

Listed@ASX Compliance Update no. 09/21

18 October 2021

1. Jobkeeper disclosure- form of notice and ASIC guidance

As foreshadowed in [Listed@ASX Compliance Update no. 08/21](#), on 15 October 2021 ASIC released [21- 271MR ASIC issues Jobkeeper notice and guidance](#) to help listed entities that have received a Jobkeeper payment comply with their new obligation to disclose information about those Jobkeeper payments to the market.

The Jobkeeper disclosure should be released to the market as a standalone announcement and the header/title of the announcement should clearly state that it is a 'Jobkeeper payments notice'. To that end ASIC has created a [Jobkeeper notice](#). The notice is also available on the ASX Online for Companies webpage under the 'Forms' tab. While it is not mandatory for a listed entity to use the Jobkeeper notice form, it is strongly encouraged as it will ensure that it will comply with all of the mandatory information required under s323DB(2) *Corporations Act 2001 (Cth)*.

ASIC has also provided guidance that will help listed entities to complete the notice: [FAQs: Disclosure by listed entities about jobkeeper payments](#).

Listed entities that have:

- received a Jobkeeper payment in a prior financial year; and
- lodged their annual report for that year before 14 September 2021,

have until 13 November 2021 to give their notice to ASX.

For all other listed entities that have received a Jobkeeper payment, the notice must be given to ASX within 60 days from when its annual financial statements are lodged.

2. Revisions to ASX Listing Rule Guidance Notes 7 and 11

On 8 October 2021, ASX released updated versions of Guidance Note 7 *US Entities - Regulation S Offerings on ASX* ("GN 7") and Guidance Note 11 *Restricted Securities and Voluntary Escrow* ("GN 11").

GN 7 has enhanced guidance in:

- section 5 on the role of ASX market circulars declaring an issuer's securities to be "FOR US" for the purposes of ASX's Foreign Ownership Restriction ("FOR") facility and expanding on the contribution expected from the issuer's US legal counsel to the drafting of those market circulars;
- sections 8 and 9 on the legal opinions ASX requires from the issuer's US legal counsel to apply and dis-apply the "FOR US" restriction to its securities; and
- a new Annexure with a pro forma market notice applying the FOR US restriction to any "U.S. Person" who is not a "Qualified Institutional Buyer".

GN 11 has enhanced guidance in:

- a new section 3.7 addressing buy-back transactions entered into to avoid or reduce escrow;
- section 5.3 on how ASX applies the definition of "controller" in relation to restricted securities held by the trustee of a discretionary trust (eg a family trust);
- section 5.6 on when ASX might be prepared to grant a waiver from the requirement for a bank or recognised trustee company to provide to ASX a written undertaking to hold the certificate for certificated restricted securities in escrow and not to deliver the certificate up until the expiry of the applicable escrow restrictions;
- section 7.3 setting out the circumstances in which ASX might be prepared to grant a waiver to exclude from escrow the same proportion of ordinary securities issued to pay interest on certain convertible debt

securities or on a cash advance as the proportion of ordinary securities issued to repay the principal on those securities or on that cash advance that are excluded from escrow under the “cash formula” (so, for example, if one third of the securities issued to repay the principal of the debt are freed from escrow under the cash formula, one third of the ordinary securities issued to pay interest on the debt will similarly be free from escrow); and

- section 11 on ASX’s enforcement powers in the event of a breach of the escrow requirements in the Listing Rules.

Mark-ups showing the changes made to the existing published versions of the two GNs can be found here: [GN 7](#) and [GN 11](#).

3. Market Announcements Reporting Calendar 2022

The 2022 reporting calendar for listed entities is now available on the home page of ASX Online and on the [ASX website](#). Designed as a quick reference guide for listed entities with a 30 June or 31 December balance date, it outlines key reporting dates under the Listing Rules. It also indicates days on which ASX is closed.

If you require assistance to understand your entity’s periodic reporting obligations, please contact your ASX Listings Compliance Adviser.

4. ASX Online access audit- November 2021

ASX will be undertaking an access audit of all ASX Online users in November 2021. Customers may recall a previous clean-up in November/December 2019. This is part of ongoing cyber security measures and to ensure that inactive and duplicate users are identified and removed.

Any customers that have not logged into ASX Online in the last 12 months will be contacted during November and asked to login to their account within 30 days. If no action is taken by the account holder within that time, the account will be deactivated, thereby removing the account holder’s ability to lodge market announcements via ASX Online without reactivating their account.

Please note you can reset your ASX Online password using ‘forgotten password’ functionality at the login screen. Alternatively, your login details can be reset by the designated ASX Online administrator within your organisation.
