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BANKING SECTOR NEWSLETTER

World's largest banks sued for rigging exchange rates

Citibank, UBS, JPMorgan, Barclays and the Royal Bank of Scotland are sued in a class action for engaging in illegal cartel conduct to manipulate foreign exchange rates

<https://www.abc.net.au/news/2019-05-27/ubs-citibank-jpmorgan-barclays-rbs-currency-rigging-case/11152318>

IN THE MEDIA

SWIFT examines recent threats in cyber threats

The report talks about cyber attackers preferred targets and methods, and what patterns can be identified. The report concludes that the global financial community has seen a continued evolution in the cyber threat since 2016, with financial institutions facing attacks of increasing levels of sophistication

<https://www.auspaynet.com.au/insights/Blog/SWIFT-Cyberthreats-2019>

Emboldened regulator to hit banker pay

APRA will soon be handing down new prudential standards around remuneration following the damaging results of an inquiry into 36 of Australia's financial institutions

<https://www.investordaily.com.au/regulation/45004-emboldened-regulator-to-hit-banker-pay>

APRA puts banks, insurers and super funds on notice, considers extra capital requirements

The banking regulator has warned it may hit several financial institutions with additional capital requirements, after self-assessments conducted by banks, insurers and superannuation trustees found "material weaknesses" in governance and risk management

<https://www.abc.net.au/news/2019-05-22/apra-flags-additional-capital-requirements-after-culture-report/11137444>

APRA issues directions to companies within the IOOF group for failing to comply with licence conditions

The APRA has issued directions to companies within the IOOF group, using for the first time the broader directions powers under the Superannuation Industry (Supervision) Act 1993 (SIS Act) that were granted by parliament in April 2019

<https://www.apra.gov.au/media-centre/media-releases/apra-issues-directions-companies-within-ioof-group-failing-comply>

APRA proposes amending guidance on mortgage lending

The APRA has begun consulting on possible revisions to its guidance on the serviceability assessments that authorised deposit-taking institutions (ADIs) perform on residential mortgage loan applications

<https://www.apra.gov.au/media-centre/media-releases/apra-proposes-amending-guidance-mortgage-lending>

Finance regulators tackle regaining investor trust

ASIC chair James Shipton has called for financial institutions to integrate fairness into their operations, as international financial regulators have said markets are wrestling with regaining trust from investors

<https://www.investordaily.com.au/regulation/44959-finance-regulators-tackling-regaining-investor-trust>

AFCA welcomes move to track dispute resolution within financial firms

The Australian Financial Complaints Authority (AFCA) has welcomed ASIC's announcement of a raft of measures to strengthen the complaints handling process within financial firms

<https://www.afca.org.au/news/media-releases/afca-welcomes-moves-to-track-dispute-resolution-within-financial-firms/>

CFA recommends sweeping reforms to wealth sector

The global CFA Institute and its Australian subsidiary have released 10 major recommendations for reform in the wealth management industry and argue that simply disclosing vertically integrated conflicts is not enough in a report titled *Professionalising Financial Advice* <https://www.investordaily.com.au/regulation/44932-cfa-recommends-sweeping-reforms-to-wealth-sector>

Report finds action needed to promote competition in banking

Changes to the regulatory framework for home lending are needed to promote competition in banking, according to an independent report commissioned by the Customer Owned Banking Association <http://www.customerownedbanking.asn.au/media-a-resources/media-release-alerts/1370-report-finds-action-needed-to-promote-competition-in-banking>

Personal insolvencies fall in most capital cities in March quarter 2019

The Australian Financial Security Authority (AFSA) released regional personal insolvency statistics for the March quarter 2019. New personal insolvencies fell in most capital cities in the March quarter 2019 compared to the previous quarter. The exception was Greater Darwin <https://www.afsa.gov.au/about-us/newsroom/personal-insolvencies-fall-most-capital-cities-march-quarter-2019>

IN PRACTICE AND COURTS

[RBA: Payments System Board Update: May 2019 Meeting](#)

Number 2019-13: Date 24 May 2019

At its meeting on Friday 24 May 2019, the Payments System Board discussed a number of issues outlined here

Exposure Draft ED 289: Annual Improvements to Australian Accounting Standards 2018-2020

[ED 289](#) proposes to amend AASB 1 First-time Adoption of Australian Accounting Standards, AASB 9 Financial Instruments, AASB 16 Leases and AASB 141 Agriculture. Annual improvements are limited to changes that either clarify the wording in the Standard or correct relatively minor unintended consequences, oversights or conflicts between requirements in the Standards. Submit your comments to the AASB by 31 July 2019 via the [AASB website](#)

FASEA opens Foreign Qualifications Assessment Service

FASEA has released its online Foreign Qualifications Assessment Service form. The form enables persons with qualifications obtained outside of Australia to apply to FASEA for approval of their foreign qualification. See the link [here](#).

