

Compliance: Theory and Practice in the Financial Services Industry

Reading List

Where material is listed under "required pre-class reading", you are expected to read that material in advance of the relevant lecture so that you can discuss it in class. This material may be the subject of questions in the examination.

The recommended additional reading is for those who have a particular interest in, or who would like a reference source for additional materials on, a topic. You are not expected to read any of this additional material. It will only be the subject of questions in the examination if and to the extent that it is expressly dealt with in the lecture slides.

Most of the reading materials are freely available online. The few items in the required pre-class reading that are not freely available online (marked ^^ in the list below) will be handed out in hard copy at the commencement of the course.

Preliminary Reading

Students (particularly overseas students) who are not familiar with the regulatory framework that applies to financial services in Australia should, by way of general introduction to the course, read Chapter 1 of the current edition of Baxt, Black and Hanrahan, *Securities and Financial Services Law*, available in the Sydney University Law School library.

1. Licensing

Required pre-class reading:

- Nil

Recommended additional reading:

- Lewis, "When is a Financial Product not a Financial Product?" (2004) 22 CSLJ 103
- Lewis, "A Decade On - Reforming the Financial Services Law Reforms", a paper delivered at the 6th Annual Supreme Court Corporate Law Conference in August 2011 (see '2. The definition of 'financial product'')
- Eastwood, "Breach reporting: Some difficult issues to consider" (2014) 32 CSLJ 251
- ASIC Regulatory Guide 1 - AFS Licensing Kit: Part 1 - Applying for and varying an AFS licence
- ASIC Regulatory Guide 2 - AFS Licensing Kit: Part 2 - Preparing your AFS licence application
- ASIC Regulatory Guide 3 - AFS Licensing Kit: Part 3 - Preparing your additional proofs
- ASIC Regulatory Guide 36 - Licensing: Financial product advice and dealing
- ASIC Regulatory Guide 78 - Breach reporting by AFS licensees
- ASIC Regulatory Guide 98 - Licensing: Administrative action against financial services providers
- ASIC Regulatory Guide 104 - Licensing: Meeting the general obligations
- ASIC Regulatory Guide 105 - Licensing: Organisational competence
- ASIC Regulatory Guide 121 - Doing financial services business in Australia
- ASIC Regulatory Guide 146 - Licensing: Training of financial product advisers
- ASIC Regulatory Guide 166 - Licensing: Financial requirements
- ASIC Regulatory Guide 167 - Licensing: Discretionary powers

- ASIC Regulatory Guide 175 - Licensing: Financial product advisers - Conduct and disclosure
- ASIC Regulatory Guide 176 - Licensing: Discretionary powers - wholesale foreign financial services providers
- ASIC Regulatory Guide 185 - Non-cash payment facilities
- ASIC Pro Forma 209 - Australian financial services licence conditions

2. The Role of Compliance

Required pre-class reading:

- International Standard ISO 19600 Compliance Management Systems - Guidelines^{^^}
- FPA Guideline for Implementing the Australian Standard on Compliance (AS 3806-1998)^{^^}

Recommended additional reading:

- Australian Standard AS 3806-2006 Compliance Programs^{^^}
- Australian Standard AS 3806-1998 Compliance Programs^{^^}
- Parker & Conolly, "Is there a Duty to Implement a Corporate Compliance System in Australian Law?" (2002) 30 ABLR 273
- Carroll & McGregor-Lowndes, "A Standard for Regulatory Compliance? Industry Self-regulation, the Courts and AS3806–1998" (2001) 60 Australian Journal of Public Administration 80
- Parker, "Evaluating Regulatory Compliance: Standards and Best Practice" (1999) 7 TPLJ 62
- Parker, "The Emergence of the Australian Compliance Industry: Trends and Accomplishments" (1999) 27 ABLR 178
- Basel Committee on Banking Supervision, "Compliance and the Compliance Function in Banks" (April 2005)
- IOSCO, "Compliance Function at Market Intermediaries" (March 2006)

3. Insider Trading and Chinese Walls

Required pre-class reading:

