with the CHESS replacement project.
- ASIC adds that it stands ready to

  'bring to bear a range of regulatory options to ensure that the ASX Group licensees and in particular, ASX Clear and ASX Settlement adhere to the regulators' expectations and comply with their CS facility licence obligations'.

- ASIC adds that:

  'its investigation into ASX Limited, ASX Clear and ASX Settlement and their directors/officers in relation to the oversight of the CHESS Replacement Program and statements and disclosures on the status of the program between October 2020 and March 2022, is ongoing'.

  [Sources: ASX media release 05/06/2023' ASIC media release 05/06/2023]

Regulators

ASIC could use regtech to 'identify and assess poor market disclosure by listed companies': Project progresses to 'proof of concept'

- The Australian Securities and Investments Commission (ASIC) has announced it is working with regtech company Eastern Analytica Pty Ltd (trading as DHI-AI PTY LTD) to develop a 'proof of concept for using technology to help identify and assess poor market disclosure by listed companies'.
- According to ASIC's announcement, Eastern Analytica will have 15 months to develop a technology solution with capability to identify and assess compliance by listed companies with the following requirements:
  - continuous disclosure (price sensitive disclosure) and other disclosure obligations to the market'
  - financial reporting obligations'
  - the prohibition against misleading or deceptive disclosure (such as misleading categorisation of market announcements)' and
  - the prohibition against practices that manipulate the pricing of securities.
- The project is part of the government's Business Research and Innovation Initiative (BRII) Regulatory Technology (RegTech) Round. Under the initiative five regtech companies (including Eastern Analytica) received funding to undertake various technology projects.

  [Source: ASIC media release 01/06/2023]

APRA Chair's opening statement to the Senate Economics Legislation Committee

Our key takeaways from Australian Prudential Regulation Authority (APRA) Chair John Lonsdale's 31 May 2023 opening statement to the Senate Economics Legislation Committee are below.

APRA's response to recent offshore banking failures

- Mr Lonsdale said that in response to recent stresses within European and US banks, APRA took a number of actions including sharpening supervision of banks and instituting more frequent liquidity reporting.
- The Committee heard that APRA considers Australia's banking system is 'one of the strongest in the world', as a result of 'significant reforms' to the prudential framework implemented by the regulator over a number of years. In particular, Mr Lonsdale highlighted Australia's 'significantly higher capital expectations of our banks, plus liquidity, credit risk and interest rate risk requirements, which go beyond international minimum expectations' as important in this context.
- Mr Lonsdale said that APRA is considering the lessons that can be drawn from events overseas. These include:
  - the need for regulators to be ready to respond to a crisis more quickly than was previously required. Mr Lonsdale said that this 'is steering our direction at APRA as we finalise the review of our strategy for the upcoming financial year.'
  - 'specific lessons in terms of liquidity risk and the speed of runs'. Mr Lonsdale commented that:

