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Australian Securities &
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Wednesday 13 May 2020

20-113MR ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs

ASIC will extend the deadline for both listed and unlisted entities to lodge financial reports under Chapters 2M and 7 of the Corporations Act (the Act) by one month for certain balance dates up to and including 7 July 2020 balance dates.

The extended deadlines for lodgement of financial reports will assist those entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19.

Where possible, entities should continue to lodge within the normal statutory deadlines, having regard to the information needs of shareholders, creditors and other users of their financial reports, or to meet borrowing covenants or other obligations.

This additional relief announced today builds on earlier relief announced for unlisted entities with 31 December 2019 to 31 March 2020 year ends (refer: **20-084MR ASIC to provide additional time for unlisted entity financial reports**) and will extend deadlines for lodging financial reports for all listed and unlisted entities for balance dates to 7 July 2020 where the reporting deadline has not already passed.

Unlisted entities will now be able to take one additional month to lodge financial reports for year ends from 31 December 2019 to 7 July 2020. Listed entities will be able to take one additional month to report for full year and half-year financial reports for 21 February 2020 to 7 July 2020 balance dates. (The 7 July 2020 date accommodates entities that use a provision in the Corporations act that allows their financial year to be changed by plus or minus 7 days each year).

Listed entities will be required to inform the market when they rely on the extended period for lodgement. These entities may also find it desirable to explain the reasons for relying on the extended deadlines. An instrument extending the deadlines is expected to be registered on the Federal Register of Legislation by the end of next week.

We understand that ASX listed entities will need to lodge their Appendix 4E under ASX Listing Rules 4.3A and 4.3B by the due date (i.e. 31 August 2020 for 30 June 2020 year ends). If the entity does not have audited accounts by that date to append to its Appendix 4E, it will need to lodge unaudited accounts with its Appendix 4E.

'No action' position on holding of Annual General Meetings

ASIC has adopted a 'no action' position where public companies do not hold their Annual General Meetings (AGMs) within five months after the end financial years that end from 31 December 2019 to 7 July 2020, but do so up to seven months after year end. For public companies with 1 June 2020 to 7 July 2020 year ends, the 'no action' position also applies where holding an AGM in January or February 2021 results in the requirement to hold an AGM in the 2020 calendar year not being met.

The Act requires public companies to hold an AGM within five months of year end and at least once every calendar year. Public companies with financial years ending from 31 December 2019 to 7 July 2020 may find it difficult to hold their AGM by the statutory deadline due to the restrictions on large gatherings, travel restrictions and concerns from members about attending large group meetings given COVID-19. Our no action position also allows additional time for distribution of financial reports to members prior to the AGM for those companies that have relied on our extension of time for lodgement of financial reports.

Companies who choose to delay their AGM should refrain from holding their AGMs in the peak holiday period in late December 2020 and early January 2021.

ASIC had previously adopted a 'no action' position where public companies hold their AGMs for 31 December 2019 year ends by the end of July 2020 (refer: **20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements**).

Guidance on use of virtual technology for meetings

The Treasurer has issued a determination amending the Act for six months from 6 May 2020 which facilitates meetings, including AGMs, being held using one or more technologies (virtual technology) that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place (see the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*).

To assist companies and responsible entities, ASIC has issued **guidance** setting out its views on the appropriate approach to calling and holding meetings using virtual technology and the requirements of the determination.

Reporting periods ending after 7 July 2020

ASIC will continue to monitor how market conditions and COVID-19 developments are affecting financial reporting and AGM obligations for balance dates after 7 July 2020.

Further detail about the various measures is provided in the attachment to this media release.

Attachment to 20-113MR: ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs

Summary of extended deadlines

The extended deadlines for the lodgment of financial reports, directors' reports and audit reports for listed and unlisted entities are summarised below. The deadlines are calculated as periods after balance dates and references to Chapters are to Chapters of the Corporations Act:

1. Under Chapter 2M, the deadline for lodgement of full year financial reports, directors' reports and auditor's reports for:
 - a. listed entities is extended from 3 months to 4 months;
 - b. unlisted disclosing entities and for unlisted registered schemes, is extended from 3 to 4 months; and
 - c. all other unlisted entities is extended from 4 to 5 months (will apply to public and proprietary companies that are not disclosing entities or registered schemes)

Note: an extension of the deadline for unlisted registered schemes to lodge compliance plan audit reports will automatically occur as a result of the extension for registered schemes. The period for auditors to complete the compliance plan audit report will be extended from 3 months to 4 months.

2. Under Chapter 2M, the deadline for lodgement of half-year financial reports, directors' reports and audit/review reports for listed entities and unlisted disclosing entities (including unlisted registered schemes that are disclosing entities) is extended from 75 days to 75 days plus 1 month; and
3. Under Chapter 7, the deadline for lodgement of profit and loss and balance sheets (and other associated information) for:
 - a. unlisted Australian financial services (AFS) licensees that are bodies corporate and also disclosing entities or registered schemes is extended from 3 months to 4 months;
 - b. unlisted AFS licensees that are body corporates and are not disclosing entities or registered schemes is extended from 4 months to 5 months; and
 - c. AFS licensees that are not bodies corporate is extended from 2 months to 3 months.

For example, the normal deadline for an unlisted public company that is not a disclosing entity to lodge its reports for the year ending 30 June 2020 is 31 October 2020 and the extended deadline will be 30 November 2020.

The extended deadlines will only apply where the normal reporting deadline has not already passed at the time that the relevant the instrument of relief is registered. For example:

- a. For public companies and proprietary companies that are not disclosing entities, and which have a 31 December 2019 year end, the reporting deadline was 30 April 2020, and the extended deadline is 31 May 2020. This relief is already available under *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* which applies for unlisted entities with 31 December 2019 to 31 March 2020 balance dates;
- b. For listed entities with 31 March 2020 year ends, the deadline is 30 June 2020, and the extended deadline will be 31 July 2020. For listed entities with 31 December 2019 year ends, the deadline of 31 March 2020 has passed and no extended deadline is available. This relief will be available under the new relief for listed and unlisted entities for balance dates up to 7 July 2020.

The relief will not apply to registered foreign companies.

Consequential relief

For entities that make use of the extended deadlines, the following relief will also be available (where applicable):

1. similar extended deadlines will be available for sending reports to members, but note some of those deadlines also operate by reference to the date of the next AGM;
2. issuers of continuously quoted securities that use the extended reporting deadlines will not lose the ability to use reduced fundraising disclosures;
3. the deadlines for compliance plan audits for registered schemes will be extended by one month;
4. where a grandfathered proprietary company uses the extended deadline relief, it will continue to retain its grandfathered status. The directors' report must disclose that the company has applied ASIC relief to report to members no later than one month after the normal reporting deadline; and
5. the reporting deadlines in *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* will be extended by one month for balance dates to 7 July 2020.

'No action' position

We have adopted a 'no action' position in relation to the timing of AGMs because ASIC does not have the power to grant extensions of time to hold an AGM on a 'class basis' to all public companies.

ASIC's general policy on 'no-action' positions and their status is set out in **Regulatory Guide 108 No-action letters**. In particular, a 'no-action' position provides an indication as to the future regulatory action that we might take and does not necessarily preclude third parties (including the Commonwealth Director of Public Prosecutions) from taking legal action in relation to the same conduct or conduct of that kind. Nor does it prevent a court from holding that particular conduct infringes the relevant legislation. ASIC does not represent that the conduct covered by the 'no-action' position will not be held to contravene the relevant legislation. Nor does ASIC undertake to intervene in an action brought by third parties in respect of such conduct.

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