

Listed@ASX Compliance Update

31 March 2020

1. COVID-19 – Continuous Disclosure Obligations

Under listing rule 3.1, once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.

Importantly, this rule is subject to the carve-outs to immediate disclosure in listing rule 3.1A, which provides that listing rule 3.1 does not apply to particular information while each of the following requirements is satisfied in relation to the information:

3.1A.1 *One or more of the following 5 situations applies:*

- *It would be a breach of a law to disclose the information;*
- *The information concerns an incomplete proposal or negotiation;*
- ***The information comprises matters of supposition or is insufficiently definite to warrant disclosure (emphasis added);***
- *The information is generated for the internal management purposes of the entity; or*
- *The information is a trade secret; and*

3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

3.1A.3 *A reasonable person would not expect the information to be disclosed.'*

ASX acknowledges the particular disclosure challenges for listed entities arising from the rapidly evolving and highly uncertain situation surrounding the coronavirus pandemic ('COVID-19') and that different listed entities are being affected in different ways by COVID-19.

It is important at the outset to state that a listed entity's continuous disclosure obligations do not extend to predicting the unpredictable.

ASX does not expect listed entities to announce information under listing rule 3.1 that comprises matters of supposition or that is insufficiently definite to warrant disclosure¹ and that otherwise meets the requirements of all three limbs of listing rule 3.1A, mentioned above.²

Nor does ASX expect listed entities to make forward-looking statements to the market unless they have a clear and reasonable basis for doing so.³

¹ See the third bullet point in listing rule 3.1A.1.

² See section '5.5 (matters of supposition or that are insufficiently definite to warrant disclosure) in [Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B \("Guidance Note 8"\)](#).

³ See section '4.15 (guidelines on the contents of announcements under Listing Rule 3.1) in [Guidance Note 8](#).

ASX offers the following practical guidance on disclosure obligations:

- **Earnings guidance:** many listed entities that issued earnings guidance prior to the outbreak of COVID-19 have taken the opportunity to withdraw that guidance. That is both acceptable and understandable in the circumstances.

Entities that have not reviewed their published guidance in light of COVID-19 are strongly encouraged to do so and, if it is no longer current, to update it or, perhaps more sensibly for most entities in the current highly uncertain climate, to simply withdraw it.

Section 7 of [Guidance Note 8](#) has further guidance on point.

- **Material operational decisions:** an entity that makes an operational decision that is likely to have a material effect on the price or value of its securities should immediately announce that decision to the market. This might include, for example, a decision to stand down a material number of employees or to close or suspend certain operations or facilities.
- **Capital raisings:** an entity that is proposing a capital raising to restore its financial position will need to announce it to the market under listing rule 3.10.3 as soon as it is committed to proceeding with the capital raising.

Section 2 of [Guidance Note 30 Notifying an Issue of Securities and Applying for Their Quotation](#) has helpful guidance on the notification obligations relating to issues of securities.

Example C in Annexure A to [Guidance Note 8](#) (Worked examples of the operation of Listing Rule 3.1) also has helpful guidance on how and when to announce a capital raising.

- **Entities in financial difficulty:** a listed entity in financial difficulty is subject to the same disclosure standards under listing rule 3.1 as any other entity. If there is an adverse development affecting the financial condition or prospects of an entity that falls outside the carve-outs to immediate disclosure in listing rule 3.1A and a reasonable person would expect information about that development to have a material effect on the price or value of its securities, the listed entity must immediately disclose that information under listing rule 3.1.

For example, information that the board of a listed entity has resolved to appoint an administrator should be notified to the market immediately under listing rule 3.1. Such information does not fall within any of the categories of information protected from immediate disclosure under listing rule 3.1A.1 and a reasonable person would expect it to have a material effect on the price or value of the entity's securities.

Similarly, information that a major lender to the listed entity has declared an event of default and called for the immediate repayment of the outstanding balance of its loan, causing the entity to become insolvent, should also be notified to the market immediately under listing rule 3.1.

Section 5.10 of [Guidance Note 8](#) (Entities in financial difficulties) has further guidance on point.