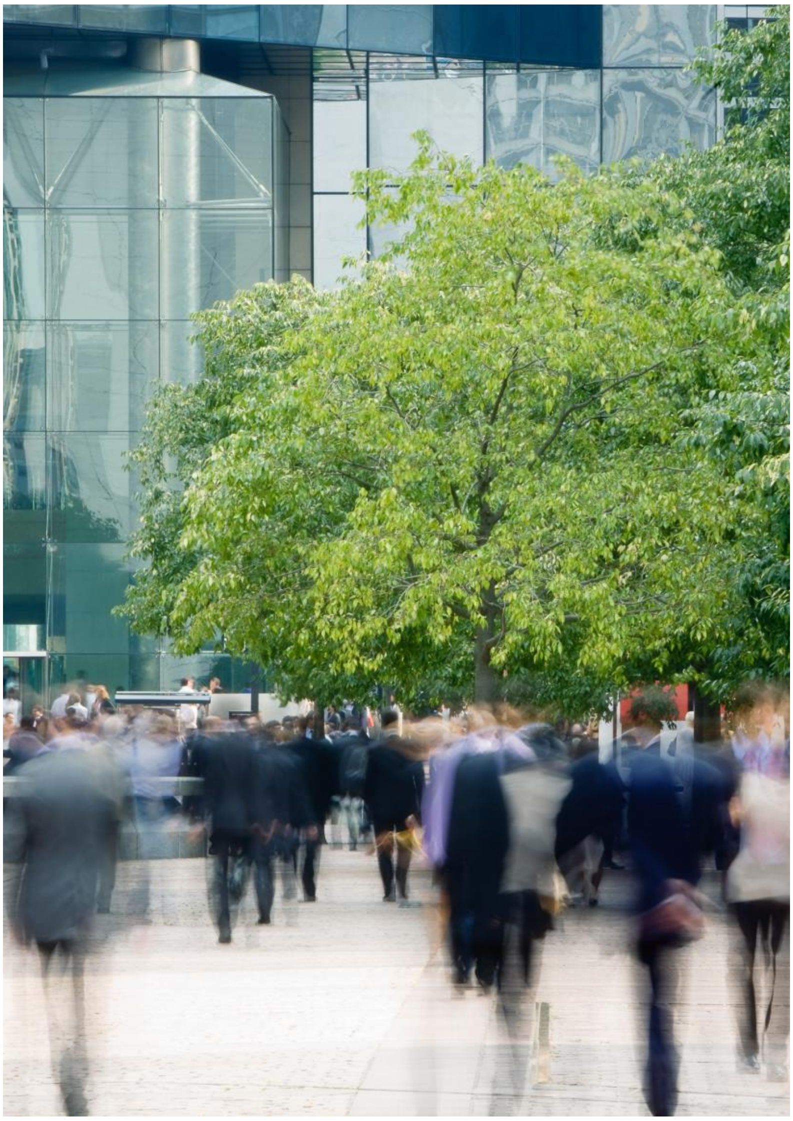
    'in spite of our much stricter requirements for Australian banks to carry capital to address the risk of rising interest rates, we continue to consider ways to improve interest rate risk management. The Basel Committee, too, will firm up its expectations of the world's banks and this will inform our framework improvements over time'.
  - learnings to be drawn from the regulatory actions in both the US and Switzerland which Mr Lonsdale said are expected to both 'shape improvements' to APRA's supervision approach and Australia's regulatory framework.

Current risks

- Mr Lonsdale said that APRA's 'intensified monitoring and supervision continues' in light of the uncertain economic outlook, heightened inflation risks, geopolitical risks, contagion risks from offshore and unforeseen shocks'.
- APRA considers that the serviceability buffer – which is currently set at 3% – 'remains appropriate in the current environment'.

- Touching briefly on the issue on the challenges facing some borrowers wishing to refinance in the current environment, Mr Lonsdale said that APRA is 'attuned to concerns' that some borrowers may have fewer options due to the impact of rising interest rates, declining housing prices and/or changed personal finances. Mr Lonsdale commented however that:

  'Where sound borrowers do not fit standard lending criteria, APRA's framework does not prohibit banks from lending to these borrowers. APRA expects banks to have prudent limits, controls and justifications for exceptions to lending policy and for these loans to be monitored closely. It is important that exceptions are used prudently and do not result in new, higher risk lending. We will continue to reiterate our guidance and expectations in the coming period'.



Other areas of focus for APRA

- Beyond the banking sector, Mr Lonsdale said that APRA continues to 'tackle key issues in insurance availability and affordability, as well as superannuation transparency, efficiency and member outcomes'. In the superannuation sector – the release of the annual performance test in August and 'finalising [together with ASIC] a thematic review relating to the retirement income covenant'.
- Mr Lonsdale also highlighted: cyber risk, operational risk and climate risk as other key focal points for ASIC. Mr Lonsdale also flagged planned industry engagement on operational and remuneration as 'upcoming'.

Positive stakeholder feedback on APRA's effectiveness

- Mr Lonsdale said that APRA's recently completed bi-annual stakeholder survey (which provides feedback from regulated entities on the effectiveness of APRA's regulation/processes/communication) is positive and the results have been provided to the Financial Regulator Assessment Authority (FRAA).

  'Pleasingly, one of the key findings is that most entities believe that APRA's supervision benefits their industry and helps to protect the financial wellbeing of the Australian community'.

- Mr Lonsdale noted that the final FRAA report is due to the Minister next month, and that 'its appraisal [of APRA] will be an important input as we endeavour to continually evolve APRA as a high performing institution'.

