



ASIC
Australian Securities &
Investments Commission

Explanatory Statement

ASIC Corporations (Extended Reporting and Lodgment Deadlines – Listed Entities) Instrument 2020/451 and

ASIC Corporations (Amendment) Instrument 2020/452

This is the Explanatory Statement for the *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451* and *ASIC Corporations (Amendment) Instrument 2020/452*.

The Explanatory Statement is approved by the Australian Securities and Investments Commission (**ASIC**).

Summary

1. *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451* implements temporary measures aimed at facilitating financial reporting by listed entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The temporary measures are intended to allow listed entities up to one additional month to complete financial reports and have those reports audited, in compliance with the financial reporting and audit requirements of the *Corporations Act 2001* (the *Act*).
2. The instrument affects the operation of sections 315, 319, 320, 601HG and 989A of the *Act* by allowing one additional month to report to members and lodge reports with ASIC. The instrument applies for financial years ending between 21 February 2020 and 7 July 2020 (both inclusive) and half-years ending between 15 March 2020 and 7 July 2020 (both inclusive) where the statutory deadline for reporting or lodgment has not already passed.
3. *ASIC Corporations (Amendment) Instrument 2020/452* makes the following amendments to ASIC instruments:
 - (a) *ASIC Corporations (Extended Reporting and Lodgment Deadlines – Unlisted Entities) Instrument 2020/395* – the relief providing an additional month for unlisted entities to lodge financial reports with ASIC and report to members applied for financial years and half-years ending between 31 December 2019 and 31 March 2020 (both inclusive) has been amended

to now provide an additional month to lodge and report for financial years and half-years ending between 31 December 2019 and 7 July 2020 (both inclusive);

- (b) *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* – the relief to preserve the grandfathered status of certain proprietary companies that use the relief under the *Instrument 2020/395*. Grandfathered proprietary companies must meet certain conditions, including reporting to members within the statutory deadline each year, to be exempt from lodging financial reports with ASIC;
 - (c) *ASIC Corporations (Wholly Owned Companies) Instrument 2016/785* – the deadlines for lodging certain documents with ASIC in this instrument have been extended by one month consistent with the primary instrument and *Instrument 2020/395*. *Instrument 2016/785* provides relief to wholly owned companies that enter into deeds of cross guarantee with their parent entity subject to meeting certain other requirements that include lodging specified documents with ASIC. *Instrument 2016/785* is also modified to facilitate any future change from paper to electronic lodgements; and
 - (d) *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73* – so that issuers of continuously quoted securities that use the extended reporting deadlines available under the primary instrument do not lose the ability to use reduced fundraising disclosures.
4. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.

Purpose of the instruments

- 5. The purpose of the instruments is to assist listed and unlisted entities affected by the impacts of COVID-19 by enabling them more time to report and have audits. This includes public companies, proprietary companies, registered schemes, disclosing entities and financial services licensees.
- 6. Where possible, entities should continue to lodge and report to members within the 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.

Consultation

- 7. Before making these instruments, ASIC engaged with a range of stakeholders to understand and invite feedback on the impacts of COVID-19 on reporting and audit, including remote working arrangements and other factors.

Operation of the instruments

- 8. 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 *Act*:

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

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

- (b) Under Chapter 2M, the deadline for lodgment 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
 - (c) Under Chapter 7, the deadline for lodgment of profit and loss statements and balance sheets (and other associated information) for:
 - (i) listed Australian financial services (AFS) licensees is extended from 3 months to 4 months;
 - (ii) unlisted AFS licensees that are bodies corporate and also disclosing entities is extended from 3 months to 4 months;
 - (iii) unlisted AFS licensees that are body corporates and are not disclosing entities is extended from 4 months to 5 months; and
 - (iv) AFS licensees that are not bodies corporate is extended from 2 months to 3 months.
9. For example, the normal lodgment 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.
10. The extended lodgment deadlines will only apply where the normal lodgment deadline has not already passed at the time of commencement of the instrument. For example:
- (a) For public companies and proprietary companies that are not disclosing entities, and which have a 31 December 2019 year end, the lodgment deadline was 30 April 2020, and the extended deadline is 31 May 2020.