- **Decisions not to pay a dividend or distribution:** Under listing rule 3.21(b), a listed entity must notify ASX immediately if it makes a decision not to pay a dividend or distribution on a quoted security in respect of a period if it has:
 - previously announced an intention to pay a dividend or distribution for that period; or
 - paid a dividend or distribution in respect of the prior corresponding period.

An entity that decides to cancel a dividend that it has already determined to pay should immediately announce that fact to the market under listing rule 3.1. The announcement should explain the legal basis for the cancellation (including confirming that the cancellation is authorised by the entity's constitution, where that is a legal requirement).

- **Trading halts and voluntary suspensions:** ASX reminds listed entities that if the market is or will be trading at any time after an entity first becomes obliged to give market sensitive information to ASX under listing rule 3.1 and before it can give an announcement with that information to ASX for release to the market, the entity should consider carefully whether it is appropriate to request a trading halt or a voluntary suspension.

Please refer to [Guidance Note 16 Trading Halts and Voluntary Suspensions](#) for further guidance.

2. The requirement for market announcements to be given to ASX first

ASX reminds entities of the importance of observing the requirements of listing rule 15.7 and not releasing information that is for release to the market to anyone else, unless and until it has been given to ASX and has been released by ASX to the market.

Beyond this general reminder, ASX confirms that the application of listing rule 15.7 does not prevent a listed entity from communicating with its employees, customers or suppliers important information relevant to those parties relating to COVID-19, including information about business closures, working from home arrangements and so on.

3. Temporary emergency capital raising relief

Recognising that many listed entities will need to raise capital urgently to sustain them as the effects of the COVID-19 pandemic become apparent, ASX is proposing to implement the temporary emergency capital raising measures described below to help facilitate capital raisings in the short term.

These temporary emergency measures will be implemented by way of class order waivers ("**Class Waivers**") under listing rule 18.1.

The Class Waivers will expire on 31 July 2020 unless ASX otherwise decides to remove or extend them.

ASX will keep these measures under review and may alter or replace them if they are not having the desired effect on capital raisings.

- **Back-to-back trading halts**

ASX will permit an entity to request two consecutive trading halts, allowing it a total of up to 4 trading days in halt to consider, plan for and execute a capital raising.⁴

Entities simply need to make it clear in their request for a trading halt that they are seeking two consecutive back-to-back halts of two days each for the purpose of considering a capital raising.⁵

- **A temporary uplift in the 15% placement capacity in rule 7.1 to 25% ("Temporary Extra Placement Capacity"), subject to there being a follow-on accelerated pro rata entitlement offer or SPP offer**

Under this Class Waiver, ASX will lift the 15% limit on placements in listing rule 7.1 to 25%, conditional on entities that avail themselves of the Temporary Extra Placement Capacity either making a follow-on pro rata entitlement offer under exceptions 1, 2 and/or 3 of listing rule 7.2 or a follow-on offer to retail investors under an SPP, in each case at the same or a lower price than the placement price.

The effect of these conditions is to ensure that all security holders, including in particular retail security holders, are offered the opportunity to participate in the capital raising at the same or a lower price than security holders participating in the placement.

⁴ If the entity is not able to complete its capital raising within those 4 trading days, the entity may need to request a voluntary suspension to afford it the time to complete the capital raising.

⁵ To avoid doubt, back-to-back trading halts will not be permitted for other purposes.

This is a one-off measure. Once utilised, the Temporary Extra Placement Capacity will not be able to be ratified or replenished under listing rule 7.1 or 7.4. Listing rules 7.1 and 7.4 will revert to operate as they normally do.

The Class Waiver will permit listed entities to do one placement only under the Temporary Extra Placement Capacity. The placement must be of fully paid ordinary securities.

Entities that wish to do more than one placement using their Temporary Extra Placement Capacity or to issue something other than fully paid ordinary securities will need to approach ASX for an individual waiver to permit this.

For the avoidance of doubt, eligible entities that already have the extra 10% placement capacity under rule 7.1A will be able to elect to use their existing rule 7.1A capacity or the extra 10% placement capacity available under the Temporary Extra Placement Capacity, but not both.