  [Source: APRA Chair John Lonsdale, Opening statement to Senate Economics Legislation Committee, 31/05/2023]

In Brief | APRA has released a new Statement of Intent in response to the government's Statement of Expectations, outlining how it will meet the expectations set

[Source: APRA media release 07/06/2023]

Financial Services

Treasurer releases five point plan to overhaul Australia's payment system, launches two consultations

- Treasurer Jim Chalmers has released a 'roadmap' for the planned overhaul of Australia's payment system - the government's Strategic Plan for Australia's Payment System.
- The Treasurer summarised the five key components included in the plan as follows:
  - 'promoting a safe and resilient payments system by reducing scams, strengthening cyber-security, and updating the RBA's supervision frameworks.
  - updating the payments regulatory framework including a new licensing framework, more competition and transparency across systems, more collaboration amongst regulators, and steps to reduce small business transaction costs.
  - modernising payments infrastructure by phasing out cheques and supporting the industry's transition to the New Payments Platform.
  - uplifting competition, innovation and productivity by aligning the payments system with other reforms including the Consumer Data Right framework, Digital ID, and the skills agenda.
  - making Australia a leader in global payments, including through work in the G20 and the Pacific to improve the availability of fast, low-cost international transfers, and piloting a central bank digital currency'.

A summary of the five key priorities for reform is also included at page 5 of the Strategic Plan.

Two consultations launched

The Treasurer also announced the release of two consultation papers seeking feedback on proposed changes to regulatory settings (as part of the broader plan outlined above).

- Reforms to the Payment Systems (Regulation) Act 1998: The first consultation paper seeks views on proposed updates to the Payments Systems (Regulation) Act 1998 (Cth) (PSRA) to address the risks posed by new payments technologies. Broadly, the government is seeking views on two proposals:
  - amending the PSRA to 'ensure the Reserve Bank of Australia can regulate new and emerging payments systems, such as digital wallet providers'. This would entail 'updating existing definitions of 'payments system' and 'participant' to ensure that all entities that play a role in facilitating or enabling payments, including new entrants, are appropriately regulated'.
  - introducing into the PSRA 'new Ministerial powers that can be exercised in the "national interest" to ensure government can respond to issues beyond the remit of independent regulators'.

