



PFA Regulatory Update

Property funds to consider warnings from ASIC about advertising

July 2020

Property funds must ensure any advertising or website promotions are “true-to-label”, as ASIC steps up its monitoring of registered funds.

ASIC warned against misleading advertising in its Interim Corporate Plan 2020-21, and the regulator has recently put responsible entities on notice to ensure fund advertising contains clear, balanced and accurate information.

ASIC said it was actively monitoring financial products and services advertising, with a special focus on weeding out misleading claims and predatory behaviour.

Retail property funds must use caution around any advertising copy which suggests an investment product has a “low risk of loss”, or which suggests withdrawals may be available at short notice.

In its Interim Corporate Plan 2020-21, ASIC states that it will:

- monitor advertising and website promotions of managed funds;
- test advertising and promotions against formal disclosure documents, constitutions, and underlying assets (e.g. statements about fund liquidity); and
- take regulatory action as necessary where advertising and promotions are not consistent with the underlying documents and fund assets.

Property funds may refer to [ASIC Regulatory Guide 234 Advertising financial products and services \(including credit\): Good practice guidance](#) for guidance.

ASIC provides expectations, extends relief for financial reporting during COVID-19

ASIC has now extended the deadline for both listed and unlisted entities (including managed investment schemes) to lodge financial reports under Chapters 2M and 7 of the *Corporations Act 2001* (Cth) (**Act**), where the entity’s financial year ends on a date up to a7 July 2020.

The relief provides one extra month for unlisted entities and unlisted registered schemes to lodge financial reports for financial year ends from 31 December 2019 to 7 July 2020, but only where the statutory deadline for lodgement has not already passed.





ASIC has also broadened its “no action position” to allow entities to delay holding their Annual General Meeting (AGM) by two months – this now applies to entities which have a financial year ending 7 July 2020.

COVID reporting expectations outlined

The regulator has said the quality of financial reports and disclosures during COVID-19 are more important than ever. ASIC has emphasised the need for caution and taking appropriate steps in its recent COVID reporting guidance.

Property funds will need to be ready for increased scrutiny across several areas, including any factors impacting asset values, provisions, and assessments of solvency and going concern.

Importantly, funds need to “tell the story” in their financial report and operating and financial review, explaining the relevant business impacts from COVID-19, and the potential uncertainties they face.

Property funds, however, must also be aware of the procedural demands applicable to any such relief. For example, a recent increase in companies involved in court proceedings, for failing to comply with the procedural requirements for ASIC’s reporting relief for wholly-owned companies, suggests some entities are not following the appropriate steps as outlined by ASIC.

For example, in relation to the wholly-owned companies relief, ASIC has identified failure to lodge **Form 389 on time** as a common problem – Form 389 only needs to be lodged once, but it must be within **four months of the end of the first financial year in which the company relies on the relief**.

Property funds must remember that they must comply with any procedural requirement of ASIC’s relief instrument if they intend to take advantage of reporting relief, otherwise they may be in breach of their financial reporting obligations under the Act.

More information on ASIC’s reporting expectations, the wholly-owned companies reporting relief, and COVID-19 related relief can be found from Hall & Wilcox here:

<https://hallandwilcox.com.au/thinking/part-one-asic-reporting-relief-for-wholly-owned-companies-dont-miss-out/>

<https://hallandwilcox.com.au/thinking/part-two-asic-reporting-relief-for-wholly-owned-companies-dont-miss-out/>

<https://hallandwilcox.com.au/thinking/asic-reporting-guidance-businesses-must-tell-the-story/>

<https://hallandwilcox.com.au/thinking/financial-services-in-focus-issue-39/>

