

**26 November 2020**

## **AIRA 2020 HALF DAY VIRTUAL CONFERENCE FIRESIDE CHAT TRANSCRIPT**

### **REGULATORY UPDATE**

#### **Speakers:**

- **JANINE RYAN | Chief Compliance Officer, ASX**
- **GREG YANCO | Executive Director, Markets, Australian Securities and Investments Commission (ASIC)**
- **Moderator: Ian Matheson | CEO, Australasian Investor Relations Association (AIRA)**

Good afternoon, everyone and thank you very much for joining us for a virtual half-day conference in this AIRA's 20th year. Delighted that we have over 150 people registered for today's event from all States of Australia and also New Zealand. The theme for this conference is Emerging from COVID IR, New Practices and Trends for 2021 and Beyond. We've got a great line-up of senior regulatory, corporate investment community representatives to review the year and give their tips for 2021. As you know, this event replaces our usual in-person Annual Conference and Awards events usually held at this time of the year but you'll be pleased to hear, we hope to run them as in-person events again in Sydney on the 26th of May, next year.

Ian:

The format for this afternoon will be that we'll have five sessions with a 15 minute break between the second and third session. There'll also be a two minute transition between all the other sessions and we'll conclude no later than 5:00 PM. There'll be an online Q and A at the end of each session and could I encourage you to submit your questions as they come to you through each session so that we can jump straight into Q and A at the end of the panel discussions. Before I hand over to our emcee, I'd like to mention a few other quick things. Firstly, for those who weren't able to attend our AGM yesterday, delighted to announce AIRA has a new chair, Sean O'Sullivan, who's head of IR at Brambles and also our new director, Ross Moffitt who's head of IR at Telstra. Sean takes over from Kelly Hibbins as chair, after her two-year term as chair, but Kelly will stay on the board. On behalf of all members, can I take this opportunity to thank both Kelly for her service and contribution as chair over the last two years.

Ian:

And also to two retiring directors, Andrew Naim from Santos and Chris Maitland from Newcrest for their fantastic contributions to the association over the last six years. The second thing is to say a big thank you to AIRA's partners and also the sponsors for today's event. To our partners, Orient Capital, our event program sponsor, Computershare, our research and insights partner and Morrow Sodali, our professional development partner and also to our sponsors for today's event, ausbiz and iReport. iReport is providing webcast services for today. The last thing I wanted to mention is that all of today's sessions will be recorded and an archive will be made available to attendees tomorrow. So now ladies and gentlemen, it's my pleasure to introduce Kylie Meritt managing director and co-founder of the fantastic online business and market streaming platform, ausbiz, who will emcee the first session this afternoon. Thanks very much Kylie over to you.

Kylie:

Thank you Ian, thank you so much. It's great as always to be involved in these AIRA meetings. It's amazing to think that it was just this time last year, we were all gathered in Melbourne in-person for this conference blissfully unaware of what was to come. My colleague Nadine Blaney actually hosted this regulatory update session and I remember just prior, we were discussing sort of the topics that were on the agenda for it and at the time we were very focused still on the outcome... Banking Royal Commission. There was a lot of talk about the corporate governance task force review and regulation of auditing inquiry and also we talked a lot about continuous disclosure in this session. But fast forward 12 months, I wouldn't say those topics are on the back burner but it's fair to say that they have been somewhat overshadowed by some other more pressing issues.

Kylie:

In the market space, the regulators have not only had to deal with the business challenges we've all faced through COVID. They really had to work through a period of market volatility in volume that clearly none of us would have predicted. And as Australia now turns that corner from COVID, we've got the new challenges of what business as usual looks like for us here, given that the global environment is far from being out of the woods. So it's at this and you might've heard this term before unprecedented juncture, that we bring together leaders from the ASX and ASIC for AIRA's annual regulatory update.

Kylie:

Janine Ryan is responsible for overseeing the compliance and enforcement services to the various ASX group entities that operate markets or clearing and settlement facilities. Janine has been with the ASX Since 2013 and was previously Deputy General Counsel, working across the ASX's businesses with a particular focus on listings and issuer services, corporate and strategy. Janine I'm delighted to say is joined by Greg Yanco who has primary responsibility for ASIC's markets group. Overseeing market infrastructure, market supervision, corporation's financial reporting and audit and insolvency practitioners teams.

The discussion will of course be ably moderated by the CEO of AIRA. Over to you, Ian Mathison.