[APRA: Self-assessments of governance, accountability and culture: information paper](#)

APRA has released this report analysing the self-assessments carried out by 36 of the country's largest banks, insurers and superannuation licensees, in response to the final report of the Prudential Inquiry into Commonwealth Bank of Australia (CBA)

APRA: Prudential Practice Guide APG 223 Residential Mortgage Lending

The APRA is now proposing to amend Residential mortgage lending for authorised deposit-taking institutions

A four-week consultation will close on 18 June, ahead of APRA releasing a final version of the updated APG 223 shortly afterwards. A copy of the letter is available on APRA's [website](#)

[Debt agreement reform - Prescribed information](#)

In preparation for the debt agreement reforms which go live on 27 June 2019 the draft PI is now available on the [AFSAsandpit](#). ASFA will continue to release guidance documents and forms on AFSAsandpit. If you want to be notified whenever we release a new or amended document, you can sign up to received automatic alerts. Go to <https://sandpit.afsa.gov.au> and click on 'Register' at the top of the screen to complete your details

[ABA: Prudential Practice Guide CPG 234 Information Security](#)

The ABA's has specific comments on the following chapters: Third parties and related parties Implementation of controls Internal audit Attachment B: Training and awareness Attachment C: Identity and access

[AFCA: Get ready for law reform changes](#)

A number of law reform and subsequent administrative changes from the Bankruptcy Amendment (Debt Agreement Reform) Act 2018 and the Insolvency Law Reform Act 2016, will commence soon. Details are outlined here

[AASB: Exposure Draft: Interest Rate Benchmark Reform](#)

ED288 Interest Rate Benchmark Reform proposes to amend AASB 9 Financial Instruments and AASB 139 Financial Instruments: Recognition and Measurement, to provide relief from specific hedge accounting requirements that could have resulted in the discontinuation of hedge accounting due solely to the uncertainty arising from interest rate benchmark reform. Please submit your comments to the AASB by 31 May 2019

[FPA Pronup campaign for Certified Financial Planner](#)

The FPA of Australia has conceived a new way for CERTIFIED FINANCIAL PLANNER® professionals to help beat the disheartening statistic and inspire more Australians to seek their services by introducing the concept of a Pronuptial Agreement (or "Pronup" for short)

[ASFA Reminder: Recovering your unclaimed money](#)

From the 27th June 2019 applications for unclaimed monies under s254 of the Bankruptcy Act can be made directly to Australian Financial Security Authority (ASFA) replacing the current Court application process. An application form and further information about the new process will be published closer to the commencement date

IFAC: Global Consultation on Quality Management for Firms and Engagements Now Open

The International Auditing and Assurance Standards Board (IAASB) seeks public comment by July 1, 2019 on [three interrelated standards that address quality management](#). The proposals bring important changes to the way professional accountancy firms are expected to manage quality - for audits, reviews, and other assurance and related services engagements

[RBA: Consultation on ISO 20022 Migration for the Australian Payments Scheme](#)

The Reserve Bank and the Australian Payments Council (APC) today issued a [consultation paper](#) seeking stakeholder views on the migration of messaging used in some parts of the Australian payments system to the International Organization for Standardization (ISO) 20022 payments messaging standard. Submissions close on 31 May 2019

FSC Submissions

13 May 2019 - [Ending Grandfathered Conflicted Remuneration for Financial Advisers](#)

CASES

[Australian Securities and Investments Commission v Piggot Wood & Baker \(A Firm\) \(No 6\) \[2019\] FCA 672](#)

CORPORATIONS – application by liquidator of unregistered managed investment scheme for directions that specific distributions of realised funds to investors are justified – where Solicitors' Trust had made payments to investors who lost principal following collapse of the scheme – where rights and interests of investors as relevant to amounts paid out by Solicitors' Trust were subject to statutory assignment – where liquidator contends mixed funds received are to be applied to interest before principal according to the rule in *Falk v Haugh* [1935] HCA 35; 53 CLR 163 – where distribution initially proposed failed adequately to take into account the Solicitors' Trust's distinct proprietary rights – where amended application would rateably distribute recoveries as between principal and interest – liquidator entitled to make interim final distribution of funds as proposed in amended application

The Court directs (b) the valuer proceeds may be first applied and paid to the Investors in those loans · in satisfaction of interest which accrued prior to the appointment of the liquidator as recorded in the liquidator's records of Investor funds

[Zreika v Royal \[2019\] FCAFC 82](#)

BANKRUPTCY AND INSOLVENCY – CONVEYANCING

PRACTICE AND PROCEDURE – whether the appellant in NSD 1801 of 2016 is entitled to raise a new defence relying on *Brady v Stapleton* [1952] HCA 62; (1953) 88 CLR 322 on appeal – whether the appellant is raising a new legal issue on appeal or appealing against an order on the basis that the primary judge's decision was wrong for want of jurisdiction

