# PANORAMIC RESOURCES LIMITED

**ACN 095 792 288**

# A GUIDE TO THE DISCLOSURE OF INFORMATION

**Version 3 – July 2013 (following ASX Listing Rule 3.1 Amendments)**

# 1 Introduction

Panoramic Resources Limited (PRL) is committed to providing relevant up to date information to its shareholders and the broader investment community in accordance with the continuous disclosure requirements under the ASX Listing Rules and the Corporations Act. The continuous disclosure practices of PRL and its controlled entities are to ensure that all shareholders and investors have equal access to the Company's information.

The continuous disclosure provisions of the Corporations Act and the ASX Listing Rules mean that criminal and civil liabilities could be imposed on PRL and its stakeholders if information is not released immediately (promptly and without delay) after it becomes known.

This memorandum deals with:

(a) the key obligations of Panoramic Resources Limited (PRL);

(b) the type of information that needs to be disclosed;

(c) the procedures for internal notification and external disclosure;

(d) the procedures for promoting understanding of compliance with the disclosure requirements; and

(e) the procedures for monitoring compliance.

# 2 Key Obligations of PRL to Notify

## *2.1 Directors, officers, employees and agents ("Stakeholders") of PRL:*

***Are you aware of any information about PRL that might influence someone in deciding to buy or sell PRL's securities? This type of information is commonly known as "market sensitive information".***

If so, immediately contact (telephone, email) the Managing Director or the Company Secretary if the Managing Director is not immediately available..

## *2.2 Managing Director and Company Secretary of PRL*

The Managing Director and/or the Company Secretary will interrogate and consider the information received with the Stakeholder and others involved if required and if deemed necessary, after consultation with the Company's legal advisor and /or the PRL Board, immediately inform the Company's ASX Relationship Officer and if requested, an announcement to ASX will be prepared and released which may include a trading halt or in exceptional cases, voluntary suspension of trading of PRL shares on the ASX.

## 3 PRL's Obligations

ASX Listing Rule 3.1 and Guidance Note 8 (as amended in May 2013) requires an entity to immediately (promptly and without delay) inform the ASX of any information concerning PRL or its associated entities which PRL or its associated entities is or becomes aware and which a reasonable person would expect to have a "material effect" on the price or value of shares and/or other securities in PRL. Chapter 6CA [Sec 674 to 678] of the Corporations Act 2001 ("Act") reinforces the ASX Listing Rule 3.1.

The requirement to inform the ASX of this information does not apply if, and only if, each of the following conditions is and remains satisfied:

- a reasonable person would not expect the information to be disclosed;
- the information is confidential and the ASX has not formed the view that the information has ceased to be confidential; and
- one or more of the following conditions apply:
  - it would be a breach of a law to disclose the information;
  - the information concerns an incomplete proposal or negotiation (for example, a negotiation to enter into a new contract);
  - the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
  - the information is generated for the internal management purposes of the Company; or
  - the information is a trade secret.

Attached to this Guide is a copy of the abridged version of ASX Guidance Note 8 (May 2013) in respect of Listing Rule 3.1 which explains the ASX approach and requirements to this Listing Rule.

## 4 How Does PRL Become Aware of Information?

PRL will be deemed to have become aware of information where an officer of PRL has, or ought reasonably to have, come into possession of information in the course of the performance of his/her duties as an officer of PRL.

There is an assumed extension of PRL's awareness beyond the information its officers in fact know to information that anyone within the Company has possession of and it is of such significance that it ought reasonably to have been brought to the attention of an officer of PRL. **In light of this extension, it is important that all stakeholders of PRL comply with the Key Obligations of this Guide set out in section 2 above**.
The term "officer" has the same meaning as in the Act and includes directors, company secretaries and certain senior managers.

## 5 Materiality

PRL must disclose information if a reasonable person would expect that information to have a material effect on the price or value of the securities of PRL. A reasonable person is taken to expect information to have such an effect if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell, those securities.

Neither the Listing Rules nor the Act define when information will be taken to have such an effect. In practice, usually a monetary test is adopted using thresholds from the accounting standards relevant to preparation of financial statements. However, other concepts of materiality are also adopted in addition to a monetary threshold. For example:

- whether a matter will significantly damage PRL's image or reputation;
- whether a matter will significantly affect PRL's ability to carry on business in the ordinary course; or
- whether the matter involves a breach of any law or regulation.

## 6 The Type of Information that Needs to be Disclosed

It is not possible to exhaustively list the information which must be disclosed as information extends beyond pure matters of fact and includes matters of opinion and intention. The following examples are provided to give you some idea about information that might require disclosure.

If there is any doubt about the importance of information which comes to light, there should be immediate notification to the Managing Director of PRL (or the Company Secretary if the Managing Director is not immediately available) so that advice can be given and a formal decision can be made by the Managing Director as to whether or not to release the information.