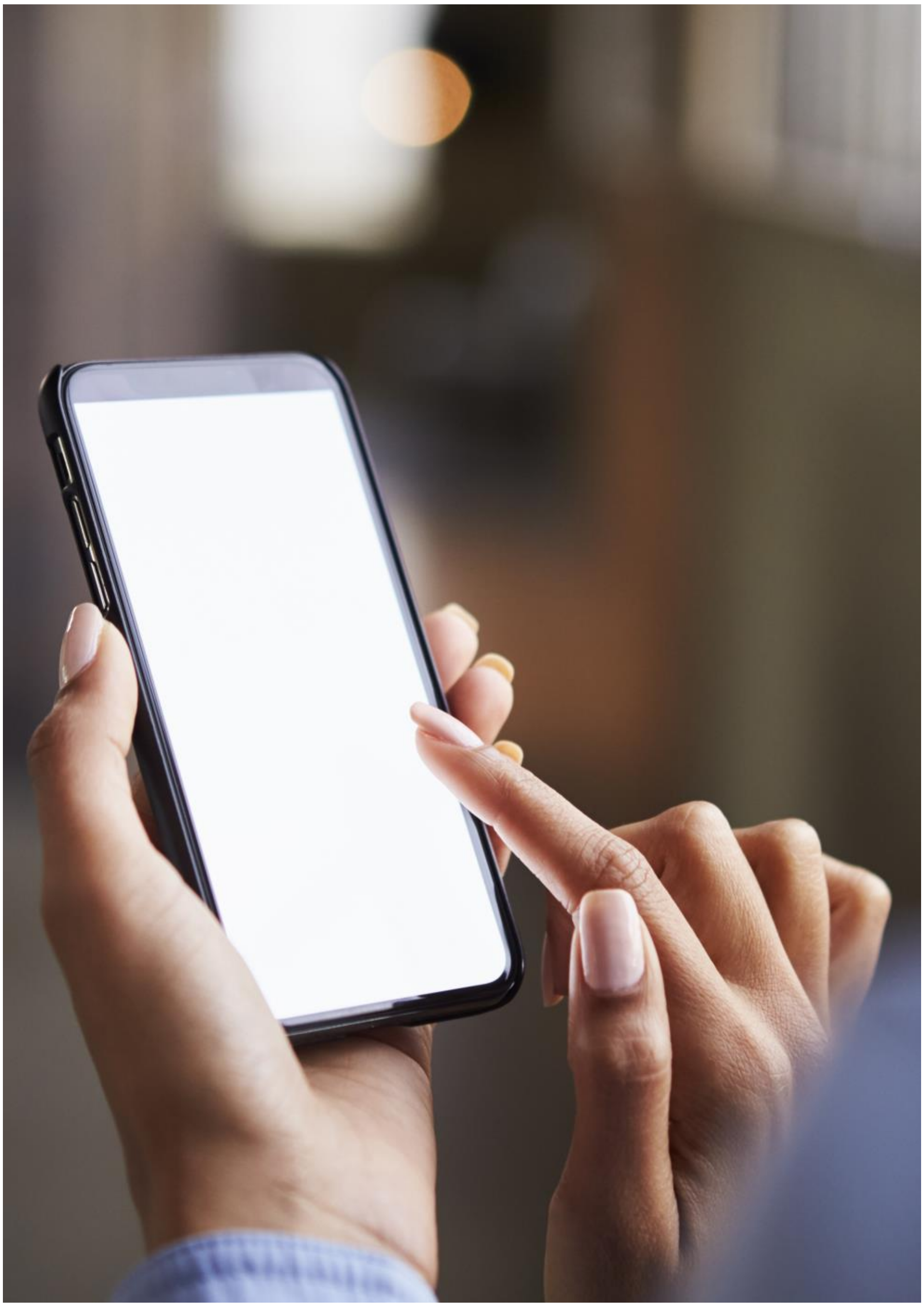
  The full text of the consultation paper is here.
- Licensing of payment service providers – payment functions: The second consultation paper seeks feedback on a proposed list of payments functions that are proposed to be regulated under the planned new licensing framework and 'preliminary views on the proposed licensing framework'. The full text of the consultation paper is here.

Proposed timing and next steps

- The due date for submissions on proposed changes to the Payments Systems (Regulation) Act 1998 (Cth) is 5 July 2023. The Treasurer has indicated that the government envisions that the necessary legislation to implement the reforms will be introduced into parliament 'before the end of 2023'.
- The due date for submissions on the proposed list of payments functions to be regulated under the proposed new licensing framework is 19 July 2023. Following this, the Treasurer has said further consultation is planned to occur 'later in 2023' on regulatory obligations under the proposed new licensing framework. It's envisioned that legislation to establish the new licensing regime itself would be introduced in 2024.

  [Sources: Treasurer Jim Chalmers media release 07/06/2023' Treasury Consultation: Licensing of payment service providers – payment functions 07 June 2023 - 19 July 2023' Treasury Consultation: Reforms to the Payment Systems (Regulation) Act 1998 07 June 2023 - 05 July 2023]

Epayments Code subscribers to comply with the (voluntary) updated Code from 5 June 2023



- An updated E-Payments Code (Code) was released by the Australian Securities and Investments Commission (ASIC) on 2 June 2022.
- The voluntary Code regulates electronic payments including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. A full list of Code subscribers is here.
- Code subscribers are expected to comply with the updated Code from 2 June 2023.

Key Changes

The Code has been updated to cover payments made using the New Payments Platform.

ASIC states that the Code has also been updated to 'strengthen the Code's protections by removing ambiguity and, where appropriate, expanding protections' in the following areas:

- 'compliance monitoring and data collection
- mistaken internet payments
- unauthorised transactions
- complaints handling
- facility expiry dates'

A Mandatory Code?

ASIC has previously indicated that the Code revisions in this latest Code update are expected to be 'interim' in nature and limited in their scope because the then government had indicated it was considering introducing a mandatory Code.

It is unclear whether this is likely to remain the case in light of the change in government. ASIC made no mention of this in its announcement that the new Code is now in effect.