Entities that have in the preceding 12 months already used up part of their existing 15% placement capacity under listing rule 7.1 or, if they are eligible for it, their existing extra 10% placement capacity under listing rule 7.1A, will need to deduct that when calculating their remaining Temporary Extra Placement Capacity.

An entity that elects to do a placement with a follow-on accelerated pro rata entitlement offer will qualify for the normal “supersize” waiver ASX grants where an entity is contemplating a placement followed by a pro rata entitlement offer.⁶ The supersize waiver will be included in the Class Waiver and listed entities will not need to apply separately to ASX to get the benefit of this waiver.

An entity that elects to do a placement with a follow-on SPP offer should note that the exception for SPPs in exception 5 of listing rule 7.2 currently is only available once in any 12 month period⁷ and then only if:

- the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and
- the issue price of the securities is at least 80% of the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

ASX will waive these requirements in the Class Waiver and substitute instead a requirement that the follow-on SPP offer must occur at a price equal to or lower than the placement price.

If there is a limit on the amount to be raised under the SPP offer, the entity must disclose any scale back arrangements and use its best endeavours to ensure that SPP offer participants have a reasonable opportunity to participate equitably in the overall capital raising. Any scale-back arrangements will be required to be pro rata to all participants.

Finally, ASX recognises that some listed entities may not be able to secure additional capital either by way of a placement or a pro rata entitlement offer. To maximise their flexibility to raise as much capital as they can under an SPP offer, the Class Waiver will remove the usual constraints for SPPs in exception 5 of listing rule 7.2 mentioned above, allowing the SPP offer to be made at any price determined by the board. Again any scale back arrangements will be required to be undertaken on a pro rata basis.

A copy of the Class Waiver for this relief is available [here](#).

⁶ See the third standard waiver set out in the Annexure to [Guidance Note 17 Waivers and In-Principle Advice](#).

⁷ An entity that has already undertaken an SPP offer in the preceding 12 month period may need to approach ASIC for relief under ASIC Corporations (Share and Interest Purchase Plans) Instrument 2019/547 to allow it to offer more than the maximum \$30,000 entitlement normally available to individual security holders over a 12 month period.

- **A temporary waiver of the one-for-one cap on non-renounceable entitlement offers in listing rule 7.11.3**

This Class Waiver will apply both to accelerated non-renounceable entitlement offers (ANREOs) and standard non-renounceable rights issues. ASX is not proposing a replacement cap for non-renounceable entitlement offers at this stage. Listed entities are expected to choose a ratio for their non-renounceable entitlement offer that meets their capital raising needs and that is fair and reasonable in the circumstances (see section 4 below).

A copy of the Class Waiver for this relief is available [here](#).

ASX will review the temporary emergency arrangements above with industry participants closer to 31 July 2020 to determine whether they need to be modified or extended.

Listed entities should note that listing rules 10.11 and 10.12 will continue to apply, as they normally do, to capital raisings involving related parties and the other parties named or described in listing rules 10.11.1 to 10.11.5.

4. ASIC and ASX guidance on fair treatment in capital raisings

ASX notes the guidance given by ASIC in its [Market Integrity Update - COVID-19 Special Issue – 31 March 2020](#). This clearly sets out ASIC's expectations that, when deciding on the timing and structuring of any capital raising, directors of listed entities must continue to act in the best interests of the entity. This requires directors to balance a range of considerations, such as the need for quick and certain capital, and the cost to and possible dilution of existing security holders.

ASX shares these expectations and may withdraw the benefit of a Class Waiver in any particular case if ASX considers it is being abused by a listed entity or that a listed entity is otherwise acting unfairly or unreasonably in the circumstances.

5. Upcoming AGMs - ASIC 'no action' position and GIA/AIRA/LCA guidance

On 20 March 2020, ASIC released media release [20-068MR Guidelines for meeting upcoming AGM and financial reporting requirements](#) and the Governance Institute of Australia and the Australian Investor Relations Association, with the assistance of the Business Law Section of the Law Council of Australia, produced some very helpful guidance on [COVID-19 and the impact on AGMs](#).

