# Compliance Culture

*As chair of the Australian Securities and Investments Commission and a member of the IOSCO board, **Joseph Longo** is focused on the effective functioning of domestic and international markets. He talks to **IQ** about the key priorities, including data and digital transformation*

**IQ:** What are the regulatory priorities for the Australian Securities and Investments Commission (ASIC) in 2024 and beyond?

**Joseph Longo (JL):** Since I became chair, my goal has been to ensure ASIC is ambitious and confident in discharging its regulatory and enforcement responsibilities to serve and advance the public interest.

We have a broad remit and are operating in an environment, both locally and internationally, where cost-of-living pressures, climate change, rapid technological transformation and an ageing population are impacting consumers' needs and the ways in which they navigate the financial services markets.

Our regulatory priorities aim to address the most significant threats and harms to investors and consumers, especially the most financially vulnerable consumers, arising from these global trends as they relate to our regulatory environment and as they intersect in areas that may cause harm or loss.

We have identified a number of specific strategic priorities, alongside our ongoing regulatory and enforcement work. These include targeting poor product design, distribution and marketing, sustainable finance, with a particular focus on greenwashing and climate-related financial disclosures, poor governance and advice misconduct in superannuation that adversely affects retirement outcomes, and technology risks in financial services and markets, including cyber and operational resilience practices within companies and financial market infrastructure.

Our goal is to create a culture of compliance across Australia's financial system, and the corporate sector more generally, by applying the right mix of education, enforcement and litigation.

**IQ:** Under your leadership, ASIC is pursuing a vision to become "a leading digitally enabled and data-informed regulator by 2030". What will this look like and what is the roadmap to achieving it?

**JL:** That's right. To support this vision, we have started a digital transformation programme. We received initial funding in the recent federal budget to commence a programme of work to boost our cyber security across our regulatory systems, which will set us on firm foundations for our digital uplift.

We will now move to implement these initiatives, including a new threat intelligence platform to improve information collection and real-time detection of internal and external cyber threats.

Last year, ASIC seized and reviewed 2.6 million documents as part of its investigations.

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The time taken to collect, process and sift through this volume of data to find the needle in the haystack and make the connections with other data sets we've previously collected is exceedingly labour-intensive, relying heavily on manual efforts from our investigators.

Bolstering our data and analytics capabilities through investment to create a unified view of entities, coupled with advanced analytics, would significantly expedite our ability to connect disparate data sets and accelerate the investigation process.

We know utilising innovative digital and data-driven approaches works. ASIC's approach to tackling investment scams with world-leading website takedown powers has seen us shutter about 5,000 scam websites since July 1, 2023, all to help protect consumers. This is work that has been recognised globally, with ASIC jointly leading a new anti-scams working group of regulators in Asia Pacific to tackle the issue in our region.

**IQ:** Global policymakers have been exploring perceived vulnerabilities in non-bank financial intermediation (NBFI) and considering measures to address leverage, liquidity, margin and transparency. How is ASIC participating in this work and what are the priorities?

**JL:** ASIC is involved in a range of work through our membership of the Council of Financial Regulators (CFR), which comprises ASIC, the Reserve Bank of Australia (RBA), the Australian Prudential Regulation Authority and the Treasury, and the International Organization of Securities Commissions (IOSCO).

ASIC also assists the RBA with work the Financial Stability Board (FSB) undertakes in this area, which involves each jurisdiction annually completing a survey about policy tools relating to the major types of non-bank entities. This work helps inform the analysis that is undertaken by the CFR about activity in the NBFI sector in Australia.

In April 2024, the RBA reported that risks to financial stability posed by the NBFI sector in Australia remain relatively contained given its comparatively small size (excluding superannuation) and its declining interconnectedness with the traditional banking sector. Lending by Australian non-banks remains small as a share of outstanding credit but has recently shifted towards riskier market segments and there is less detailed information about this lending than for lending carried out by prudentially regulated banks.

