



**ASIC**  
Australian Securities &  
Investments Commission

CONSULTATION PAPER 337

# Externally administered companies: Extending financial reporting and AGM relief

January 2021

## About this paper

This consultation paper is about extending the relief available under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#). It sets out our proposals to:

- extend the period of deferral of financial reporting obligations available for certain externally administered companies; and
- provide AGM deferral relief to public companies in external administration to align with financial reporting relief.

We are seeking feedback from insolvency practitioners, law firms, industry, creditors, members and other stakeholders on our proposals.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This paper was issued on 28 January 2021 and is based on the legislation as at the date of issue.

### Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

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## The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information. We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on financial reporting relief for externally administered bodies. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section D, 'Regulatory and financial impact'.

### Making a submission

You may choose to remain anonymous or use an alias when making a submission. However, if you do remain anonymous we will not be able to contact you to discuss your submission should we need to.

Please note we will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any personal or financial information) as confidential.

Please refer to our [privacy policy](#) for more information on how we handle personal information, your rights to seek access to and correct personal information, and your right to complain about breaches of privacy by ASIC.

Comments should be sent by 11 March 2021 to:

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Australian Securities and Investments Commission  
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## What will happen next?

<b>Stage 1</b>	28 January 2021	ASIC consultation paper released
<b>Stage 2</b>	11 March 2021	Comments due on the consultation paper
<b>Stage 3</b>	Q3–Q4 2021	Commencement of any legislative instrument providing relief and updates to RG 174

## A Background to the proposals

### Key points

Unless ASIC relief applies, financial reporting obligations and annual general meeting (AGM) obligations continue to apply while a company is under external administration.

[ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) (the instrument) grants a deferral of financial reporting obligations falling due within six months from the date of the first appointment of a relevant external administrator, and any continuing financial reporting obligations that were due before the appointment of the relevant external administrator.

On application, ASIC may grant individual relief to a company from its financial reporting obligations and may also grant individual relief to extend the time in which an externally administered public company must hold an AGM.

We are consulting on whether to extend the relief provided under the instrument and update our guidance in [Regulatory Guide 174 Relief for externally administered companies and registered schemes being wound up](#) (RG 174).

### Our current relief

- 1 ASIC currently provides relief from the financial reporting, compliance plan audit and annual general meeting obligations for externally administered companies and registered managed investment schemes (registered schemes) being wound up, under the instrument. ASIC also grants individual relief from the financial reporting, compliance plan audit obligations and AGM obligations in other circumstances.
- 2 We provide two broad types of relief:
  - (a) exemptions—where financial reporting, compliance plan audit and AGM obligations are cancelled; and
  - (b) deferrals—where financial reporting, compliance plan audit and AGM obligations are deferred and so must be complied with at a later date.

### Exemption relief

- 3 The instrument provides an exemption from Pt 2M.3 of the *Corporations Act 2001* (Corporations Act) to companies in liquidation, provided that those companies are not Australian financial services (AFS) licensees. Our exemption relief for companies that have a liquidator appointed also applies to any outstanding financial reporting requirements from prior years. Our

exemption relief also applies to outstanding AFS licensee financial reporting obligations provided that the company's licence has been cancelled.

Note: In this report, references to chapters (Chs), parts (Pts) and sections (s) are to the Corporations Act, unless otherwise specified.

- 4 The instrument also provides an exemption from financial reporting and compliance plan audit obligations to registered schemes when:
- (a) ASIC has been formally notified of the commencement of the winding-up of the scheme; and
  - (b) the scheme has been insolvent for at least 12 months before the end of the relevant financial year or half-year and a scheme insolvency resolution has been lodged with ASIC.
- 5 The exemption relief for companies in liquidation and registered schemes being wound up is based on the view that complying with Pt 2M.3 in these circumstances would make the financial reports misleading, would be inappropriate in the circumstances and would impose an unreasonable burden: see s324(1). Externally administered companies that still hold an AFS licence are excluded from our relief because AFS licensees are subject to minimum financial requirements at all times. In the case of registered schemes being wound up, we also consider compliance with s601HG to obtain a compliance plan audit report would impose unreasonable burdens.
- 6 The instrument exempts public companies in liquidation from the requirement to hold an AGM. This is because the safeguard function served by the AGM requirement in ordinary circumstances is no longer relevant when a company enters into liquidation.
- 7 We consider that our exemption relief is operating efficiently and effectively. We currently do not propose to change the legislative or policy settings for companies in liquidation and registered schemes being wound up.