- *ASIC v Citigroup Global Markets Australia Pty Limited (No. 4)* [2007] FCA 963, paragraphs 466-598
- ASX Market Rules Guidance Note 13 - Prohibition of Advice to Clients
- SEC Report, "Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Non-public Information" [1990] Fed Sec Law Reports ¶84,520^{^^}
- NYSE/NASD Info Memo 91-22 - Chinese Walls Policies and Procedures
- *Slade v. Shearson, Hammill & Co., Inc*, selected judgments

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '4. Continuous disclosure and insider trading')
- Rubenstein, "The Regulation and Prosecution of Insider Trading in Australia: Towards Civil Penalty Sanctions for Insider Trading" [2002] CSLJ 89
- Goldwasser, "Recent Developments in the Regulation of Chinese Walls and Business Ethics - In Search of a Remedy for a Problem that Persists" [1993] CSLJ 227
- Doty and Powers, "Chinese Walls: The Transformation of a Good Business Practice" (1988) 26 American Criminal Law Review 155
- Bollen, "Research Analysts and the Australian Market Misconduct Regime" [2003] MurUEJL 19
- NYSE Disciplinary Proceedings 98-069
- ASIC Regulatory Guide 62 - Better disclosure for investors

- ASIC Regulatory Guide 73 - Continuous disclosure obligations: Infringement notices
- ASIC Regulatory Guide 95 - Disclosing entity provisions relief
- ASIC Regulatory Guide 198 - Unlisted disclosing entities: Continuous disclosure obligations
- ASIC Regulatory Guide 238 - Suspicious activity reporting
- ASX Listing Rules Guidance Note 8 - Continuous Disclosure: Listing Rules 3.1 - 3.1B

4. Market Conduct Rules

Required pre-class reading:

- ASX Business Rules Guidance Note 8/00 - Summary
- ASX Business Rules Guidance Note 8/00 - Trading Practices

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '3C(ii) The inappropriate extension of former futures laws to OTC derivatives and other financial products - Order precedence requirements' and '5. Short selling')
- ASIC Regulatory Guide 196 - Short selling
- ASIC Regulatory Guide 238 - Suspicious activity reporting
- ASX Market Rules Guidance Note 1 - Prevention of Manipulative Trading - Transactions Involving no Change in Beneficial Ownership
- ASX Market Rules Guidance Note 11 - Client Order Priority
- ASX Business Rules Guidance Note 12/01 - Order Record Keeping
- ASX Business Rules Guidance Note 11/97 - Short Selling

5. Shareholding Restrictions

Required pre-class reading:

- Nil

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '3C(ii) The inappropriate extension of former futures laws to OTC derivatives and other financial products - Takeovers and relevant interests')
- ASIC Regulatory Guide 5 - Relevant interests and substantial holding notices
- ASIC Regulatory Guide 6 - Takeovers: Exceptions to the general prohibition
- ASIC Regulatory Guide 9 - Takeovers bids
- ASIC Regulatory Guide 10 - Compulsory acquisitions and buyouts
- ASIC Regulatory Guide 25 - Takeovers: false and misleading statements
- ASIC Regulatory Guide 59 - Announcing and withdrawing takeover bids (s653 and s746)
- ASIC Regulatory Guide 71 - Downstream acquisitions
- ASIC Regulatory Guide 74 - Acquisitions agreed to by shareholders
- ASIC Regulatory Guide 86 - Tracing beneficial ownership
- ASIC Regulatory Guide 102 - Tender offers by vendor shareholders
- ASIC Regulatory Guide 128 - Collective action by institutional investors
- ASIC Regulatory Guide 163 - Takeovers: Minimum bid price principle: s621
- ASIC Regulatory Guide 222 - Substantial holding disclosure: Securities lending and prime broking
- Treasury, "Australia's Foreign Investment Policy" (December 2015)
- Takeovers Panel Guidance Notes

6. Competition and Consumer Law

Required pre-class reading:

- Nil

Recommended additional reading:

- Parker and Nielsen, "Do Businesses Take Compliance Systems Seriously? An Empirical Study of the Implementation of Trade Practices Compliance Systems in Australia" [2006] MULR 15
- ASIC Regulatory Guide 96 - Debt collection guideline for collectors and creditors
- ASIC Regulatory Guide 201 - Unsolicited credit cards and debit cards
- ASIC Regulatory Guide 220 - Early termination fees for residential loans: Unconscionable fees and unfair contract terms

7. Combating Crime

Required pre-class reading:

- Nil

Recommended additional reading:

- Fisse, "Minimising Exposure to Liability under the New Legislation: Developing Effective Corporate Compliance Systems", Chapter 19 from Fisse, Fraser & Coss, *The Money Trail: Confiscation of Proceeds of Crime, Money Laundering and Cash Transaction Reporting* (1992) The Law Book Company Limited
- Daley, "Effectiveness of United States and International Efforts to Combat International Money Laundering" (2000) Saint Louis-Warsaw Transatlantic Law Journal 175
- Wilder and Ahrens, "Australia's Implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" [2001] MelbJIL 22
- Basel Committee on Banking Supervision, "Sound management of risks related to money laundering and financing of terrorism" (February 2016)
- Austrac Regulatory Guide
- Austrac Typologies and Case Studies Reports
- Austrac Guideline No 1: Suspect Transaction Reporting
Addendum 1: Suspect Transaction Reporting - The Use Of Cheques In Money Laundering
Addendum 5: Suspect Transaction Reporting - Identifying Suspect Transactions by Call Centres
- Austrac Guideline No 4: Merchant Bankers and Stock Brokers Suspect Transaction Reporting
Enclosure 1: Areas of Suspect Activity - Money Laundering
Enclosure 2: Areas of Suspect Activity - Tax Evasion
Enclosure 3: Areas of Suspect Activity - Corporate Fraud
Enclosure 4: Areas of Suspect Activity - Securities Offences
- Austrac Guidance Note 07/01 - Correspondent Banking
- Austrac Guidance Note 11/02 - Verification of Identity (e-Verification)
- Public Legal Interpretation No. 2 - Item 54 of table 1 in section 6 of the AML/CTF Act
- Public Legal Interpretation No. 4 - What constitutes a reporting entity
- Public Legal Interpretation No. 6 - Suspect transactions and suspicious matter reports
- Public Legal Interpretation No. 7 - Significant cash transaction and threshold transaction reports
- Public Legal Interpretation No. 8 - Cross-border movements
- Public Legal Interpretation No. 9 - Customer identification requirements under the AML/CTF Act
- Public Legal Interpretation No. 10 - Agency and the AML/CTF Act

- Public Legal Interpretation No. 11 - Electronic funds transfer instructions and international funds transfer instructions

8. Retail Customer Obligations and Marketing Financial Products

Required pre-class reading:

- Australian Standard AS ISO 10002-2006 Customer Satisfaction - Guidelines for Complaints Handling in Organizations^^