Given vulnerabilities in the NBFI sector can have implications for financial stability, the CFR will monitor evolving risks in the sector by improving visibility over domestic NBFI activities, including in commercial real estate and the growing use of over-the-counter derivatives.

Our work also intersects with ASIC's membership of IOSCO internationally in several areas. This includes the →

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→ Financial Stability Engagement Group, which aims to enhance NBFI resilience to reduce excessive spikes in liquidity demand related to structural liquidity mismatches in open-ended funds and margining practices. It also includes the IOSCO Committee on Emerging Risks, which is undertaking analytical work to identify and assess emerging risks and vulnerabilities within the growing private finance sector. In addition, ASIC chairs the IOSCO Committee on Regulation of Market Intermediaries (Committee 3), which recently outlined 12 good practices designed to support participants in the leveraged loan and collateralised loan obligation markets. NBFIs play a large role in these markets and there are fewer and looser covenants on investor protections, less transparency and scope for potential conduct-related issues.

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**IQ:** Australia is one of several countries to be updating its derivatives reporting rules, with similar updates having been implemented in the US, EU, Japan, the UK and Singapore. How confident are you that these updates will materially improve transparency in the global derivatives market? What more could be done?

**JL:** These updates will materially improve not just transparency in the global derivatives market but also the conformity and consistency of derivatives transaction data, which will ultimately improve its quality and useability.

In terms of further improvements, relatively minor implementation issues are being raised as each jurisdiction implements requirements for internationally consistent reporting standards, and regulators are collaborating internationally to find common approaches to resolving any residual issues.

I also know regulators are working to ensure data analytics and international data sharing arrangements are fit for purpose to facilitate the use of that improved derivatives transaction data.

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**IQ:** Climate-related disclosure requirements will be introduced in Australia over the coming years. What role will ASIC play in the administration of climate disclosures, and how important is it that Australia's requirements are aligned with those in other jurisdictions? How serious an issue is greenwashing and what is ASIC doing to clamp down on this?

**JL:** The growing interest in environmental, social and governance (ESG) issues is driving the biggest changes to financial reporting and disclosure standards in a generation. This is a transformational issue for global markets and we need to be ready to meet that change at every step of its development. To do that, we must maintain high standards of governance and disclosure.

We think the introduction of the mandatory climate-related financial disclosure requirement regime will improve transparency and provide the information architecture to support the growth in sustainability-related products and services. This will facilitate the efficient allocation of capital.

We also want to minimise divergent climate reporting requirements between different jurisdictions. That's important for market efficiency, the competitiveness of Australian companies and to reduce the regulatory burden for reporting entities.

As with any new regime, we intend to take a pragmatic approach to supervision and enforcement, and we will develop guidance to help entities meet their obligations. There will obviously be a period of transition as the industry works to build the capability required to meet these new obligations as well.

In the meantime, I have been encouraged to see listed companies report voluntarily under the recommendations of the FSB's Taskforce on Climate-related Financial Disclosures. In my discussions with business leaders, I have also been encouraging them to start developing the necessary organisational and governance structures to support future reporting requirements, including any additional sustainability-related topics that may be introduced in future years.

While we prepare for these reforms, ASIC has been active under longstanding financial consumer protection laws in addressing greenwashing, particularly in relation to superannuation and investment products.

Greenwashing, for example, erodes trust in the market and can lead to the misallocation of capital. Combating greenwashing is therefore critical to supporting trust. ASIC's role is to help shore up that trust by finding the right balance between guidance, surveillance and enforcement. We won our first greenwashing civil penalty action against Vanguard Investments earlier this year and have other active court cases involving greenwashing.

Just like the reporting standards under consideration, our focus on greenwashing is about ensuring transparent information and conduct, and enforcing what are long-standing and well-established legal obligations that prohibit misleading and deceptive conduct.

Sustainability-related claims, like any other information, must be founded on reasonable grounds. Equally, omitting material sustainability-related information – that is, greenhushing – can also be misleading and deceptive, depending on the nature and significance of the omission.