CORPORATIONS – where the primary judge refused to approve a deed pursuant to s 477(2A) of the Corporations Act 2001 (Cth) – whether the order by the primary judge refusing approval of the deed was an interlocutory order – whether the primary judge's refusal to approve the deed is attended with sufficient doubt to warrant it being reconsidered

COSTS – whether the primary judge erred in exercising a discretion to make a lump sum order for costs on a joint and several basis – whether the primary judge erred in rejecting the submission that the respondents were not legally obliged to pay any legal costs to their solicitors – consideration of the indemnity principle – where the primary judge found that the respondents' obligation to pay costs was a contingent liability

Mortgages - discharge a loan secured by a mortgage

[Australian Securities and Investments Commission v Goldsky Global Access Fund Pty Ltd & Ors \[2019\] QSC 114](#)

CORPORATIONS – FINANCIAL SERVICES – FINANCIAL SERVICES PROVIDERS – LICENCE: WHEN REQUIRED – where s 911A of the Corporations Act 2001 (Cth) requires a person to hold an Australian financial services licence (AFSL) if a person carries on a financial services business in this jurisdiction – where a company incorporated in the United States of America, of which the fourth respondent was managing director, applied to the applicant for class order relief from the requirement to hold an AFSL – where the applicant accepted the fourth respondent's reliance on class order relief – where the first, second and third respondents, which were also controlled by the fourth respondent, each operated a bank account – where third parties deposited funds into the first, second and third respondent's bank accounts – where none of the first, second and third respondents held an AFSL – where the fourth respondent was subsequently the subject of an investigation by the United States Securities and Exchange Commission – where the fourth respondent initially did not notify the applicant of the investigation – whether the first, second and third respondents carried on a financial services business – whether the first, second and third respondents were exempted from holding an AFSL

PROCEDURE – DECLARATIONS – APPROPRIATE FORM OF RELIEF - DISCRETION OF COURT – OTHER

CASES – where the applicant requests the Court to make declarations that the first, second and third respondent have contravened s 911A of the Corporations Act 2001 (Cth) – whether it is an appropriate exercise of the Court’s discretion to make the declarations sought by the applicant. Australian Securities and Investments Commission Act 2001 Cth s 30; Corporations Act 2001 Cth s 9, s 21, s 761A, s 761C, s 763A, s 766A, s 766E, s 910A, s 911A

[Huizhong Investment Group Pty Ltd v Westpac Banking Corporation Ltd and Ors \[2019\] NSWSC 524](#)

Upon a determination of separate questions adversely to the plaintiff, order that the proceedings be dismissed.

EQUITY – Subrogation – Ghana Bank principle – Mortgages of Torrens title land – First mortgage paid out by second mortgagee pursuant to statutory right – Conveyancing Act 1919 NSW, sections 94-95 – Registration of transfer of mortgage – Real Property Act 1900 NSW, sections 51-52 – Second Mortgagee claimed to be subrogated to rights of first mortgagee under securities collateral to first mortgage – No formal assignment of rights under collateral securities – No subrogation

MORTGAGES AND SECURITIES – Mortgages – Duties, rights and remedies of mortgagee – Power of sale – Sale by second registered mortgagee after acquisition by transfer of first mortgage – Appropriation of sale proceeds exclusively towards payment of second mortgage debt – First mortgage discharged – Second mortgagee not entitled to disregard first mortgage debt in claim to be subrogated to rights under securities collateral to first mortgagee – Any entitlement to subrogation lost on receipt of sale proceeds in excess of first mortgage debt and discharge of first mortgage

[CBA v MTC Diesel Pty Ltd & Ors \[2019\] VSC 639](#)

Warehousemen’s Lien – when lien is claimed over goods stored – possession of goods – immediate possession – storage costs.

Security interest – registered security interests – within meaning of Personal Property Securities Act 2009 (Cth) – whether a valid lien pursuant to legislation takes priority over a security interest.

Notice – requirements of notice – whether notice requirements complied with pursuant to statute.

Acts Interpretation Act 1901 (Cth); Credit Act 1984 (Vic); Education Services for Overseas Students Act 2000 (Cth); Electronic Transactions (Victoria) Act 2000 (Vic); Estate Agents Act 1980 (Vic); Migration Act 1958 (Cth); Personal Property Securities Act 2009 (Cth); Personal Property Securities Regulations 2010 (Cth); Storage Liens Act 1935 (NSW); Storage Liens Act 1973 (Qld); Warehouseman’s Liens Act 1952 (WA); Warehousemen’s Lien Act 1958 (Vic).

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