### **Deferral relief**

- 8 The instrument grants a deferral of financial reporting obligations under Pt 2M.3 falling due within six months from the date of the first appointment of a voluntary administrator, controller or provisional liquidator (i.e. a relevant external administrator). The due date for complying with an obligation (that would otherwise fall due within six months from the date of the first appointment of the relevant administrator) is the date that is six months after the relevant external administrator is appointed.
- 9 This deferral relief recognises that compliance with the financial reporting requirements during the initial six-month period following the appointment of the relevant external administrator will generally impose unreasonable burdens, due to a combination of time, financial and human resource

constraints imposed on the company and the relevant external administrator in these forms of external administration.

- 10 The six-month deferral relief also applies to the AFS licensee financial reporting obligations under Pt 7.8. Financial statements lodged in compliance with these obligations are not public documents. We consider the burden imposed by the licensee requirements is likely to be disproportionate to the value the reports may have for ASIC during the relevant period.

### **Individual deferral relief for externally administered companies**

- 11 As outlined in [RG 174](#), after the initial period of six months following the appointment of an external administrator (during which deferral is available under the instrument), we may grant individual deferral relief from all of the financial reporting obligations (including any previously deferred financial reporting obligations) for a period of up to 24 months, if:
- (a) the external administrator (who is not a liquidator) exercises all or most of the management functions and powers; and
  - (b) we are satisfied that compliance will impose unreasonable burdens on the company during the external administration.
- 12 We may also grant individual relief to extend the time by which an externally administered company must hold an AGM. If we have provided deferral relief under the instrument, or individual deferral relief from financial reporting obligations, we will generally provide an extension of time in which to convene the AGM. This is because the consideration of financial reports is one of the primary functions of the AGM.
- 13 While users of the financial reports may benefit from the company complying with its financial reporting and AGM obligations during external administration, this needs to be balanced with the costs associated with preparing annual or half-year financial reports. As companies in external administration are under financial and human resource constraints, compliance with financial reporting obligations may unnecessarily protract the external administration and reduce the amount of cash available for distribution to creditors.

## **Our proposed relief**

- 14 We have observed that the six-month deferral period for companies in external administration to comply with the financial reporting and AGM obligations may not always be sufficient, particularly for more complex or larger external administrations.



- 15 Companies in external administration will often apply to ASIC for individual deferral relief of financial reporting obligations under Pt 2M.3 before the initial six-month deferral period ends, on the basis that compliance with the relevant requirements in Pt 2M.3 impose unreasonable burdens. Where the applicant is a public company, they will also apply for the deferral of AGM requirements at the same time, given that one of the main functions of the AGM is to present financial reports to members.
- 16 Between 28 May 2015 and 27 August 2019, we considered 123 financial reporting deferral relief applications from companies under external administration. We granted relief in 84% (or 103) of the financial reporting relief applications. Of those 103 approved financial reporting relief applications, 30% of those applicants were granted a deferral period of less than 12 months, 61% were granted a deferral period of 24 months, and the remaining 9% were granted a deferral period between 12 and 24 months. We were disposed to approve financial reporting relief in a further 13% of matters, but these applications were subsequently withdrawn. Of the 3% of applications that were refused, one of those applications was lodged out of time, and the other application was outside of our policy in [RG 174](#).
- 17 During this period, we also considered 68 AGM deferral applications from companies in external administration. We granted relief in 97% (or 66) of the AGM deferral applications, and we were disposed to approve AGM deferral relief in a further 2% of matters, but ultimately refused the relief because the applicant was unable to agree on the conditions of the relief. The remaining 1% of these applications were withdrawn because the company was in liquidation and able to rely on exemption relief available under the instrument and therefore individual relief was no longer required.
- 18 For individual relief applications, the externally administered company must pay ASIC fees of approximately \$3,500 per head of power and per entity for which they seek relief. The company is also likely to incur legal and external administration fees for the preparation of the relief applications.
- 19 To provide certainty and reduce the regulatory burden on externally administered companies, we are proposing to extend our relief in the instrument to provide:
- (a) a 24-month deferral of financial reporting obligations to companies in relevant external administration; and
  - (b) consequential AGM deferral relief to public companies in external administration to align with the period of financial reporting deferral relief.