I would also say that a recent development in our greenwashing work is a focus on the governance around sustainable representations made to investors. This is a logical extension of our focus on whether sustainable representations are misleading or deceptive.

**IQ:** How is ASIC responding to the growth of private markets in Australia?

**JL:** ASIC's latest market cleanliness report has shown Australia's equity markets continue to operate with a high level of integrity and remain consistently among the cleanest in the world. This makes Australia an attractive destination for investment. Many forms of capital are available to grow Australian businesses, the economy and to fund important initiatives such as Australia's energy transition.

Private equity and private credit funds are an important source of funding for many Australian companies, especially businesses that have difficulty raising capital in public markets or accessing bank loans.

ASIC has been watching the rise of, and discussion about, the growth of private markets very closely. While Australia's private markets are dwarfed in size by our listed equity markets, their opacity presents an outsized risk to market integrity, particularly as more investors become exposed.

ASIC is putting private market participants on notice in recognition of the risks we can see. Our focus on private markets will form part of a new, fifth strategic priority for ASIC – to drive consistency and transparency across markets and products.

We are expanding our supervision of private equity and private credit funds, reflecting recent growth in this sector. We are establishing a dedicated private markets unit within ASIC, which will be out there speaking with private equity and credit firms, hedge funds and others to reinforce and test our expectations on governance, reporting and managing conflicts of interest.

Private markets are less transparent than public markets and present different risks for investors, including on liquidity, asset selection and valuations, leverage, performance reporting and fees. We will also review how managers of private finance funds protect confidential information and manage conflicts of interest in their businesses.

**IQ:** Retail investors in Australia have shown an appetite for digital assets, notably through exchange-traded funds. Does this trigger specific concerns for ASIC that might require regulatory monitoring or intervention?

**JL:** My consistent refrain on this issue has been that many crypto-asset products are financial products under the current law. As a result, the issuers – and any intermediaries and exchanges that trade in those crypto assets – need an Australian financial services licence.

The Australian government has also proposed a licensing regime for digital asset facilities to ensure most major forms of crypto-asset activities are regulated in Australia. We have observed the enthusiasm for digital assets goes up and down over time, but my warning is very clear that retail investors must think twice before investing in crypto. Crypto assets are inherently risky and complex.

As for crypto exchange-traded funds, they are regulated products and can be traded via stockbrokers and others, on ASX and CBOE in Australia. However, they are also very risky given their value depends on underlying assets that are volatile, like Bitcoin and Ethereum.

**IQ:** What role do you think artificial intelligence (AI) could play in the future of financial markets, and what guardrails are needed to manage the associated risks and avoid malicious use of AI?

**JL:** I believe effective AI tools may bring enormous benefits, but there is the potential for considerable harm. All participants in the financial system – including regulators – have a duty to balance innovation with the responsible and ethical use of emerging technologies.

We have been engaging with the industry, other agencies and international peers to monitor developments, identify risks and improve practices around its use. For example, we are reviewing the use of AI and advanced data analytics in a sample of entities in banking, credit, insurance and financial advice, and testing how licensees are identifying and mitigating potential consumer harms. We're hoping to report on those findings shortly.

We are also encouraging conversations on AI. In partnership with the University of Technology Sydney, we hosted an AI Regulators Symposium in May so we could have a critical conversation with experts from academia, business, industry and government on how AI is changing regulation, and the way regulators go about their work and identify the conditions necessary for effective regulation of AI.

There is clearly a question here about whether our current regulatory framework is enough to meet the speed of AI's growth. Businesses and individuals that develop and use AI are already subject to various Australian laws.

The current laws that ASIC administers, such as directors' duties and general licensing obligations, are technology neutral. This means they apply equally to outcomes delivered by AI and non-AI systems and processes, and those laws continue to protect consumers and investors. However, we must consider if the current laws can prevent potential harms caused by AI, even if they are sufficient to punish bad action.

For now, existing obligations on good governance and the provision of financial services don't change with new technology.