[Sources: ASIC media release 02/06/2022' Updated E-Payments Code 02/06/2022' ASIC media release 02/06/2023]

Planned CDR expansion into super, insurance and telecommunications sectors on 'pause'

- The government has decided to 'pause' the planned expansion of the consumer data right (CDR) into the superannuation, insurance and telecommunications sectors in with the recommendations from an independent statutory review. The review found that 'further time is needed to allow the CDR to mature'.
- According to the government's announcement, this 'pause' will:

  'allow time to focus on ensuring that the CDR in banking is working as effectively as possible, extending into the non-bank lending sector and continuing with the energy rollout as planned'.
- For clarity, the 'pause' will not impact the expansion of the CDR to allow action initiation which will continue to be progressed.
- The government has also flagged that funding has been allocated to lift public awareness of the CDR and where they can access 'CDR-powered providers, products and services' by 'developing a trust brand strategy'.

'Strategic assessment' of the CDR planned for late 2024

The government also plans to undertake a 'strategic assessment' of the CDR towards the end of 2024. This is planned to:

> 'inform future expansions, including superannuation, insurance and telecommunications, as well as the implementation of action initiation'.
>
> [Source: CDR Newsletter 26/05/2023]

APRA says it is on track to release a new cross-industry operational risk management standard (CPS 230) 'in the next month or so'

Our key takeaways from Australian Prudential Regulation Authority (APRA) Chair John Lonsdale's 2 June 2023 opening statement to the House of Representatives Standing Committee on Economics are below.

- Internal changes at APRA: Mr Lonsdale noted the appointment of two new members of the APRA Executive Board since his last appearance before the committee and the creation of two new divisions within APRA (the Technology and Data division and the Chief of Staff division). On the creation of the new divisions, Mr Lonsdale said that the change aims to ensure APRA's leadership structure 'better aligns with our strategic priorities and the accountabilities for delivering on them'.
- APRA's priorities: Ensuring the ongoing strength and stability of the financial system, especially in the context of the current uncertain environment remains a key focus for APRA, and this is reflected in APRA's short term supervision and policy priorities. Mr Lonsdale said that APRA's current agenda 'focuses on embedding recent regulatory reforms, as well as bolstering operational resilience and ensuring entities have sufficient financial strength to act as a buffer against any emerging financial stresses'.
- Mr Lonsdale reiterated that APRA's key policy priorities include:
  - 'completing key reforms to strengthen the financial and operational resilience of APRA-regulated entities, including in areas such as operational risk management and remuneration'
  - continuing focus on transparency and efficiency in superannuation, with the annual performance test (which this year will incorporate hundreds more products compared with last year), alongside longer-term consideration of retirement income frameworks, with ASIC'
  - progressing APRA's plan to modernise the prudential architecture, a core strategic initiative designed to make the framework clearer, simpler and more adaptable' and reviewing core standards, including governance and the regulation of conglomerate groups'.
- Mr Lonsdale reiterated that APRA's key supervision priorities include:
  - 'heightened supervision of cyber resilience through detailed assessments and rigorous pursuit of breaches'
  - embedding the capital reforms for banks and insurers'
  - continuing to hold trustees to account to improve outcomes for superannuation members' and
  - ongoing work to address challenges in the availability, affordability and sustainability of insurance'.
- Mr Lonsdale said APRA is making progress towards delivering on the priorities highlighted above. In particular, he pointed to:

- APRA's finalisation of new requirements/guidance aimed at strengthening the preparedness of banks, insurers and superannuation funds to respond to a crisis earlier this month
- APRA is also close to finalising a new cross industry standard on operational risk management (including the management of contractual arrangements with service providers) - CPS 230. APRA plans to finalise CPS 230 'in the next month or so'
- Further updates will be provided in APRA's updated Corporate Plan and Annual report, due to be published in August and October respectively.

[Source: APRA Chair John Lonsdale's opening statement to the House of Representatives Standing Committee on Economics 02/06/2023]

DDO enforcement | ASIC continues to take action to enforce DDO compliance, outlines findings of BNPL DDO review

Context: What are DDOs?

Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 (Cth) amended the Corporations Act 2001 (Cth) to introduce a new design and distribution obligations (DDOs) regime for financial products. The DDOs commenced in October 2021.