ASX strongly endorses and supports the advice and guidance given in these documents.

Where a listed entity has already dispatched its notice of meeting, ASX is supportive of the entity sending supplementary information to its security holders about the meeting and voting procedures electronically, via their website and the ASX market announcements platform.

6. Reporting relief for ASX/NZX dual-listed entities

On 19 March 2020, the New Zealand Financial Markets Authority and NZX Regulation announced that they had granted a class waiver ("**NZX Class Waiver**") extending the deadlines for filing financial statements and annual reports for NZX listed entities with balance dates between 30 September and 31 May. Under the NZX Class Waiver, NZX listed entities will have up to an additional 30 days to prepare and release their results announcements (including preliminary interim and full year financial statements), and up to an additional two months to prepare and release their annual reports. Further details are available via the [NZX Regulation Issuer Update: COVID-19 class relief](#).

Dual listed ASX/NZX entities admitted to ASX as Foreign Exempt Listings are not subject to the ASX reporting requirements in chapter 4 of the ASX listing rules and simply lodge with ASX whatever documents they are required to lodge with the NZX. They automatically qualify for the extension to their filing deadlines under the NZX Class Waiver without needing to do anything under the ASX listing rules.

Dual listed ASX/NZX entities admitted to ASX as standard ASX Listings are ordinarily subject to the ASX reporting requirements and deadlines in chapter 4 of the ASX Listing rules. To facilitate the operation of the NZX Class Waiver, ASX has granted an equivalent class waiver under listing rule 18.1 to dual listed ASX/NZX entities incorporated in New Zealand and admitted to ASX as a standard ASX Listing, extending the reporting deadlines in chapter 4 to the substituted deadlines provided in the NZX Class Waiver. A copy of the ASX Class Waiver is available [here](#).

7. Reporting relief for other listed entities with a 30 September, 31 December or 31 March balance date

ASX has yet to discern any major call from listed entities with a 30 September, 31 December or 31 March balance date requesting an extension to the deadlines for filing their financial statements for the half year (in the case of 30 September balancers) or for the full year (in the case of 31 December or 31 March balancers) under chapter 4 of the listing rules.

Any such requests will be looked at by ASX on a case-by-case basis and will generally only be granted where there has been an unavoidable delay in having financial statements audited or reviewed.

ASX may agree to grant a listed entity with a 30 September, 31 December or 31 March balance date a short extension of the deadline for filing its reviewed half yearly or audited annual financial statements where:

- ASIC (or the equivalent corporate regulator for overseas companies) has agreed to grant the entity an extension to the relevant reporting deadline under the Corporations Act (or overseas equivalent legislation);
- The entity's auditor has confirmed in writing to ASX that they will not be able to complete their audit or review of the entity's financial statements by the deadline in chapter 4;
- In the case of annual financial statements, the entity has released an Appendix 4E (Preliminary Final Report) with unaudited financial results for the financial year; and
- In the case of half yearly financial statements, the entity has released unaudited and unreviewed financial results for the half year.

Entities with a 30 September, 31 December or 31 March balance date not able to meet all of the conditions above will not be granted any relief from their financial reporting deadlines under chapter 4. If they fail to file their financial statements by the due date under that chapter, listing rule 17.5 will come into operation and their securities will be automatically suspended from quotation on the trading day after the date on which those financial statements were due to be lodged with ASX.

Any relief granted by ASX from the financial reporting deadlines in chapter 4 for entities with a 30 September, 31 December or 31 March balance date will be conditional on the entity:

- announcing to the market the date by which it reasonably anticipates being able to lodge its audited or reviewed financial statements with ASX (as applicable);
- confirming to the market that it is in compliance with its disclosure obligations under listing rule 3.1; and
- immediately notifying ASX if there is a material difference between its unaudited results and its audited or reviewed financial statements.

ASX will keep the situation for listed entities with a 31 May or 30 June balance date under review and engage with those listed entities and their auditors closer to their balance date to determine whether there is a need for any relief from the reporting deadlines in chapter 4 of the Listing Rules for those entities.