This relief was already available under *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395* which originally applied for unlisted entities with 31 December 2019 to 31 March 2020 balance dates;

- (b) For listed entities with a 31 March 2020 balance date, the normal lodgment deadline is 30 June 2020, and the extended deadline will be 31 July 2020. This relief is available under the primary instrument. For listed entities with a 31 December 2019 balance dates, the normal lodgment deadline of 31 March 2020 has passed and no extended deadline is available under the primary instrument.
11. A listed entity seeking to rely on the extended lodgment deadline relief must disclose to the financial market on which it is listed that it is relying on the primary instrument. The listed entity must make this disclosure before the normal lodgment deadline to ensure the market is kept informed.
12. The relief will not apply to registered foreign companies.
13. Similar extended deadlines are available for sending reports to members. The extended reporting deadlines will also only apply where the normal reporting deadline has not already passed at the time of commencement of the instrument. Some of those reporting deadlines also operate by reference to the date of the next Annual General Meeting (AGM). ASIC media releases 20-068MR *Guidelines for meeting upcoming AGM and financial reporting requirements* and 20-113MR *ASIC to further extend financial reporting deadlines for listed and unlisted entities and amends 'no action' position for AGMs* provide information on the ASIC 'no action' position for AGMs of public companies with year ends from 31 December 2019 to 7 July 2020.

Legislative authority

14. The primary instrument is made under subsections 341(1), 601QA(1) and 992B(1) of the Act. The amending instrument is made under subsections 341(1), 601QA(1), 741(1), 992B(1) and 1020F(1) of the *Act*.
15. Subsection 341(1) provides that ASIC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the directors, the companies, registered schemes or disclosing entities themselves, or the auditors of the companies, registered schemes or disclosing entities from all or specified requirements of Parts 2M.2, 2M.3 and 2M.4 (other than Division 4) of the *Act*.
16. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the *Act* or declare that the Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.
17. Subsection 741(1) provides that ASIC may exempt all persons or a specified class of persons from a provision of Chapter 6D of the *Act* or declare that

Chapter 6D applies to all persons or a specified class of persons as if specified provisions were omitted, modified or varied.

18. Subsection 992B(1) provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.8 of the *Act*.
19. Subsection 1020F(1) provides that ASIC may exempt a person or a financial product or class of persons or financial products from all or specified provisions of Part 7.9 of the *Act* and may declare that Part 7.9 of the *Act* applies in relation to a person or a class of persons as if specified provisions were omitted, modified or varied.
20. Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make any instrument, the power is to be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to amend any such instrument.
21. Both legislative instruments are disallowable legislative instruments.

Statement of Compatibility with Human Rights

22. The Explanatory Statement for a disallowable legislative instrument must contain a Statement of Compatibility with Human Rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is in the Attachment.

Statement of Compatibility with Human Rights

This Statement of Compatibility with Human Rights is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451 and ***ASIC Corporations (Amendment) Instrument 2020/452***

Overview

1. *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Listed Entities) Instrument 2020/451* implements temporary measures aimed at facilitating financial reporting by listed entities whose reporting processes take additional time due to current remote work arrangements, travel restrictions and other impacts of COVID-19. The measures are intended to allow listed entities sufficient time to complete their financial reports and for those reports to be audited.
2. *ASIC Corporations (Amendment) Instrument 2020/452*:
 - (a) amends *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395* so that relief providing an additional month for unlisted entities to lodge financial reports with ASIC and report to members applies for years ending between 31 December 2019 and 7 July 2020 (both inclusive); and
 - (b) makes consequential amendments to the following instruments - *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840*, *ASIC Corporations (Wholly Owned Companies) Instrument 2016/785* and *ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73*.

Assessment of human rights implications

3. The instruments do not engage any of the applicable rights or freedoms

Conclusion

4. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.