## Purpose of this paper

- 20 We recognise there are differing views on the extent to which outstanding financial reports would provide useful information to users of the reports while a company is under external administration, and whether our proposal strikes an appropriate balance between the interests of members and creditors, and the statutory objectives of financial reporting and external administration provisions. Therefore, we are seeking feedback on:
- (a) our proposal to grant a longer deferral period for the period of the administration but up to a total maximum period of 24 months to companies in external administration for financial reporting obligations under Pt 2M.3;
  - (b) our proposal to grant consequential AGM deferral relief under the legislative instrument;
  - (c) the particular conditions of relief we are proposing;
  - (d) our proposal to include ASIC's exclusion powers in relation to our proposed financial reporting and AGM deferral relief; and
  - (e) any other current or emerging issues that you think we should consider as part of our process of updating our guidance and relief.

## B Extending financial reporting deferral relief for externally administered companies

### Key points

We are proposing to use ASIC's exemption power to extend the deferral relief for financial reporting under Pt 2M.3 for companies under relevant external administrations for the period of the external administration, but up to a maximum period of 24 months.

The proposed deferral period of up to a maximum of 24 months will include any subsequent appointment of an external administrator—for example, a deed administrator—that occurs after the first appointment of a relevant external administrator. This is so long as the deed administrator exercises all of the management functions and powers of the company.

We consider this is a reasonable period of time for an external administration to progress, and that it provides a balance between the interests of users of the financial reports and the burden imposed by compliance with the reporting obligations.

### Extension of current deferral period

- 21 We are proposing to use ASIC's exemption power in s341 to conditionally extend the deferral period to a period of up to 24 months for companies with a relevant external administrator appointed (extended deferral period). Any financial reporting obligations arising during the 24-month period will be deferred until the end of the deferral period (i.e. 24 months after the relevant external administrator is appointed).
- 22 We are also proposing to include a cessation trigger so that the financial reporting deferral relief may end before the 24-month period where:
- (a) the external administration comes to an end and the relevant external administrator returns the company to the directors' control; or
  - (b) the company is subject to a deed of company arrangement (DOCA) and the deed administrator ceases to exercise all of the management powers and functions of the company and powers of the directors.
- 23 We do not propose for our financial reporting deferral relief to be triggered a second time by a company entering into a DOCA after the initial deferral period. This is because DOCAs are not an initial form of external administration and the deed administrator is usually the same person as the preceding voluntary administrator.

- 24 We also do not propose to extend the financial reporting deferral relief of six months provided under the instrument for AFS licensees.

### Proposal

- B1** We propose to use ASIC's exemption power in s341 to extend the financial reporting deferral relief period available to companies in relevant external administration to a period of up to 24 months, subject to conditions.

#### *Your feedback*

- B1Q1 Do you agree that we should conditionally extend the current deferral relief to a period of up to 24 months?
- (a) If not, why not?
- (b) If so, do you consider that the deferral period ought to be available for up to a maximum period of 24 months and why?
- B1Q2 In what circumstances do you consider it is not appropriate to extend the deferral period to up to 24 months for an externally administered company?

- B2** We propose to include early cessation triggers to bring about an early end to the financial reporting deferral relief where the company is no longer externally administered or where the deed administrator is no longer exercising the powers and functions of the company.

#### *Your feedback*

- B2Q1 Do you agree that we should include early cessation triggers relating to the end of an external administration? Are there any other situations you consider should bring about an early end to the deferral period?

### Rationale

- 25 We have a well-established policy on individual financial reporting deferral relief for externally administered companies, which we routinely grant on the basis of unreasonable burden. We routinely allow a deferral period of up to 24 months because we consider a deferral period of up to 24 months is a reasonable time period for the relevant external administrator to progress the external administration.
- 26 Our preliminary view is that this time period provides a balance between the interests of users of financial reports and the burden imposed by compliance with the reporting obligations, particularly in the context of companies whose continued operation is in doubt because of financial strain or where the whole or substantially the whole of the company's business or assets are being sold.

- 27 We consider that a deferral period beyond 24 months is inappropriate because of the limited ability of users to independently obtain, in a timely manner, audited or other reliable financial information about the externally administered company. When a company enters external administration, often the only information available about the company will be limited to:
- (a) information the relevant external administrator is required to lodge with ASIC under Ch 5; and
  - (b) where the company is a listed entity, information the company is required to disclose under its continuous disclosure obligations.
- 28 We are proposing to include a cessation trigger because we recognise that the more likely it is that a company will continue to carry on business, the more useful it is to have complete, contemporaneous financial information about the company. Such a trigger may also reduce the potential for unintended consequences and may mitigate potential risks, for example by ensuring that a company that exits external administration does not continue to have the benefit of financial reporting relief and that users of the company's financial reports have access to the reports from the point in time that the company ceases to be under external administration or shortly thereafter.