Ian:

All right folks. So Janine and Greg, you're both going to speak for about five minutes each and give us from their respective perspectives, a bit of a report card on 2020 and also some thoughts and tips for 2021. Janine, would you like to go ahead first? I'm not sure also whether you're in a position to talk about some changes to guidance note eight as well, but I'll let you go ahead.

Janine:

Thank you, Ian, and thank you for the opportunity to be here today and apologies for being on phone, despite our best plans of testing. It seems to have some technical issues today. I think as most people have experienced this year; our focus has shifted to COVID related initiatives in terms of our monitoring. If I run through from where we started at the beginning of the year, the initial focus was obviously... And sort of updating to the market on how to manage issues like earnings' updates in the uncertain environment that we had and clearly there we were recognizing that entities might need to redraw their guidance as a result of that uncertainty and may also not be able to re-instate that guidance in the short term. And obviously I think that's consistent with what we've seen play out over the year.

Janine:

An update to that... So what we have done in the last few months is prepared an update to guidance note eight, which addresses some of the issues around earnings' burdens, taking into account some of the COVID related factors but also more general feedback we'd been hearing from stakeholders about some of the issues around updating earnings' guidance, consensus forecast and comparisons to prior periods. So we've got a very well progressed draft of provisions to guidance note eight. We've engaged in consultations with a number of stakeholders at the moment, including AIRA and Ian and Kelly gave us some really useful feedback on that. The final changes on that are currently with ASIC so we're just working through the changes with them but expecting that guidance to come out, hopefully sometime in December.

Janine:

Just a quick precursor to that coming out, what that guidance deals with, it's really a few practical questions about how to approach issues around earnings. In particular, some of the issues around how companies can determine what they consider consensus to be for their organizations, for example, how to deal with outliers, how to deal with stale analysis. So there'd be some guidance on those issues. We're also getting an indicative percentage guidance on when companies might need to announce a variation against consensus as well. I won't speak in detail about that yet because they're still finalizing the changes but I think companies will find that useful when it comes out. The other measures we've had,

which have been really effective but are about to reach the end of their life where obviously the emergency capital raising relief that we had in place.

Janine:

And we had quite a few entities about 17 in total raising about \$13 billion of capital through the capital raising relief. That relief will expire on Monday, next week, given their stabilization in the market and the general views from stakeholders that there wasn't a need to continue that relationship. We've extended in conjunction with ASIC, the lodgement period for audited and reviewed accounts for the 31 December period. So companies will again have the benefit of the extension by a month to lodge their audited or reviewed accounts, obviously that doesn't affect the timing of entities putting in their 4Ds and 4Es. I think it's fair to say in relation to that relief, we certainly didn't see a huge amount of take-up from listed entities and certainly not at the larger end of the market. Most entities seem to be able to get their audit and reviews still done within normal timeframes, which you think is great from the perspective of timely disclosure to the market.

Janine:

I think the other area of focus for us has been around, I guess, what I'll describe as, misleading announcement to the market with a particular focus on sort of ramping of COVID related initiatives or companies looking to change their business model as a result of COVID obviously, companies are very open to do that but we did see a lot of announcements that were being made that probably didn't meet our requirements in terms of appropriately balancing the new initiatives and disposal of those with the risks that come with those initiatives and really the state of development and readiness of a lot of those initiatives. So that will be a continuing watch point for us going forward. It was also an area where we were working very closely with ASIC as well, just to ensure that we weren't seeing a lot of ramping in the market off the back of new initiatives or development.

Janine:

The piece I would probably add on there too, is another focus area. I think both for us and without speaking for ASIC but I know it's something on their radar is really ensuring that entities have got robust policies around their social media activities because again, we've seen a little bit over the COVID period, some sort of leakage of information on social media and other platforms. That's probably not consistent with entities complying with their continuous disclosure obligations. So that'll be a watch point for us as we head into the new year. Probably the final area of focus we've had during COVID and particularly over the financial reporting seasons of 30 June was really looking at going concern issue, qualifications in accounts but also closely reviewing entities to accordingly reporters. I think pleasingly at this stage, we're not seeing an increase in goings and qualifications or issues at the moment, but it will continue to be a watch point for us and we expect also ASIC over the new year, as the market settles down post COVID and also as we see the role of some of the government subsidies and other initiatives we've had in place.

Janine:

If I look forward to next year, as you said, we'll have the continuous disclosure guidance note coming out. We'll be doing some work around corporate government statements as entities move through to reporting against the fourth edition of the corporate governance principles. And we'll be doing some work on and there is further rounded FTP processing and forms coming through in March of next year as well, which will be a focus area over the next couple of months. So I think, that was it from me. So I thank you, Kylie and Ian.