Broadly, the DDOs purpose requirements for:

- product issuers to prepare a target market determination (TMD) identifying the target market for a financial product that meets the 'content' and 'appropriateness' requirements in s944B of the Corporations Act 2001 (Cth)
- product issuers and distributors to take 'reasonable steps' that are reasonably likely to result in financial products reaching consumers in the target market defined by the issuer
- product issuers to monitor consumer outcomes and review products to ensure products are appropriately targeted

The purpose of these requirements is to:

> 'assist consumers to obtain appropriate financial products by requiring issuers and distributors to have a customer-centric approach to designing, marketing and distributing financial products'.

DDO compliance is a priority for ASIC

DDO enforcement is included in the list of ASIC's top priorities for 2023. ASIC's initial review of compliance by investment product issuers (eg issuers of managed investment schemes and other products) with their design and distribution obligations (DDO) - Report 762 Design and distribution obligations: Investment products (REP 762) (summarised)- concluded there is significant room for improvement, with the regulator flagging that 'closer scrutiny of DDO is coming'.

ASIC has demonstrated its willingness to take action to address non-compliance – to date, the regulator has issued 42 interim stop orders due to (what ASIC considers to be 'deficient TMDs').

Latest enforcement actions

ASIC has issued its first DDO stop order for failure to take 'reasonable steps' in CFD distribution

- In order to comply with their obligation to take 'reasonable steps' that are reasonably likely to result in distribution of a product being consistent with the product's Target Market Determination (TMD) (reasonable steps obligation), issuers and distributors need to have in place arrangements that are likely to direct distribution of the product to the target market (as identified in the target market determination).
- This week ASIC issued its first design and distribution obligations (DDO) interim stop order over (what ASIC considers to be) failure to meet these obligations.
- In this case, a key concern for ASIC, was what it considered to be a trading platform provider's over-reliance on a retail investor questionnaire to ensure compliance with its distribution obligations. Among other things, ASIC was concerned that the questionnaire:
  - 'did not adequately enquire into the objectives and needs of retail investors to enable Mitrade to adequately assess whether the investors are likely to be in the target market described in its TMD for the complex, high-risk, leveraged CFDs and margin FX products' and
  - lacked the degree of specificity required to adequately assess whether distribution to retail investors would likely be consistent with Mitrade's target market criteria on knowledge and experience, in relation to CFD and margin FX trading'.

- ASIC was also concerned that the trading platform provider did not adequately assess whether retail investors were likely to be in the target market for CFDs (in the questionnaire or otherwise).
- The interim stop order (which is valid for 21 days unless revoked earlier) prevents the trading platform provider from opening trading accounts or dealing in contracts for difference (CFDs) or margin foreign exchange contracts (margin FX) to retail investors.

ASIC issues stop order on BNPL provider, following its review of DDO compliance in the BNPL sector

ASIC also issued an interim stop order against a BNPL provider over 'deficiencies' in its TMD. Among other things, ASIC was concerned that the TMD did not:

- 'appropriately define the target market'. In essence, ASIC considered that the target market was defined too broadly in that the target market for the product 'only excluded a narrow subset of consumers who may find it difficult to make payments'
- specify the details of a particular payment feature of the product – a 'bill payment feature' which allowed customers to use the product to defer the payment of bills - or the financial situation of consumers who intended to use this feature
- 'contain appropriate distribution conditions to ensure the product was directed towards the target market' in that it did not: set out how the BNPL provider (or its distributors) would assess whether a consumer meets the product's eligibility criteria' and did not explain how the BNPL processes would ensure that the product was likely to reach consumers in the target market.
- 'did not contain specific review triggers to monitor consumer outcomes in relation to consumers missing payments.'

The order has since been revoked following corrective action by the provider.

ASIC's action follows the regulator's recently completed review of DDO compliance by BNPL providers.

Outcomes of BNPL DDO compliance review – four key improvement areas identified

ASIC's targeted review of DDO compliance by BNPL providers identifies the following four areas for improvement.