## Conditions of financial reporting deferral relief

### Retaining the existing conditions of our individual financial reporting deferral relief

- 29 It is a condition of our individual financial reporting deferral relief that during the period of the deferral, the company must do all of the following:
- (a) prepare and lodge their financial reports before the end of the deferral period;
  - (b) publish a notice which explains the financial reporting deferral relief in a prominent place on the company's website (if any), and in a place that is readily accessible to the company's members on a website maintained by the relevant external administrator or deed administrator;
  - (c) if the company is listed on a prescribed financial market, the company must provide a copy of the notice that explains the financial reporting deferral relief to the operator of the prescribed financial market; and
  - (d) the company must have adequate arrangements in place to answer, within a reasonable period of time and without charge, any reasonable questions asked by a member of the company, or debenture holder (if any) about the external administration.

## Proposal

**B3** We propose to retain all the existing conditions of our individual financial reporting deferral relief.

### Your feedback

B3Q1 Do you agree with our proposal? If not, why not?

## Rationale

30 We consider that the conditions of relief for companies in external administration are operating effectively and should be retained in any financial reporting deferral relief provided.

## New conditions of financial reporting deferral relief

31 We are also consulting on potentially imposing the following new conditions in relation to our proposed financial reporting deferral relief:

- (a) companies to put in place arrangements to make any [Form 5602](#) *Annual administration return* and any [Form 5603](#) *End of administration return* publicly available and free of charge; and
- (b) companies to provide management accounts for:
  - (i) each financial year ending during the deferral period—within three months after the end of the financial year; and
  - (ii) each half-year ending during the deferral period—within 75 days after the end of the financial year.

## Proposal

**B4** We are consulting on potentially imposing the following new conditions to the proposed 24-month deferral relief:

- (a) companies to put in place arrangements to make any [Form 5602](#) *Annual administration return* and any [Form 5603](#) *End of administration return* publicly available and free of charge; and
- (b) companies to provide management accounts in relation to each financial year and half-year during the proposed 24-month deferral period.

### Your feedback

B4Q1 We are seeking feedback on whether to impose the following new conditions:

- (a) Do you agree with our proposal to require companies to put in place arrangements to make any [Form 5602](#) and any [Form 5603](#) publicly available free of charge? If not, why not?
- (b) Do you consider that we should require companies to provide management accounts to members?
  - (i) If not, why not?

- (ii) What type of management accounts would external administrators be comfortable with providing to members, and why?
- (iii) Please outline any unintended consequences as a result of ASIC imposing this requirement and the appropriate strategies to deal with each of the identified unintended consequences.

B4Q2 Do you consider that we should impose any other additional conditions during the deferral period?

## Rationale

- 32 Generally, the longer the period of any extension we provide for reporting deferral relief, the more we are likely to consider imposing additional conditions for the relief.
- 33 The proposed new conditions are directed at enabling members to obtain adequate information in the circumstances while preserving the assets as the prospects of the company are being determined by the relevant external administrator.
- 34 We note that although members of an externally administered company have access to any public information that is prepared and lodged with ASIC by a relevant external administrator under Ch 5, this information is not available free of charge. We also note that there are limited opportunities for members in an external administration to access and engage with information about the company. For large external administrations, it can be very difficult for members to piece together information from the various returns of individual externally administered companies.
- 35 We recognise that the information the relevant external administrator is required to provide under s422A in [Form 5602](#) and under s422B in [Form 5603](#) does not provide sufficient information to members about the activities of the externally administered company over a specific period, and to be properly informed about the company's affairs. To address this information asymmetry, we are considering whether to impose a requirement for external administrators to provide management accounts to members free of charge. However, we also recognise there are commercial sensitivities around releasing this information.

## Power to exclude reliance on deferral relief

- 36 Our proposal to provide financial reporting deferral relief for companies under external administration, up to a period of 24 months, may not be appropriate in all circumstances. We propose to include an express power for ASIC to exclude companies from relying on our proposed financial reporting

deferral relief (exclusion power). We also propose to include a provision that enables our decision to exclude an externally administered company from relying on our financial reporting deferral relief to be reviewable by the Administrative Appeals Tribunal (AAT).

### Proposal

**B5** We propose to include an express exclusion power for ASIC to exclude entities from relying on the financial reporting deferral relief in certain circumstances. We also propose to make our exclusion decision reviewable by the AAT. We will update our guidance in [RG 174](#) to include examples or scenarios of when our power may be exercised.

#### *Your feedback*

B5Q1 Do you agree with our proposal to exclude certain entities from relying on our financial reporting deferral relief? If not, why not?