Examples of information that might need to be disclosed include the following:

- a new material contract or licence that PRL had entered into or a variation to an existing contract or licence; or
- any event which could affect PRL's assets, earnings or profitability such as:
  - litigation being commenced by or against PRL (e.g. because of an alleged breach of contract etc.);
  - industrial action being threatened or commenced;
  - significant unbudgeted capital expenditure commitments arising; or
  - proposed changes in the nature of the business of PRL; or
- any other information regarding PRL that may be material to the share price or the value of shares and/or other securities of PRL such as:
  - proposed changes to the Board or senior management; or
  - proposed changes to the capital structure of PRL.

For other examples refer to the checklist in the Schedule and the attached abridged version of ASX Guidance Note 8.

## 7 The Continuous Disclosure Officer

The Board of Directors of PRL have appointed the Company Secretary as the Company's Continuous Disclosure Officer. In the event that the Company Secretary is absent or on leave the Managing Director will act in this capacity.

The Continuous Disclosure Officer is primarily responsible for ensuring that PRL complies with its disclosure obligations and is primarily responsible for supervising what information will be disclosed.

## 8 Confidential Information

In determining whether any information that comes to light about PRL needs to be released, it will be necessary to determine whether the conditions permitting non-disclosure or carve out which are mentioned in section 3 above apply. In particular, a determination may need to be made as to whether the information is confidential. If a determination is made that the information is confidential, then the Managing Director of PRL will ensure that anyone who has a copy of the information is aware that it is confidential.

## 9 Relationship with Media and Public

PRL must disclose information needed to prevent a false market. Accordingly, it may be necessary for PRL to correct a rumour or to respond to speculation, including media speculation, regarding PRL.

Relevant information must be provided to ASX under Listing Rule 3.1 and released to the market before it is provided to the media (even on an embargoed basis).

Care must be taken not to make comments to the media or others which could result in rumours or speculation about PRL. Staff must comply with the media relations policy of PRL. That policy limits media contact to the Managing Director of PRL. Other officers and executives may only confer with the media in relation to a particular matter concerning PRL if they have obtained the prior express approval of the Managing Director of PRL or his delegate for the purpose of giving such approval.

## 10 Employment and Monitoring of Compliance

To promote an understanding of the continuous disclosure obligations imposed on PRL by the Corporations Act and the Listing Rules, a copy of this guide will be provided to all directors, executive officers and employees (present or future) of PRL and to all agents of PRL who may from time to time be in the possession of undisclosed information that may be material to the price or value of PRL's securities.

The Managing Director of PRL and the Continuous Disclosure Officer will ensure that the continuous disclosure obligations of PRL are drawn to the attention of officers, employees or agents of PRL, on a regular basis.

At least once in every 12 month period, the board of directors of PRL will review PRL's compliance with this memorandum. From time to time, and if considered necessary, the PRL Board may update this memorandum (and distribute an updated copy to all directors, officers, employees and relevant agents of PRL) to reflect changes in PRL's business operations and changes in the Act and the Listing Rules.

A copy of this document has been placed on the PRL intranet site. The induction procedures for new staff must require that a copy of this Guide be provided to each new employee. It is the responsibility of the Company Secretary of PRL to ensure that all staff and consultants have received this Guide and understand its requirements.

## 11 Share Trading by Officers

Any director, officer or employee of PRL proposing to trade in PRL's shares must comply with the Company's Share Trading Policy on rules for trading in the Company's securities.

## 12 Audit

PRL's audit committee will annually audit PRL's adherence to the procedures as set out in this Guide.

## 13 Reporting and Correcting Mistaken Non-Disclosure

Any director, officer or employee of PRL who becomes aware that relevant information has not been notified and disclosed in accordance with the preceding provisions, should immediately telephone or email the Managing Director of PRL (or if the Managing Director is not immediately available, the Company Secretary of PRL) so that appropriate action can be taken. It is far better to correct mistaken non-disclosure and lodge an announcement belatedly than to continue to ignore the omission and fail to comply with Listing Rule 3.1.

## 14 Conclusion

**Compliance with this policy is very important. Failure to comply could lead to civil or criminal liabilities for PRL and its officers and could have a damaging impact on the perception of PRL within the investment community. Any director, officer, employee or agent of PRL who wilfully or negligently causes a failure to comply by PRL will be considered to have engaged in serious misconduct which may result in the termination of their engagement by PRL.**

All directors, officers, employees and agents are encouraged to actively consider the need for disclosure. Do you have information likely to influence a person to buy or sell PRL's securities? If so, notify the Managing Director of PRL as soon as possible. It is far better to consider and, where appropriate, reject the need for disclosure rather than make what could be a false assumption that information does not need to be disclosed.