Ian:

Thanks very much Janine. Greg, over to you if you...

Greg:

Thanks Ian. I think I'm ready to go. I guess we'd been, we learn a lot ourselves. We learned a lot about ourselves pretty quickly, which I thought might be interesting to start with. One thing we learn very quickly, was important to keep the guidance and relief up to date. And so we were pretty fortunate, I guess you could call it luck of foresight. The fact that we recently changed the share purchase plan limit up significantly to \$30,000 was really important for the capital risings this year because once we got into looking at how things were allocated out, we felt that that increase led to the fairness that people were looking for. I know not everyone was happy about that. We'd also had fairly fresh guidance on confidential information and our report on allocations and equity raisings were all really pretty fresh.

Greg:

We went into this year in fairly good shape. In that respect, I'll talk a little bit more about the capital raising second, the key thing for us was to switch pretty quickly from the parts of the corporation's team and the market supervision team that were really looking more at regulatory type supervision to more guidance and focusing on supporting markets, market participants and corporations pretty quickly. So we found the people who were looking to both ASIC and ASX as guidance. We're all pretty quick to give relief on the virtual meetings, the timing of audit accounts, as Janine mentioned. Wet signatures, we put out some guidance on reporting during the COVID period, we provided some relief on low capital raisings, some guidance about holding virtual meetings and one of the important things was most of you will be aware that we do... I know we talked about the COVID governance task force.

Greg:

We did complete our work on executive remuneration but decided to hold off on publishing the final report because there's a bit of work in doing that but we did get demand for some feedback. So we produced an information sheet on executive remuneration that was quite timely and was well-received because it came in the period leading up to the reporting period. We were glad that we'd done that. In the markets area,



we published our expectations about... this is actually important for everyone. We published our expectations about critical systems and staff and governance and also outsourcing. But we also found that we were having to intervene when there was an issue in the market that both market participants back offices was struggling and Chess itself was struggling to handle the amount of trading that was going on in March so unfortunately we had to intervene, put some limits on but they weren't there for too long.

Greg:

We did want to facilitate placement so that with ASX... And ASX get most of the credit for this, I'm sure. So the raisings could be done quickly, and we did want companies to consider the balance in their allocation. When you do a discounted placement, there is a wealth transfer. We've got a couple of fairly high profile... I think there was three fairly high-profile incidents where shareholders were not happy but overall, we were pretty happy with how our boards were engaging with the allocation processes. We felt that the boards were much more engaged than we'd seen previously when we did the light work, leading up to our equity capital raising report.

Greg:

That evolved pretty quickly. We worked with ASX to put some control to try and add some transparency to the process. We monitor a lot of transactions to see how messaging was going. We don't like things leaking to the paper all the time but I didn't mind seeing the messaging that was coming out of investment banks about how deals were going because to me, that messaging looked pretty sound and consistent with what we were saying when we're looking at allocations. So we'll continue to do that. Looking back, some of the things that we found with a really sound governance practices, were the basis of people to go through this year in good shape. Particularly in the financial services' area, we found people not only putting... Getting people working really quickly, putting in some controls in systems but really looking at their governance as well.

Greg:

That was good because that turned out to be fairly critical. Globally, remote working went pretty well. We saw a few hiccups with home internet systems, particularly when school kids were arriving home but generally those things started to work and still does. So I guess my tips... We found people resilience is as important as technical resilience. So whilst we're encouraging everyone to review their technical and cyber resilience, we hope that people will continue to review the resilience of their people and not just because they've been at home for a year, some of them, but because we found that this is really important, just highlighting that. Consider our guidance on the impact of COVID and financial reporting. Just financial reporting generally whilst yes, we've moved on to a whole new set of priorities but on actual reporting, we're still seeing about 5% of the financial reports we review having to be restated.

Greg:

The government will be consulting on some issues such as... They'll be consulting on electronic communications rather than ad copy on the virtual meetings on it and things like that. Really get engaged in that consultation because now's the opportunity to get some real change in those area. And finally, because I do have the cradle to grave a job, insolvency is also part of my world. If you are in difficulties, it's really important to get sound advice and whether it be restructuring advice or just advice on managing, creditors, debtors, your business, we found that when people get sound advice, they come out of those things in a whole lot better shape and create less work for us.