B5Q2 In what circumstances do you consider that ASIC should exercise the proposed power to exclude certain entities from relying on our financial reporting deferral relief?

### Rationale

37 To mitigate any risks and the potential for unintended consequences as a result of our proposed financial reporting deferral relief, we are proposing to include an express exclusion power. We may exercise our exclusion power where it is in the public interest to do so because the benefit of fulsome information to the market outweighs the costs to the administrator of preparing and lodging financial reports.

38 We anticipate that we will rarely exercise our exclusion power. In the interests of transparency, we propose to update our guidance in [RG 174](#) to specify the circumstances in which we will exercise our exclusion power, and the process proposed to be undertaken before excluding an externally administered company from relying on our financial reporting deferral relief. Consistent with ASIC's procedural fairness obligations, we propose to afford procedural fairness to the potential adversely affected externally administered company when considering whether to exercise our exclusion power.

## Operation of individual and legislative relief

39 Aside from our proposed financial reporting deferral relief for externally administered companies and proposed AGM relief for externally administered public companies, we do not propose to expand the scope or availability of the financial reporting relief under the instrument.



## Proposal

- B6** Other than as set out in proposals B1–B5, we do not propose to extend the scope or availability of financial reporting relief under [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#).

### *Your feedback*

- B6Q1 Do you agree that the relief and our guidance is operating effectively? If not, please provide details of any concerns or issues that you have so that we may consider addressing these when updating our policy and guidance.

## Rationale

- 40 We updated our relief and guidance in 2015 following extensive consultation. We consider that our relief is operating effectively and that our guidance is clear and fulsome.
- 41 An entity that is not able to access the relief under the instrument may still be eligible for, and continue to apply for, individual relief.

## C AGM deferral relief for public companies in relevant external administration

### Key points

A public company must hold an AGM at least once in each calendar year and within five months after the end of its financial year: see s250N. This obligation applies under the Corporations Act even when a company is under external administration.

The instrument exempts public companies in liquidation from the requirement to hold an AGM.

ASIC routinely provides individual relief to extend the time by which an externally administered public company must hold an AGM where the company has the benefit of financial reporting deferral relief.

We propose to provide AGM deferral relief to public companies in relevant external administration.

### AGM deferral relief for public companies in external administration

- 42 The instrument exempts public companies in liquidation from the requirement to hold an AGM. This relief extends to any obligation to hold an AGM that has been deferred through an earlier extension.
- 43 Companies in external administration must seek individual relief to extend the time by which an externally administered company must hold an AGM. We generally grant individual AGM deferral relief where the externally administered company (not in liquidation) has been granted individual deferral relief from the financial reporting obligations. The individual AGM deferral relief extends the period of time by which the company must hold an AGM until two months after the individual financial reporting deferral relief expires.
- 44 We are proposing to use ASIC's exemption power in s250PAA to provide AGM deferral relief to public companies under external administration until two months after the proposed financial reporting deferral relief expires. Our proposed AGM deferral relief will be conditional on the following:
- (a) where the company is a listed company, the company must provide a notice of intention to rely on the legislative relief to the relevant market operator(s) where the company is listed;
  - (b) the company must publish a notice of intention to rely on the legislative relief on the website of the company and/or external administrator; and

- (c) the company must lay before the next AGM all outstanding financial reports deferred as a result of the financial reporting deferral relief.

## Proposal

- c1 We propose to amend [ASIC Corporations \(Externally-Administered Bodies\) Instrument 2015/251](#) to give public companies with a relevant external administrator appointed an extension of time to hold its AGM. We propose to defer AGM obligations until two months after their reporting deferral relief expires.

### *Your feedback*

C1Q1 Do you agree with our proposal to extend the period of time by which a public company under relevant administration must hold an AGM until two months after the reporting deferral relief expires? If not, why not?

- c2 We propose to impose conditions on the relief, including that:
- (a) a notice of the intention to rely on the AGM relief must be given to the market operator(s) where the public company is listed and must be placed on the website of the company and/or external administrator whether listed or unlisted; and
  - (b) members will be able to consider any outstanding financial reports at the next AGM.

### *Your feedback*

C2Q1 Do you agree with the conditions proposed? If not, why not? Should any other conditions be imposed?