8. Quarterly reporters

Quarterly reporters are again reminded that they must use the new form of Appendix 4C or Appendix 5B (as applicable) published with the Listing Rule changes that came into effect on 1 December 2019 for their quarterly cash flow reports for the quarter ended 31 March 2020.

Appendix 4C filers must for the first time also lodge a quarterly activities report under listing rule 4.7C for the quarter ended 31 March 2020, along with their quarterly cash flow report. Failure to do so will result in an automatic suspension of the entity's securities under listing rule 17.5.

Please note that ASX is unlikely to agree to an extension for the filing of quarterly cash flow or quarterly activity reports, as these are not generally audited or reviewed.

9. Long term suspended entities

ASX has received some approaches from market participants asking it to reconsider the changes to its long term suspended entity policy introduced on 3 February 2020. Under that policy, ASX will automatically remove from the official list:

- an entity that fails to lodge any of the documents referred to in listing rule 17.5 for a continuous period of 1 year after the deadline for lodgement of that document; and
- an entity whose securities have been suspended from quotation for a continuous period of 2 years, whichever occurs first. The removal will usually take effect from the open of trading on the first trading day after the expiration of the 1 or 2 year period referred to above.

ASX considers this policy important to maintaining the quality and integrity of the ASX market and therefore does not propose to change it or to grant any relief from it.

10. Misleading COVID-19 announcements

Disturbingly, ASX has experienced a significant number of instances recently where listed entities have made announcements with potentially misleading claims around COVID-19. These include entities that don't appear to have had any prior meaningful involvement in similar activities lodging announcements claiming:

- to have found a cure or new treatment for COVID-19;
- their product kills the COVID-19 virus; or
- to have developed new forms of test kits for COVID-19.

It also includes entities claiming to be gearing up to use their manufacturing facilities to manufacture masks, gowns, thermometers, hand sanitisers and other medical necessities in short supply with little or no details.

Upon questioning by ASX, a number of these claims have not been able to be properly substantiated to ASX's satisfaction and have resulted in the entity being prevented from releasing the announcement on ASX or, where it has already been released, having to retract the announcement or to make substantial amendments to the announcement to ensure that it is accurate, complete and not misleading.

Entities are reminded of the following guidance in section 4.15 of [Guidance Note 8](#) (Guidelines on the contents of announcements under Listing Rule 3.1):

'Wherever possible, an announcement under Listing Rule 3.1 should contain sufficient detail for investors or their professional advisers to understand its ramifications and to assess its impact on the price or value of the entity's securities. An announcement under Listing Rule 3.1 must be accurate, complete and not misleading.'

Announcements related to COVID-19 should have regard not only to this guidance but also to the disclosure principles set out in the [Code of Best Practice for Reporting by Life Sciences Companies, Second Edition](#).

A listed entity disclosing information about investigation of a new COVID-19 treatment that references clinical trials either previously conducted or proposed to be conducted, should note section 4.2 of that Code (Clinical Trials), which states:

‘Companies should take care to ensure that any announcement relating to a clinical trial conveys the correct regulatory context of the trial. In particular, companies should ensure that any announcement regarding a clinical trial clearly states the way in which the study is linked to a relevant regulatory process. It is important that investors are not misled about the commercial or regulatory significance of a trial.

Companies should consider explaining the pathway to approval in their announcements and making it clear that achievement of endpoints does not necessarily lead to regulatory approval. Companies should be careful not to mislead the investor of the likelihood or timing of approval or the likely success of the product on the market following approval.’

Where ASX has concerns about a COVID-19-related announcement, ASX is likely to immediately suspend trading in the entity’s securities pending further enquiries by ASX to establish that the announcement meets the requirements of the listing rules.

ASX will not hesitate to use its new power of censure in listing rule 18.8A to censure entities that make misleading COVID-19 claims.

11. ASX to consult on CHES replacement implementation timetable

On 25 March 2020, ASX issued a [media release](#) advising that it is replanning the implementation timetable for the CHES replacement system due to the unfolding COVID-19 pandemic, as well as user feedback on timing, requested functionality changes and the need for ASX to complete aspects of its own readiness.

Formal consultation with users will follow in June. Meanwhile, system development continues.