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '6. Product disclosure')
- ASIC Regulatory Guide 38 - The hawking provisions
- ASIC Regulatory Guide 53 - The use of past performance in promotional material
- ASIC Regulatory Guide 55 - Disclosure documents and PDS: consent to quote
- ASIC Regulatory Guide 65 - Section 1013DA disclosure guidelines
- ASIC Regulatory Guide 66 - Transaction specific disclosure
- ASIC Regulatory Guide 69 - Debentures - improving disclosure for retail investors
- ASIC Regulatory Guide 70 - Prospectuses for cash box and investment companies
- ASIC Regulatory Guide 72 - Foreign securities prospectus relief
- ASIC Regulatory Guide 90 - Example Statement of Advice for a limited financial advice scenario for a new client
- ASIC Regulatory Guide 97 - Enhanced fee disclosure regulations: Questions and answers
- ASIC Regulatory Guide 107 - Fundraising: Facilitating electronic offers of securities
- ASIC Regulatory Guide 125 - Share purchase plans
- ASIC Regulatory Guide 126 - Compensation and insurance arrangements for AFS licensees
- ASIC Regulatory Guide 139 - Approval of external complaints resolution schemes
- ASIC Regulatory Guide 141 - Offers of securities on the Internet
- ASIC Regulatory Guide 151 - Fundraising: Discretionary powers
- ASIC Regulatory Guide 154 - Certificate by a qualified accountant
- ASIC Regulatory Guide 156 - Advertising of debentures and notes to retail investors
- ASIC Regulatory Guide 165 - Licensing: Internal and external dispute resolution
- ASIC Regulatory Guide 168 - Disclosure: Product disclosure statements (and other disclosure obligations)
- ASIC Regulatory Guide 169 - Disclosure: Discretionary powers
- ASIC Regulatory Guide 170 - Prospective financial information
- ASIC Regulatory Guide 173 - Disclosure for on-sale of securities and other financial products
- ASIC Regulatory Guide 175 - Licensing: Financial product advisers - Conduct and disclosure
- ASIC Regulatory Guide 182 - Dollar disclosure
- ASIC Regulatory Guide 189 - Disclosure relief for rights issues
- ASIC Regulatory Guide 190 - Offering securities in New Zealand and Australia under mutual recognition
- ASIC Regulatory Guide 221 - Facilitating digital financial services disclosures
- ASIC Regulatory Guide 228 - Prospectuses: Effective disclosure for retail investors
- ASIC Regulatory Guide 234 - Advertising financial products and advice services: Good practice guidance
- ASIC Regulatory Guide 244 - Giving information, general advice and scaled advice
- ASIC Regulatory Guide 245 - Fee disclosure statements
- ASIC Regulatory Guide 246 - Conflicted remuneration

9. Miscellaneous Compliance Issues

Required pre-class reading:

- *Bonds & Securities Trading Pty Ltd v Glomex Mines NL* [1971] 1 NSWLR 879
- *ASIC v Citigroup Global Markets Australia Pty Limited (No. 4)* [2007] FCA 963, paragraphs 254 - 456

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '3C(i) - The inappropriate extension of former futures laws to OTC derivatives and other financial products - Client segregated accounts and margins')
- Tuch, "Investment Banks as Fiduciaries: Implications for Conflicts of Interest" [2005] MULR 15
- Matthews, "Internal Corporate Investigations" (1984) 45 Ohio State Law Journal 655
- SIA/SDIA Best Practice Guidelines for Research Integrity
- ASIC Regulatory Guide 79 - Managing conflicts of interest: An ASIC guide for research report providers
- ASIC Regulatory Guide 181 - Licensing: Managing conflicts of interest
- ASIC Regulatory Guide 212 - Client money relating to dealing in OTC derivatives

10. Managed Investments

Required pre-class reading:

- Nil

Recommended additional reading:

- ASIC Regulatory Guide 80 - Managed investment schemes - interests not for money
- ASIC Regulatory Guide 94 - Unit pricing: Guide to good practice (joint publication with APRA)
- ASIC Regulatory Guide 105 - Licensing: Organisational competence (paragraphs 34, 37, 45, 65 and 80-82)
- ASIC Regulatory Guide 116 - Commentary on compliance plans: Agricultural industry schemes
- ASIC Regulatory Guide 117 - Commentary on compliance plans: Financial asset schemes
- ASIC Regulatory Guide 118 - Commentary on compliance plans: Contributory mortgage schemes
- ASIC Regulatory Guide 119 - Commentary on compliance plans: Pooled mortgage schemes
- ASIC Regulatory Guide 120 - Commentary on compliance plans: Property schemes
- ASIC Regulatory Guide 127 - Additional investments in managed investment schemes
- ASIC Regulatory Guide 132 - Managed investments: Compliance plans
- ASIC Regulatory Guide 133 - Managed investments and custodial or depository services: Holding assets
- ASIC Regulatory Guide 134 - Managed investments: Constitutions
- ASIC Regulatory Guide 136 - Managed investments: Discretionary powers and closely related schemes
- ASIC Regulatory Guide 148 - Platforms that are managed investment schemes and nominee and custody services
- ASIC Regulatory Guide 166 - Licensing: Financial requirements (paragraphs 63-86)
- ASIC Regulatory Guide 167 - Licensing: Discretionary powers (paragraphs 18-23, 85 and 89)
- ASIC Regulatory Guide 178 - Foreign collective investment schemes
- ASIC Regulatory Guide 179 - Managed discretionary account services
- FSC Standard 1 - Code of Ethics & Code of Conduct