## Rationale

- 45 An AGM is a forum at which a company's members meet with the company's management to consider the financial reports, elect directors, appoint auditors if necessary and consider any other business: see s250R and s317. As the consideration of financial reports is one of the primary functions of the AGM, we routinely grant individual AGM deferral relief to externally administered companies that also have the benefit of financial reporting relief because no financial reports will be available for consideration at the AGM.
- 46 Our policy in [RG 174](#) provides that we will generally extend the period of time by which the company must hold an AGM until two months after the individual financial reporting deferral relief expires. We consider that this period remains appropriate.
- 47 We also consider that requiring companies to publish a notice of reliance on the legislative relief is appropriate so that members and other interested parties are aware that the company is relying on the AGM deferral relief.

## Power to exclude reliance on AGM deferral relief

- 48 Our proposal to provide AGM deferral relief may not be appropriate in all circumstances. We propose to include an express power for ASIC to exclude entities from relying on our proposed AGM deferral relief (exclusion power). We also propose to include a provision to enable our decision to exclude an externally administered company from relying on our AGM deferral relief to be reviewable by the AAT.

### Proposal

- c3 We propose to include an express exclusion power for ASIC to exclude entities from relying on the proposed AGM deferral relief in certain circumstances. This is to mitigate any risks and the potential for unintended consequences as a result of our proposed AGM deferral relief. We also propose to make our exclusion decision reviewable by the AAT. We will update our guidance in [RG 174](#) to explain when our power may be exercised.

#### *Your feedback*

- C3Q1 Do you agree with our proposal to include an exclusion power so ASIC can exclude certain entities from relying on the proposed AGM deferral relief? If not, why not?
- C3Q2 In what circumstances do you consider that ASIC should exercise the proposed exclusion power?

### Rationale

- 49 To mitigate any risks and the potential for unintended consequences as a result of our proposed AGM deferral relief, we are proposing to include an express exclusion power. We consider it may be appropriate to exercise our exclusion power in the following where it is in the public interest for members to have an opportunity to meet with and ask questions of the external administrator. We are unlikely to exercise this exclusion power if we have not also exercised the exclusion power in relation to financial reporting deferral relief.
- 50 We anticipate that we will rarely exercise our exclusion power. In the interests of transparency, we propose to update our guidance in [RG 174](#) to specify the circumstances in which we will exercise our exclusion power, and the process proposed to be undertaken before excluding an externally administered company from relying on our AGM deferral relief. We also propose to afford procedural fairness to the potential adversely affected externally administered company by including a provision to enable our exclusion decision to be reviewable by the AAT.

## D Regulatory and financial impact

51 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

- (a) the information needs of users of a company's financial information; and
- (b) the costs and regulatory burden associated with preparing annual or half-year reports by companies in distress.

52 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

- (a) considering all feasible options, including examining the likely impacts of the range of alternative options that could meet our policy objectives;
- (b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and
- (c) if our proposed option has more than a minor or machinery impact on business or on the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

53 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

54 To ensure that we are in a position to properly complete any required RIS, please give us as much information as you can about our proposals or any alternative approaches, including:

- (a) the likely compliance costs;
- (b) the likely effect on competition; and
- (c) other impacts, costs and benefits.

Note: See also 'The consultation process', p. 4.

## Key terms

Term	Meaning in this document
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
AFS licensee financial reporting obligations	The obligations in Subdiv C of Div 6 of Pt 7.8 of the Corporations Act that require AFS licensees to prepare and lodge with ASIC an audited annual profit and loss statement and balance sheet
AGM	An annual general meeting of a company that s250N of the Corporations Act requires to be held  Note: This is a definition contained in s9.
AGM obligation	The obligation in s250N of the Corporations Act that requires an AGM to be held
annual report	The reports referred to in s314(1) of the Corporations Act  A company, registered scheme or disclosing entity must report to members for a financial year by providing either of the following in accordance with s314(1AA) or (1AE): <ul style="list-style-type: none"> <li>• all of the following reports: <ul style="list-style-type: none"> <li>– the financial report for the year;</li> <li>– the directors' report for the year (s298–300A); and</li> <li>– the auditor's report on the financial report; or</li> </ul> </li> <li>• a concise report for the year that complies with s314(2)</li> </ul>
ASIC	Australian Securities and Investments Commission
controller	Has the meaning given in s9 of the Corporations Act  Note: It therefore includes 'managing controller', 'receiver' and 'receiver and manager'
controllership	When a controller is appointed to property of a company
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
deed administrator	An administrator of a DOCA under Pt 5.3A of the Corporations Act
disclosing entity	Has the meaning given by s111AC of the Corporations Act
DOCA	A deed of company arrangement