- Product descriptions not detailed enough
  - ASIC observed that most of the TMDs reviewed did not contain sufficient detail about the features/attributes of the product.
  - In addition, ASIC observes that 'a number' of TMDs reviewed 'mentioned fees as a key attribute of the product without specifying the numerical values of the fees'.
  - ASIC considers that TMDs could be improved by 'more clearly setting out the key attributes of the product and how they are consistent with the likely objectives, financial situation, and needs of the class of consumers in the target market'.
- Clearer definition of the target market for a particular product
  - ASIC considers that the target market was often defined too broadly, making it 'difficult to ascertain the class of consumers comprising the target market'.
  - ASIC considers this to be a particular concern because it means that vulnerable consumers may be included in the target market. ASIC observes that 'a broad description of the target market that does not include references to financial hardship or the ability of consumers to make repayments is at risk of including vulnerable consumers in the class of consumers that comprise the target market'.
  - ASIC considers that the class or classes of consumers that comprise the target market for a particular product should be defined by clear, 'objective, tangible parameters' so that 'it is clear which consumers form part of the target market'.
- Setting review periods for the TMD
  - ASIC observes that most BNPL providers reviewed nominated an ongoing review period of at least annually following the initial review, with some providers indicating a period of at least two years.
  - ASIC considers that a reasonable review period requires BNPL providers to 'consider the risk of detriment to consumers if the TMD is not reviewed promptly'.
  - ASIC considers that this should entail consideration by the BNPL provider of

    > 'the term and nature of its product and the market in which it is sold, including the way in which the product is distributed. For example, for providers that offer shorter term BNPL arrangements, such as repayment periods of six weeks, conducting a review every two years is unlikely to be frequent enough to satisfy themselves that the TMD remains appropriate'.

- Setting 'appropriate' review triggers
  - ASIC considers that 'many' of the TMDs reviewed did not contain 'appropriate review triggers' – ie triggers that would enable a BNPL provider to determine whether the product remained appropriate for the target market eg issues identified in ASIC REP 600 such as 'incidents of consumers missing payments and becoming overcommitted when using BNPL'.
  - ASIC also found that none of TMDs reviewed included 'clear data-based review triggers'. Instead review triggers were based on 'subjective thresholds such as a "material increase" or a "significant increase"'.
  - ASIC considers that the inclusion of specific review triggers, based on objective measures such as 'a level or rate of change that suggests a need for review' would 'help BNPL providers ensure the TMD is likely to remain consistent with consumers' likely objectives, financial situation, and needs'.
- ASIC states that it will provide general and individual feedback to the BNPL providers included in the review.
- ASIC also makes clear that it expects the providers to review this feedback and consider whether action may be needed to ensure compliance with their DDO.

Broader observations on DDO compliance

ASIC's targeted review of DDO compliance by BNPL providers is part of a broader effort to monitor and address industry compliance with DDO across regulated sectors.

Commenting on DDO compliance more broadly, ASIC identifies the following as 'common trends' that is has observed across 'numerous sectors': a) deficiencies in defining target markets, b) setting vague review triggers, and c) poor descriptions of key features and attributes of specific products.

[Sources: ASIC media release 02/06/2023' 02/06/2023]

Risk management and oversight in focus: AUSTRAC and APRA accept separate court enforceable undertakings from bank

APRA CEU

- Following self-reported breaches of Australian Prudential Regulation Authority (APRA) prudential standards - APS 210 Liquidity (paragraph 51 concerning review/testing arrangements for ADI contingency funding plans), CPS 232 Business Continuity Management and CPS 231 Outsourcing – to APRA by the Bank of Queensland (BoQ), and following engagement with the bank 'on a range of supervisory matters, including with regard to its risk management and compliance practices' over the course of 2022, APRA has accepted a court enforceable undertaking (CEU) from the bank.
- Under CEU, the bank has undertaken to:
  - prepare a Remedial Action Plan for approval by APRA (within 120 days from the commencement of the CEU) and implement the plan within the timelines set
  - provide Board papers on its progress implementing the plan to APRA within 15 Business Days of the Board meetings
  - appoint an independent reviewer (approved by APRA) to report every four months to APRA on implementation of the plan
  - 'reflect and give significant weight to the accountability for Remediation Activities in the Remedial Action Plan in the Remuneration Scorecards of the Accountable and responsible persons specified in the Remedial Action Plan, and other staff as relevant'
  - 'make the necessary changes to the Accountability Statements of the relevant Accountable Persons to reflect accountabilities for the completion of the Remediation Activities in the Remedial Action Plan'.
- Capital add-on: In addition, APRA will require the bank to hold an operational risk capital add-on of $50 million to take effect from 30 May 2023. This will remain in place until the bank has 'delivered the remedial action plan under the CEU to APRA's satisfaction'.