**SCHEDULE**

**NOTIFICATION CHECKLIST**

*You are aware of information concerning PRL which you think might influence someone to buy or sell PRL's securities. Use this checklist to help you determine whether the information may require disclosure under Listing Rule 3.1 (the attached abridged version of ASX listing rule Guidance Note 8 – Continuous Disclosure also provides examples and details to assist listed entities with their obligations under listing rule 3.1). Remember, if in doubt, always notify and discuss your concerns with the Managing Director or Company Secretary of PRL.*

## 1 Is the Information likely to influence someone in buying or selling PRL's securities?

Is the information likely to have a material effect on the price or value of the shares of PRL? Would the information be likely to influence people who commonly invest in securities in deciding whether or not to subscribe for, buy or sell PRL's shares?

For example:

- does the information relate to any change in the value of PRL's investment in PRL?
- is the information about a material acquisition or sale by, PRL?
- is the information about a significant "milestone" achievement for PRL?
- are you about to commit PRL to a strategic alliance, or business relationship, or new initiatives?
- has someone threatened to sue PRL?
- have you instructed a corporate solicitor to initiate legal action against a PRL customer or supplier or any other party?

If so, the information might be material and you should immediately notify the Managing Director of PRL or the Company Secretary of PRL if the Managing Director is not available.

## 2 Are the conditions for non-disclosure satisfied?

Are **each** of the following 3 conditions satisfied:

Would a reasonable person expect the information to be disclosed? For example, would disclosure result in unreasonable prejudice to PRL?

**AND**

Is the information confidential? Are all of the persons who, to your knowledge, are in possession of the information, bound by an obligation of confidentiality? Has there been any media speculation concerning the information?

**AND**

Does one or more of the following apply:

- it would be a breach of a law to disclose the information;
- the information relates to an incomplete proposal or negotiation;
- the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- the information is generated for the internal management purposes of PRL;
- the information is a trade secret?

Ultimately, it is not for you to determine whether these conditions are satisfied. Having determined that:

- the information has been received in the course of your duties for PRL; and
- the information is likely to influence someone to buy or sell PRL securities,

you must disclose the information to the Managing Director or the Company Secretary.

# Continuous Disclosure:
# an Abridged Guide

**Important notice:** ASX has published this abridged guide to assist listed entities and their officers to understand and comply with their continuous disclosure obligations under the Listing Rules. Nothing in this guide necessarily binds ASX in the application of the Listing Rules in a particular case. In issuing this guide, ASX is not providing legal advice. Listed entities and their officers should obtain their own advice from a qualified professional person in respect of their obligations. ASX may withdraw or replace this guide at any time without further notice to any person.

More detailed guidance on the issues covered in this guide can be found in ASX Listing Rules Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*, available on the ASX website at:

http://www.asxgroup.com.au/media/PDFs/gn08_continuous_disclosure.pdf

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ASX
COMPLIANCE

# Continuous Disclosure: an Abridged Guide

## 1. Introduction

This Guide is published to assist listed entities and their officers to understand and comply with their disclosure obligations under Listing Rules 3.1 and 3.1A. These rules provide:

*3.1 Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.*

*3.1A Listing rule 3.1 does not apply to particular information while each of the following requirements is satisfied in relation to the information:*

*3.1A.1 One or more of the following 5 situations applies:*

- *It would be a breach of a law to disclose the information;*
- *The information concerns an incomplete proposal or negotiation;*
- *The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- *The information is generated for the internal management purposes of the entity; or*
- *The information is a trade secret; and*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

*3.1A.3 A reasonable person would not expect the information to be disclosed.*

Compliance with Listing Rule 3.1 is critical to the integrity and efficiency of the ASX market and other markets that trade in ASX quoted securities or derivatives of those securities. Reflecting this, Parliament has given the rule statutory force in section 674 of the Corporations Act.

If a listed entity breaches Listing Rule 3.1, it may also breach section 674(2). This is a both criminal offence and a financial services civil penalty provision, punishable in the former case by a fine of up to $110,000 and in the latter case by a civil penalty of up to $1,000,000. Alternatively, if ASIC has reasonable grounds to suspect a breach it may, by administrative action, issue an infringement notice imposing a penalty of up to $100,000. The entity may also be liable to pay damages to any person who suffers loss or damage as a result of the breach.