Term	Meaning in this document
entity	A company, registered scheme or disclosing entity
external administration	In this consultation paper, means when an external administrator is appointed to a company
external administrator	<p>In this consultation paper, means:</p> <ul style="list-style-type: none"> <li>• for a company—a voluntary administrator, deed administrator, controller, provisional liquidator or liquidator; and</li> <li>• for a disclosing entity that is not a company or a scheme—the person taking responsibility for ensuring that the disclosing entity is wound up in accordance with its constitution, rules and applicable laws</li> </ul> <p>Note: A person is not an external administrator of a company for the purposes of Sch 2 to the Corporations Act merely because the person has been appointed as a receiver, receiver and manager, or controller in relation to property of the company.</p>
externally administered company	<p>In this consultation paper, means a company:</p> <ul style="list-style-type: none"> <li>• under voluntary administration;</li> <li>• subject to a DOCA;</li> <li>• where a controller has been appointed (whether or not by a court) and is acting;</li> <li>• in provisional liquidation;</li> <li>• in liquidation; or</li> <li>• concurrently in two or more of the forms of external administration referred to above</li> </ul> <p>Note 1: An externally administered company may be either a public company or a proprietary company.</p> <p>Note 2: A company is not under external administration for the purposes of Sch 2 to the Corporations Act merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company.</p>
financial reporting obligations	<p>The obligations in Divs 1–5 of Pt 2M.3 in relation to:</p> <ul style="list-style-type: none"> <li>• an annual financial report and directors' report;</li> <li>• a half-year financial report and directors' report;</li> <li>• an audit and the auditor's report;</li> <li>• annual financial reporting to members; and</li> <li>• lodging reports with ASIC</li> </ul>
half-year report	The reports referred to in s302 of the Corporations Act
individual deferral relief	Relief that we may grant, on application, to defer the time for compliance with some or all of the financial reporting obligations for externally administered companies (that are not in liquidation) and certain registered schemes being wound up
instrument	In this consultation paper, means <a href="#">ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251</a>

Term	Meaning in this document
liquidation	For a company, the process for: <ul style="list-style-type: none"> <li>• the winding-up of a company business;</li> <li>• the collection and realisation of company assets;</li> <li>• the application of the proceeds to the company's creditors; and</li> <li>• should a surplus remain, repayment to the members under: <ul style="list-style-type: none"> <li>– a winding-up in insolvency or ordered by the court;</li> <li>– a members' voluntary winding-up; or</li> <li>– a creditors' voluntary winding-up</li> </ul> </li> </ul>
managing controller	Has the same meaning as in s9 of the Corporations Act
proprietary company	A company that is registered as, or converts to, a proprietary company under the Corporations Act Note: This is a definition contained in s45A(1).
provisional liquidator	A person appointed by the court under s472(2) of the Corporations Act
public company	A company other than a proprietary company
receiver	A person appointed under an instrument or by the court to receive property of a company, who does not manage, and under the terms of the person's appointment does not have power to manage, the affairs of the company
receiver and manager	Has the meaning given in s9 of the Corporations Act
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
relevant external administrator	In relation to a company, means: <ul style="list-style-type: none"> <li>• an administrator of the company (but does not include an administrator of a deed of company arrangement in relation to the company);</li> <li>• a managing controller appointed to the whole or substantially the whole of the property of the company;</li> <li>• a provisional liquidator of the company,</li> </ul> where no other person was acting in one of those capacities in relation to the company at the time of their appointment
relevant market operator	Has the same meaning as in s9 of the Corporations Act
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
RG 174 (for example)	An ASIC regulatory guide (in this example numbered 174)



Term	Meaning in this document
s292 (for example)	A section of the Corporations Act (in this example numbered 292)
scheme insolvency resolution	In relation to a registered scheme, means a resolution to the effect that, for a period of at least 12 months, the scheme property has been insufficient to meet the debts of the responsible entity of the scheme incurred in that capacity as and when they were due and payable
voluntary administration	The external administration of a company by a person appointed under s436A, 436B or 436C of Pt 5.3A of the Corporations Act but does not include external administration under a DOCA
voluntary administrator	An administrator of a company but not a DOCA
winding-up	For a company, has the same meaning as liquidation For a registered scheme, the process for winding up under a provision in Pt 5C.9 of the Corporations Act

