

# EY FSO Oceania Law: Regulatory Update

April 2020



Our Financial Services Law team at EY (EY FSO Law) is dedicated to helping you navigate through these unprecedented times and are committed to providing you with quality legal advice. EY FSO Law is made up of an experienced team that are well equipped to address a wide range of regulatory, contractual and transactional issues that you may face in responding to COVID-19, both at a local level, and across your global supply business and networks.

## COVID-19 Key announcements

Here are some important announcements from our Government and Regulators in the last week:

### ASIC

#### ASIC letter to Responsible Entities

ASIC has written to major REs and has requested that they remain particularly vigilant given the current market conditions and if a scheme is assessed as being non-liquid or there is a resolution to suspend redemptions, to notify ASIC immediately. REs are reminded that ASIC has redemption-related relief should a RE find itself in a position of declaring a scheme non-liquid for an extended period. As a RE, you must ensure that you are complying with your Financial Services Licence obligations and that you are monitoring your scheme's liquidity appropriately.

#### ASIC facilitates capital raisings during COVID-19 period

ASIC is helping listed companies raise capital quickly by giving temporary relief to enable certain 'low doc' offers (including rights offers, placements and share purchase plans) to be made to investors, even if they do not meet all the normal requirements. Entities will be able to rely on regulatory relief if:

- ▶ They have been suspended for up to 10 days in the 12 months before the offer, and

- ▶ They were not suspended for more than 5 days in the period commencing 12 months before the offer and ending 19 March 2020.

Entities that have been suspended for more than 5 days before 19 March 2020, or entities that have been suspended for more than 10 days in total will need to apply for individual relief to conduct 'low doc' capital raising or prepare and lodge a prospectus.

However, the usual rules still apply. Directors need to ensure the capital raising is in the best interests of the company and companies need to make sure they are keeping the market informed via continuous disclosure announcements, even when they are in suspension. ASIC will also consider the entity's need for funds and if the offer hasn't been extended to retail investors, why that is the case.

To protect market integrity, ASIC will revoke its relief with 30 days' notice. The decision to revoke will be based on an assessment of the market and in consultation with key stakeholders.

#### ASIC tells traders to cut volume orders

ASIC has taken pre-emptive action to ensure Australia's equity market remains orderly and fair by directing trading firms to cut their order volumes by up to 25% to remain resilient amidst COVID-19.

## ASIC announces expectations regarding licensee response to COVID-19

ASIC announced that in light of COVID-19, it expects all Australian financial services licensees to have business continuity plans in place and that it is currently in discussions with licensees around the assessment and implementation of the plans.

## ASIC amends regulatory priorities to focus on COVID-19 challenges

ASIC has advised that it will focus its regulatory efforts on challenges created by the COVID-19 pandemic. Until at least 30 September 2020, ASIC will afford priority where there is the risk of significant consumer harm, serious breaches of the law, risks to market integrity and time-critical matters. ASIC has immediately suspended several near-term activities which are not time-critical, including:

- ▶ Consultation, regulatory reports and reviews, such as the ASIC report on executive remuneration;
- ▶ Updated internal dispute resolution guidance; and
- ▶ A consultation paper on managed discretionary accounts.

However, there has been no change to the implementation of the DDO regime scheduled to commence from 1 April 2021.

## APRA

### APRA adapts 2020 agenda to prioritise COVID-19 response

APRA has announced it has suspended majority of its planned policy and supervision initiatives which were released in January 2020. Due TO COVID-19, APRA does not plan to recommence consultation on any non-essential matters before 30 September 2020.

## AUSTRAC

### Compliance Report 2019 and customer verification for superannuation funds

AUSTRAC has extended the submission due date for 2019 compliance reports from 31 March. They will now accept 2019 reports until 30 June, without risk of compliance action.

AUSTRAC will also work with superannuation funds to facilitate a streamlined process that will allow payments to be made under the Early Release of Superannuation Initiative so that they can provide funds to people experiencing financial hardship promptly. AUSTRAC will introduce a Rule under the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act). This Rule will ensure that superannuation funds making payments to their members under this initiative will not have to conduct additional customer verification under the AML/CTF regime, where the payment is approved by the ATO and processed through myGov and ATO online services.

## FIRB

### Changes to foreign investment framework

Effective from 29 March 2020, all proposed foreign investments into Australia will require approval, (regardless of the value or the nature of the foreign investor including corporate reorganisations), and all monetary thresholds have been temporarily reduced to nil. The prior 20-day timeframe for review of new and submitted applications has been extended to a period of up to 6 months.

## Reserve Bank of Australia

### RBA announces new package to assist the economy

The RBA announced a package to support the Australian economy through the effects of COVID-19. The purpose of the package is to help in lowering funding costs across the economy and to support the provision of credit, with a focus on small to medium-sized businesses.

## Council of Financial Regulators

### Quarterly Statement - March 2020

The Council met in March to ensure a coordinated response to COVID-19 across the financial market. The initiatives in place involve the RBA announcing measures to provide liquidity to households and businesses, APRA announcing temporary changes to its expectations on bank capital ratios, and ASIC introducing measures to ensure participants in the equity market manage transaction volumes. To further this cooperation, Council members and a representative of the Australian Financial Complaints Authority (AFCA) met with the CEOs and CROs of the major lenders to discuss further ways in which the banking sector could support continued flow of credit to the economy.



## How we can help you

We can assist you to understand the impact of these announcements for your business. We have an excellent track record with successful applications and submissions to regulators, such as APRA and ASIC. These relationships have meant that we are up to date with how the regulators are responding to queries and prioritising matters in these unprecedented circumstances.

### Fund Managers/Responsible Entities

EY FSO Law's dedicated team can provide you with tailored solutions to ensure you are able to meet your obligations. EY' services include:

1. Advising on your scheme's redemption terms to ensure they are appropriate given the liquidity of the underlying assets of the scheme;
2. Advising on your rights and ability to suspend all member related cashflows (including applications, distribution re-investments) should your scheme become non-liquid;
3. Managing your ASIC notifications;
4. Advising on your application for redemption-related relief (hardship relief and rolling withdrawal relief); and
5. Advising and managing your application for relief or waiver from your regulatory requirements.

### Financial Services businesses

We can help you to understand the immediate and medium-term impacts of COVID-19 on your business from a regulatory perspective as well as your existing contractual relationships. We can advise you on your privacy and confidentiality rights and obligations, and how these should be managed in the face of emerging risks to your employees and business. We can assist you to resolve contractual issues in a tight timeframe and the most cost-effective manner.

We can also continue to help you with your ongoing priority regulatory issues which you face in 2020, including updating your policies, compliance arrangements and documentation for the new foreign AFSL regime, whistleblowing, complaints management, superannuation regulatory changes, RG 97, DDO, breach reporting, FATCA/CRS compliance, IBOR and FAR.

## Contact us

For a confidential discussion on how we can help you, please contact:



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