



**ASIC**  
Australian Securities &  
Investments Commission

## Explanatory Statement

### *ASIC Corporations (Amendment) Instrument 2021/976*

This is the Explanatory Statement for the *ASIC Corporations (Amendment) Instrument 2021/976*.

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

#### Summary

1. *ASIC Corporations (Amendment) Instrument 2021/976* (the **amending instrument**) implements temporary measures aimed at facilitating financial reporting by unlisted entities whose reporting processes take additional time due to pressures on audit resources and other impacts of COVID-19. The temporary measures are intended to allow 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 amending instrument affects the operation of sections 250N, 315, 316A, 319, 320, 601HG and 989D of the Act by allowing unlisted entities one additional month to report to members and lodge reports with ASIC, and for unlisted public companies to hold an Annual General Meeting (**AGM**).
3. The amending instrument 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 for certain financial years and half-years has been amended to now provide an additional month to lodge and report for financial years and half-years ending between 24 December 2021 and 7 January 2022 (both inclusive);
  - (b) *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* – the relief to preserve the grandfathered status of certain

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proprietary companies that use the relief under *Instrument 2020/395* (as amended). 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. *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;
- (d) *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770* – the relief extending the time for certain public companies to hold their AGMs has been amended to now provide an additional month for unlisted public companies with financial years ending between 24 December 2021 and 7 January 2022 (both inclusive).

- 4. ASIC will continue to monitor the appropriateness of these legislative instruments having regard to the feedback from relevant stakeholders.

#### **Purpose of the instrument**

- 5. The purpose of the amending instrument is to assist unlisted entities affected by the impacts of COVID-19 by enabling them more time to report and have audits. This includes unlisted public companies, companies limited by guarantee, proprietary companies, unlisted registered schemes, unlisted disclosing entities and unlisted Australian Financial Services (AFS) licensees.
- 6. The extended deadlines for reporting periods ending between 24 December 2021 to 7 January 2022 (both inclusive) will assist with any pressures on resources for the audits of unlisted entities and provide adequate time for the completion of the audit process taking into account challenges presented by COVID-19 conditions. Factors that might affect audit firm resources could include the number of subsidiaries of foreign companies reporting at 31 December, increased staff turnover, delays with new secondees from overseas after the lifting of travel restrictions, existing secondees travelling home, staff leave, and reduced virtual secondments from overseas audit firms that have mainly 31 December year end audits.
- 7. Directors of some unlisted entities may be asked by their auditors to facilitate the spreading of deadlines for lodging audited financial reports.
- 8. Directors should consider the information needs of shareholders and other users of their financial reports, as well as meeting borrowing covenants or other obligations, when deciding whether to depart from the normal statutory deadlines.
- 9. The amending instrument does not affect the duration of the instruments to be amended.

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## Consultation

10. Before making this amending instrument, ASIC engaged with a range of financial reporting and audit stakeholders (including audit firms and professional accounting bodies) to understand and invite feedback on the impacts of COVID-19 on reporting and audit.
11. Given that the measures being implemented are temporary and the amending instrument does not affect the duration of the instruments to be amended, ASIC did not consider it necessary to engage in further consultation before making the amending instrument.

## Operation of the instrument

12. The extended deadlines for the lodgment of financial reports, directors' reports and audit reports for 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 audit reports for:
    - (i) unlisted disclosing entities and for unlisted registered schemes, is extended from 3 to 4 months; and
    - (ii) all other unlisted entities is extended from 4 to 5 months (will apply to public companies, companies limited by guarantee 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 to 4 months.
  - (b) Under Chapter 2M, the deadline for lodgment of half-year financial reports, directors' reports and audit/review reports for 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) unlisted AFS licensees that are bodies corporate and also disclosing entities is extended from 3 to 4 months;
    - (ii) unlisted AFS licensees that are bodies corporate and are not disclosing entities is extended from 4 to 5 months; and
    - (iii) AFS licensees that are not bodies corporate is extended from 2 to 3 months.

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13. For example, the normal deadline for an unlisted public company that is not a disclosing entity to lodge its reports for the year ending 31 December 2021 is 30 April 2022 and the extended deadline will be 31 May 2022.
  14. The relief will not apply to registered foreign companies.

#### Consequential relief

15. Similar extended deadlines are available for sending reports to members. Some of those reporting deadlines also operate by reference to the date of the next Annual General Meeting (AGM).
16. The time for unlisted public companies to hold their AGMs under section 250N of the Act is extended by one month for balance dates between 24 December 2021 and 7 January 2022 by amending *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*. The extension of time also applies to the requirement in subsection 250N(2) of the Act that entities must hold an AGM once in each calendar year and the requirement in subsection 250N(1) of the Act that entities must hold an AGM within 18 months after its registration.
17. The deadline for reporting to members in *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840* is extended by one month to enable a grandfathered proprietary company using the extended reporting relief to 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.
18. The reporting deadlines in *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* are extended by one month for balance dates from 24 December 2021 to 7 January 2022.

#### Commencement

19. The amending instrument commences on the day after it is registered on the Federal Register of Legislation.

#### Duration of principal instruments to be amended

20. None of these changes affect the duration of any of the principal instruments to be amended. As such, each of these instruments will be subject to a separate review process prior to their relevant sunset dates.

#### **Legislative authority**

21. The amending instrument is made under subsections 253T(2), 341(1), 601QA(1) and 992B(1) of the Act.
22. Subsection 253T(2) provides that ASIC may make a determination specifying a class of public companies, if ASIC considers that it may be unreasonable to expect the companies in the specified class to hold AGMs within the time required under section 250N because of a situation that is beyond the control of

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those companies. ASIC is of the view that unlisted public companies may not be able to comply with the AGM timing requirements due to the extended reporting deadlines.

23. 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.
24. To make an order under subsection 341(1), ASIC must be satisfied that complying with the relevant requirements of Parts 2M.2, 2M.3 and 2M.4 of the Act would:
  - (a) make the financial report or other reports misleading; or
  - (b) be inappropriate in the circumstances; or
  - (c) impose unreasonable burdens.
25. ASIC is satisfied that complying with the statutory financial reporting deadlines for balance dates between 24 December 2021 and 7 January 2022 (both inclusive) would impose unreasonable burdens because, having regard to pressures on audit resources under COVID-19 conditions, auditing can take more time.
26. Subsection 601QA(1) provides that ASIC may exempt a specified class of persons from a provision of Chapter 5C of the Act.
27. 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.
28. Under subsection 33(3) of the *Acts Interpretation Act 1901* (as in force as at 1 January 2005 and as applicable to the relevant powers because of section 5C of the Act), 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.
29. The amending instrument is a disallowable legislative instrument.

### **Statement of Compatibility with Human Rights**

30. 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 (Amendment) Instrument 2021/976***

#### Overview

1. *ASIC Corporations (Amendment) Instrument 2021/976* implements temporary measures aimed at facilitating financial reporting by unlisted entities whose reporting processes take additional time due pressures on audit resources and other impacts of COVID-19. The measures are intended to allow unlisted entities sufficient time to complete their financial reports and for those reports to be audited.
2. *ASIC Corporations (Amendment) Instrument 2021/976* makes amendments to the following instruments – *ASIC Corporations (Extended Reporting and Lodgment Deadlines—Unlisted Entities) Instrument 2020/395*, *ASIC Corporations (Exempt Proprietary Companies) Instrument 2015/840*, *ASIC Corporations (Wholly-owned Companies) Instrument 2016/785* and *ASIC Corporations (Extension of Time to Hold AGM) Instrument 2021/770*.

#### 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*.