## List of proposals and questions

Proposal	Your feedback
<p>B1 We propose to use ASIC's exemption power in s341 to extend the financial reporting deferral relief period available to companies in relevant external administration to a period of up to 24 months, subject to conditions.</p>	<p>B1Q1 Do you agree that we should conditionally extend the current deferral relief to a period of up to 24 months?</p> <p>(a) If not, why not?</p> <p>(b) If so, do you consider that the deferral period ought to be available for up to a maximum period of 24 months and why?</p> <p>B1Q2 In what circumstances do you consider it is not appropriate to extend the deferral period to up to 24 months for an externally administered company?</p>
<p>B2 We propose to include early cessation triggers to bring about an early end to the financial reporting deferral relief where the company is no longer externally administered or where the deed administrator is no longer exercising the powers and functions of the company.</p>	<p>B2Q1 Do you agree that we should include early cessation triggers relating to the end of an external administration? Are there any other situations you consider should bring about an early end to the deferral period?</p>
<p>B3 We propose to retain all the existing conditions of our individual financial reporting deferral relief.</p>	<p>B3Q1 Do you agree with our proposal? If not, why not?</p>

Proposal	Your feedback
<p>B4 We are consulting on potentially imposing the following new conditions to the proposed 24-month deferral relief:</p> <p>(a) companies to put in place arrangements to make any <a href="#">Form 5602 Annual administration return</a> and any <a href="#">Form 5603 End of administration return</a> publicly available and free of charge; and</p> <p>(b) companies to provide management accounts in relation to each financial year and half-year during the proposed 24-month deferral period.</p>	<p>B4Q1 We are seeking feedback on whether to impose the following new conditions:</p> <p>(a) Do you agree with our proposal to require companies to put in place arrangements to make any <a href="#">Form 5602</a> and any <a href="#">Form 5603</a> publicly available free of charge? If not, why not?</p> <p>(b) Do you consider that we should require companies to provide management accounts to members?</p> <p>(i) If not, why not?</p> <p>(ii) What type of management accounts would external administrators be comfortable with providing to members, and why?</p> <p>(iii) Please outline any unintended consequences as a result of ASIC imposing this requirement and the appropriate strategies to deal with each of the identified unintended consequences.</p> <p>B4Q2 Do you consider that we should impose any other additional conditions during the deferral period?</p>
<p>B5 We propose to include an express exclusion power for ASIC to exclude entities from relying on the financial reporting deferral relief in certain circumstances. We also propose to make our exclusion decision reviewable by the AAT. We will update our guidance in <a href="#">RG 174</a> to include examples or scenarios of when our power may be exercised.</p>	<p>B5Q1 Do you agree with our proposal to exclude certain entities from relying on our financial reporting deferral relief? If not, why not?</p> <p>B5Q2 In what circumstances do you consider that ASIC should exercise the proposed power to exclude certain entities from relying on our financial reporting deferral relief?</p>
<p>B6 Other than as set out in proposals B1–B5, we do not propose to extend the scope or availability of financial reporting relief under <a href="#">ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251</a>.</p>	<p>B6Q1 Do you agree that the relief and our guidance is operating effectively? If not, please provide details of any concerns or issues that you have so that we may consider addressing these when updating our policy and guidance.</p>
<p>C1 We propose to amend <a href="#">ASIC Corporations (Externally-Administered Bodies) Instrument 2015/251</a> to give public companies with a relevant external administrator appointed an extension of time to hold its AGM. We propose to defer AGM obligations until two months after their reporting deferral relief expires.</p>	<p>C1Q1 Do you agree with our proposal to extend the period of time by which a public company under relevant administration must hold an AGM until two months after the reporting deferral relief expires? If not, why not?</p>

Proposal	Your feedback
<p>C2 We propose to impose conditions on the relief, including that:</p> <p>(a) a notice of the intention to rely on the AGM relief must be given to the market operator(s) where the public company is listed and must be placed on the website of the company and/or external administrator whether listed or unlisted; and</p> <p>(b) members will be able to consider any outstanding financial reports at the next AGM.</p>	<p>C2Q1 Do you agree with the conditions proposed? If not, why not? Should any other conditions be imposed?</p>
<p>C3 We propose to include an express exclusion power for ASIC to exclude entities from relying on the proposed AGM deferral relief in certain circumstances. This is to mitigate any risks and the potential for unintended consequences as a result of our proposed AGM deferral relief. We also propose to make our exclusion decision reviewable by the AAT. We will update our guidance in <a href="#">RG 174</a> to explain when our power may be exercised.</p>	<p>C3Q1 Do you agree with our proposal to include an exclusion power so ASIC can exclude certain entities from relying on the proposed AGM deferral relief? If not, why not?</p> <p>C3Q2 In what circumstances do you consider that ASIC should exercise the proposed exclusion power?</p>