COVID-19 (AUSTRALIA): ASX CLASS WAIVER TO GIVE EFFECT TO ASIC REPORTING RELIEF

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On 16 June, ASX released a class waiver decision (Class Waiver) in order to give effect to *ASIC Corporations (Extended Reporting and Lodgement Deadlines - Listed Entities) Instrument 2020/451* (ASIC Relief), providing additional time for ASX listed entities to comply with their reporting and lodgement obligations under the ASX Listing Rules (Listing Rules).

The Class Waiver is an amendment of ASX's earlier class waiver decision on 3 June which sought to harmonise the Listing Rules with the ASIC Relief.

NEED FOR THE CLASS WAIVER

As part of a host of measures adopted in response to the enveloping COVID-19 crisis (which you can read about in K&L Gates' alerts of 26 March, 2 April and 7 May), ASIC enacted the ASIC Relief which extended the deadlines of both listed and unlisted entities to comply with their reporting obligations under Chapters 2M and 7 of the *Corporations Act 2001* (Act).

For listed entities, the ASIC Relief applies to those entities with a financial year that ends between 21 February and 7 July 2020, or to those with a half-year that ends between 15 March and 7 July 2020. Public companies are also able to fulfil their reporting obligations to members under sections 314-315 of the Act by the earlier of (a) 21 days before the next AGM after the end of their financial year, or (b) 5 months after the end of their financial year.

THE CLASS WAIVER

The Class Waiver gives effect to the ASIC Relief under the Listing Rules by allowing:

- annual financial reports, directors' reports and auditor's reports to be lodged 4 months after year-end (up from 3), and
- half-year financial reports, directors' reports and audit/review reports to be lodged 106 days after half-year-end (up from 75),

in line with the ASIC Relief.

In addition, the Class Waiver also mirrors the ASIC Relief in extending the deadline for the entity to give to ASX its annual report and any concise report required to be sent to members (under section 314 of the Act), to the earlier of (a) the first day the entity sends the documents to members under section 315 of the Corporations Act, and (b) the date the annual report and any concise report must be sent to security holders under the ASIC Relief.

THE CONDITIONS

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The relief granted by the ASX is only available to entities established in Australia. A listed entity seeking to rely on the Class Waiver must:

- lodge their unaudited/unreviewed accounts and the information required by Appendix 4D or 4E (as applicable) by the usual ASX lodgement deadline, and
- make an announcement to the market at the time it lodges its unaudited/unreviewed accounts stating:
  - that it is relying on the ASIC Relief; and
  - that it will immediately make a further announcement should it become aware that there will be a material difference between the unaudited/unreviewed accounts and the audited or reviewed accounts.

In respect of a listed entity's reporting obligations to members under section 314 of the Act, if an entity is intending to rely on the ASIC Relief, it must make an announcement to that effect before the normal lodgement deadline.

ASX considers that these conditions will ensure that the market has the benefit of "reasonably current financial information" on which to base its trading decisions. The ASX further encourages entities to (notwithstanding the Class Waiver), endeavour to lodge their audited or reviewed accounts with ASX within the normal listing rule deadlines.

DOES THE CLASS WAIVER ACTUALLY MAKE A DIFFERENCE?

Whilst the Class Waiver aligns the Listing Rule reporting deadlines with the ASIC Relief, it may not, in practice, provide listed entities with a full reporting reprieve. Although there is an effective extension of the deadline for entities to give ASX their annual reports and any concise reports, entities are still obliged to provide unaudited/unreviewed accounts in accordance with the unmodified Listing Rule deadlines.

Given a subsequent corrective market announcement may adversely affect an entity's trading price and market reputation, entities may ultimately avoid relying on the Class Waiver in order to avoid the potential risk of any discrepancy between their unaudited/unreviewed and final audited/reviewed accounts.

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