AUSTRAC CEU

- Separately, the Australian Transaction Reports and Analysis Centre (AUSTRAC) has also accepted a CEU from the bank following a compliance inspection by AUSTRAC which identified 'concerns relating to the adequacy of BoQ's AML/CTF systems and controls'.
- Broadly, under the CEU the bank has undertaken to:

- develop and implement a remedial action plan to improve its AML/CTF program, in line with agreed timeframes
- engage an external auditor to report to AUSTRAC on implementation of the program

Focus on risk management needs to be maintained

- Commenting on these actions APRA and AUSTRAC noted that they had worked closely together in responding to these issues.
- The regulators also each underlined the importance of banks having strong AML/CTF frameworks in place.

[Sources: APRA media release 31/05/2023' AUSTRAC media release 31/05/2023]

APRA finalises 'minor' amendments to reporting standards for insurers

- On 6 June 2023, the Australian Prudential Regulation Authority (APRA) released finalised reporting standards for general and life insurers impacted by the introduction of the Australian Accounting Standards Board 17 Insurance Contracts (AASB 17).
- APRA also released a letter to industry confirming that the changes proposed in the May consultation have been implemented without further amendment (as no submissions were received in response to the consultation).
- For context, APRA describes the changes as 'minor' in that they aim to: 'correct errors that could lead to incorrect reporting, remove ambiguity of instructions' and improving usability'.
- APRA has published clean and marked up versions of the 14 updated general insurance and five life insurance standards here.
- The changes take effect for reporting periods ending on or after 1 July 2023

[Sources: APRA: Round five - Minor amendments to the finalised capital and reporting framework for insurers 06/06/2023]

Risk Management

'Safe and responsible AI in Australia': Discussion paper released for consultation

- The government has released a discussion paper seeking view on the best regulatory approach to ensure AI is 'developed and used safely and responsibly in Australia'. Feedback will inform the government's policy (and regulatory) response.
- As flagged, the focus of the paper is on what 'governance mechanisms' – ie regulatory mechanisms, voluntary mechanisms or a mix of both - could/should be introduced to ensure AI is used 'safely and responsibly'. .
- Attachment C to the paper sets out the potential elements of a 'draft risk based approach to regulation'.
- Among other things, the consultation paper seeks views on:
  - the main benefits or limitations of a risk-based approach to regulation
  - whether a risk-based approach for responsible AI should 'be a voluntary or self-regulation tool or be mandated through regulation' and whether it should apply to public or private organisations or both, and or whether it should apply to 'developers or deployers or both'
  - 'mandating transparency requirements across the private and public sectors, including how these requirements could be implemented'.
- A full list of consultation questions is included at p34 of the discussion paper.
- The due date for submissions is 26 July 2023.

[Sources: Supporting responsible AI: discussion paper 01/06/2023' ACOLA media release 01/06/2023' Minister for Science and Technology Ed Husic 01/06/2023]

In Brief | The EU and US are reportedly drafting a voluntary code of AI conduct, with a draft expected to be released shortly

[Source: ABC News 01/06/2023]

In Brief | Crypto trading platform Binance (and its founder) are facing multiple SEC charges over (alleged) engagement in what SEC describes as 'an extensive web of deception, conflicts of interest, lack of disclosure, and calculated evasion of the law'

[Source: SEC media release 05/06/2023' SEC complaint]

Other News

Top Story | Changes to reporting foreign investments –Register of Foreign Ownership of Australian Assets

With a new Register of Foreign Ownership of Australian Assets set to commence on 1 July 2023.

MinterEllison has released an article outlining the key changes, you can access the full text here.

Has this newsletter been forwarded to you? You can subscribe to our weekly wrap up of key governance, risk, regulatory and ESG developments here.

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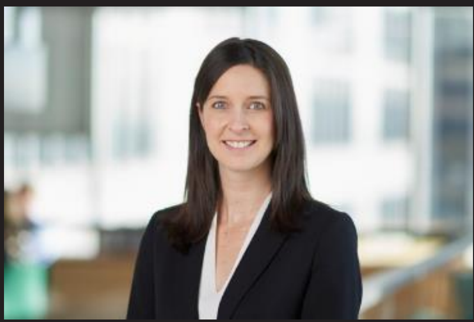

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