Ian:

Thanks very much, Greg. Folks, just a reminder, if you'd like to ask a question, on the bottom right of your screen there's a little bubble where you can click on. It says, 'ask a question.' Please feel free to type in questions into that facility, through all the sessions this afternoon. We've got about five minutes for Q and A with the panel. I've got a couple of questions that have come through already. Perhaps Janine, the first one to you. Would you mind clarifying what the proposed changes to... It was guidance note eight and listing rules in relation to consensus, please. You're on, there we go.

Janine:

Okay. Back on, apologies for that. I couldn't tell where it was. Yes. So it'll address a number of issues and a lot of this really came... Some specifically came out of COVID but also about general feedback that we've been getting along the way about entities, potentially struggling to work out what the consensus was, where they might have had outliers in the sort of analyst forecast or really widespread in views on analyst forecast or where analysts forecast might've become stale over time. We're really trying to give entities some guidance to help them. Really what we're saying there is that the owners will be on the company to determine what it considers consensus to use for the relevant company because really it's best placed to look at those analysts forecasts and to form a view as to whether they think that they're properly formulated.

Janine:

That'll be the first part where we're providing some guidance but we are planning on putting in some indicative thresholds for the percentages to help people to assess when a variation from consensus might be required to be disclosed to the market and that's not something we've had out before. So again, I won't get into the data yet because I need to wait until that comes out publicly but hopefully that will help people to get a little bit more of a sense of the percentages that they might be looking at. Again, I say it's guidance only. It can be obviously case specific for any particular company as to what's happening with a particular company but it will hopefully help with some of those issues.

Ian:

Right. So just to be clear that's going to be changed to guidance note eight?

Janine:

Correct. Yes. Apologies. Sorry. I've yet to get to ask them to continue this disclosure of guidance note eight.

Ian:

Great and any sense of timing for the release of that note?

Janine:

Hopefully in the next couple of weeks. So we've received feedback from all of the stakeholders that we've spoken to and we've made some minor changes to that and we're currently engaging with ASIC to finalize that. We've been through an extensive process with ASIC before we went outside to third party. So we're hoping it's quick. Aiming for around the first week of December at this stage but we need to wait and see how that plays out.

Ian:

Great. Janine next question is also to you. When submitting an ASX announcement, the company selects whether an announcement is price sensitive. Often this is overridden by ASX. The questioner says we've had a few instances when the ASX determine announcement is not price sensitive. How does the ASX determine this in such a quick timeframe between the company uploading the announcement and the announcement being published?

Janine:

It will depend on the entity but typically our process is that we've got a team in the market announcements office who do an initial scan off the announcements just really to see what it's about and context. They will have a quick look and then now we'll search through a listings' compliance by the full review, but everyone is sitting there doing it in real time, which is how we do it relatively quickly. If there are any specific concerns on those things that anyone would like to talk to us about, of course, we're very happy. I'm happy to discuss it as well.

Ian:

Thanks very much. Greg the next question is to you. As I think you know, ERA's position on virtual AGMs is that the law, that is, the Corporations Act should allow for virtual AGMs. That doesn't mean to say that every company after the current instrument expires on the 20th of March next year, will continue to have a virtual AGM, but it should be allowed. Given that there have been some concerns and complaints expressed by a few activists



about preferring hybrids over virtual meetings on the basis that some companies in their opinion have not managed Q and A well. Has ASIC actually had any complaints about the conduct of virtual audience? You're on mute, sorry.

Greg:

Gosh, I was really keen not to do that. We haven't seen much in the way of compliance about this, this just the odd thing but I guess my thing, and of course it's a matter for the government, that's why I really want people to engage in this. The government will be consulting on what the new model will be. My view is, and this is a personal view, that technology, if it's not already caught up, will catch up really quickly on making this work better so I would expect that when we come around to the 20, 21, 22 reporting AGM season, that the virtualized AGMs will be really sophisticated. There's still an argument to have the hybrid and have people there. And I guess the government will be considering all aspects of this and they'll be making a call on that.

Ian:

Fantastic. In fact this now brings to a close the regulatory update session. Thanks for those questions that were submitted by attendees. On behalf of AIRA and all attendees today, can I thank both of the members of the panel, Janine Ryan from ASX and Greg Yanko from ASIC for their remarks today and giving us a bit of both a report card on 2020 and also some tips for 2021. Folks we now have a quick two-minute transition to the next session, which is a global outlook session looking at post pandemic themes and mega trends. When we reconvene in a couple of minutes, the moderator, correction, the emcee for the next session will be Nadine Blaney another ausbiz presenter. Thanks very much to the panel. All right.

**End.**

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