- FSC Standard 17 - Incorrect Pricing of Scheme Units - Correction and Compensation
- FSC Guidance Note 7 - Personal Trading
- FSC Guidance Note 8 - Related Party Transactions
- FSC Guidance Note 10 - Brokerage Arrangements
- FSC Guidance Note 24 - Managing AML/CTF, FATCA and CRS Customer Identification Obligations

11. Deposit Products, Non-Cash Payment Facilities, FHSA Products, Credit Facilities, Margin Lending and ASX Stockbroking

Required pre-class reading:

- Nil

Recommended additional reading:

- Code of Banking Practice
- Customer Owned Banking Code of Practice
- ePayments Code
- ASIC Regulatory Guide 40 - Good transaction fee disclosure for bank, building society and credit union deposit and payments products (transaction accounts)
- ASIC Regulatory Guide 202 - Credit registration and transition
- ASIC Regulatory Guide 203 - Do I need a credit licence?
- ASIC Regulatory Guide 204 - Applying for and varying a credit licence
- ASIC Regulatory Guide 205 - Credit licensing: General conduct obligations
- ASIC Regulatory Guide 206 - Credit licensing: Competence and training
- ASIC Regulatory Guide 207 - Credit licensing: Financial requirements
- ASIC Regulatory Guide 208 - How ASIC charges fees for credit relief applications
- ASIC Regulatory Guide 209 - Credit licensing: Responsible lending conduct obligations
- ASIC Regulatory Guide 210 - Compensation and insurance arrangements for credit licensees
- ASIC Regulatory Guide 214 - Guidance on ASIC market integrity rules for ASX and ASX 24 markets
- ASIC Regulatory Guide 219 - Non-standard margin lending facilities: Disclosure to investors
- ASIC Regulatory Guide 223 - Guidance on ASIC market integrity rules for competition in exchange markets
- ASIC Regulatory Guide 226 - Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets
- ASX, Audio Visual Presentations for First-Time Investors
- ASX, Getting Started in Shares
- ASX, CHESS - Clearing House Electronic Subregister System
- ASX, Options - a Simple Guide
- ASX, Understanding Options Trading
- ASX, Low Exercise Price Options Explanatory Booklet
- ASX, Understanding Trading and Investment Warrants
- ASX, Introduction to Index Futures and Options

12. Derivatives, Warrants, ASX 24 Futures Broking, FX and Financial Planning

Required pre-class reading:

- Lecture slides for Lecture 3 (Insider Trading and Chinese Walls), Lecture 4 (Market Conduct Rules) and Lecture 11E (Stockbroking)
- Part B 2002 Examination Paper and sample answer

Recommended additional reading:

- Lewis, "A Decade On - Reforming the Financial Services Law Reforms" (see '3. Derivatives')
- FPA Code of Professional Practice
- ASIC Regulatory Guide 214 - Guidance on ASIC market integrity rules for ASX and ASX 24 markets
- ASIC Regulatory Guide 226 - Guidance on ASIC market integrity rules for capital and related requirements: ASX, ASX 24, Chi-X and APX markets
- ASIC Regulatory Guide 250 - Guidance on ASIC market integrity rules for risk management and other requirements: ASX 24 market

13. Insurance, Superannuation and RSAs

Required pre-class reading:

- Nil

Recommended additional reading:

- General Insurance Code of Practice
- General Insurance Brokers' Code of Practice
- ASIC Regulatory Guide 184 - Superannuation: Delivery of product disclosure for investment strategies
- ASIC Regulatory Guide 229 - Superannuation forecasts
- ASIC Regulatory Guide 252 - Keeping superannuation websites up to date

^^ These materials will be handed out in hard copy at the commencement of the course. All other materials are available on-line. Go to www.inhouselegal.com.au, click on "Compliance Course" in the menu and then select "Reading List". A page will appear with hyperlinks to the materials.

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