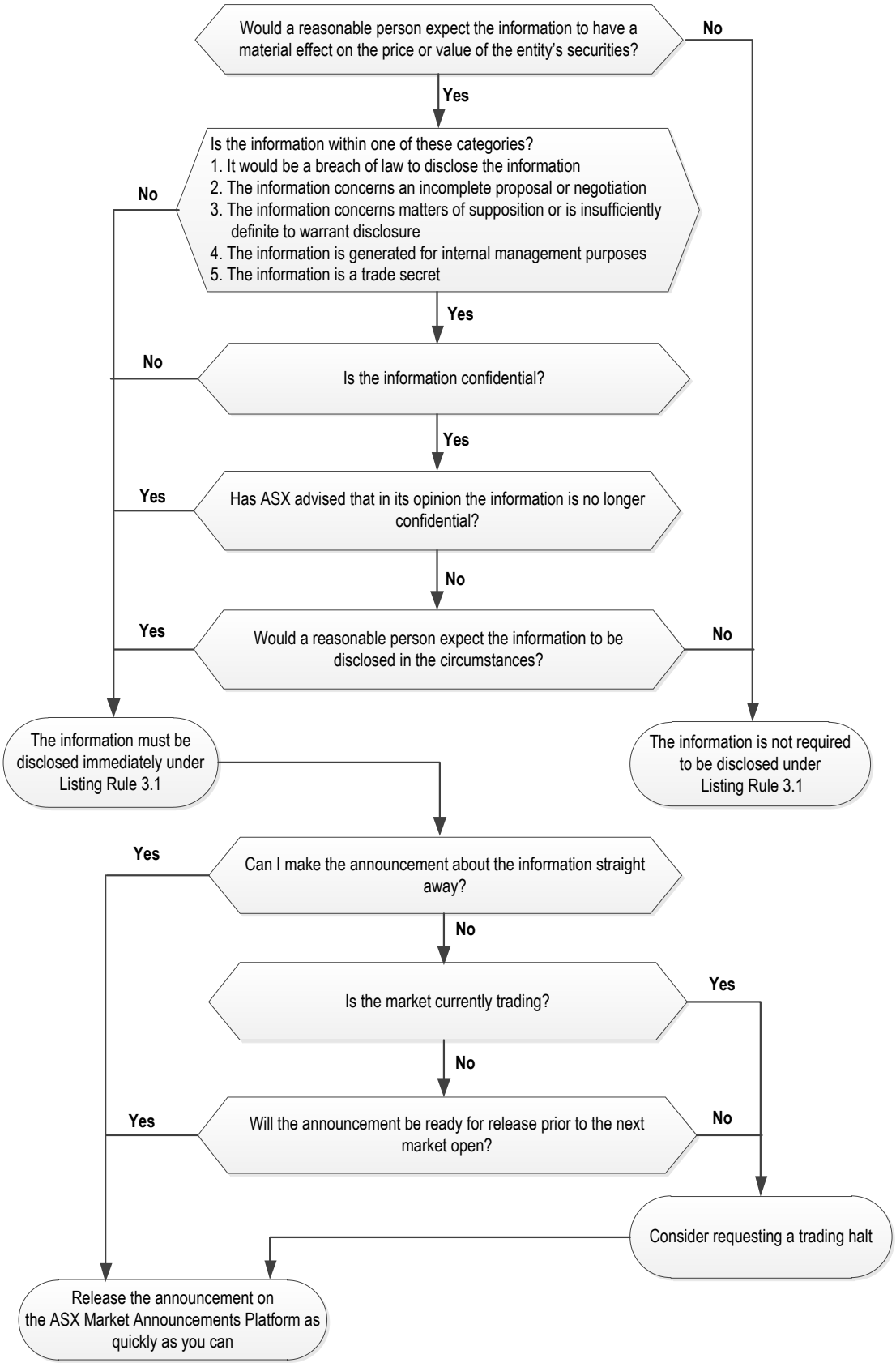
An officer who is involved in such a breach may infringe section 674(2A) of the Corporations Act. This is a civil penalty provision punishable by a penalty of up to $200,000. The officer may also be liable to pay damages to anyone who suffers loss or damage as a result of the breach, although there is a due diligence defence in section 674(2B), which protects officers of a listed entity from civil penalties and civil claims for damages if they can prove that they took all steps that were reasonable in the circumstances to ensure that the entity complied with its continuous disclosure obligations and, after doing so, believed on reasonable grounds that the entity was complying with those obligations.

It should also be noted that an officer or employee of a listed entity who gives, or authorises or permits the giving of, materially false or misleading information to ASX under Listing Rule 3.1 (including in response to any enquiry ASX may make of the entity under that rule) may commit a criminal offence under section 1309 of the Corporations Act.

## 2. An overview of the continuous disclosure decision process

The diagram on the next page outlines the decision process a listed entity should generally follow, if it becomes aware of information that could have a material effect on the price or value of its securities, to determine whether

the information needs to be disclosed under Listing Rules 3.1 and 3.1A and, if it does and the entity is not in a position to issue an announcement straight away, whether it should consider requesting a trading halt:




The questions in the second to fifth hexagons in the diagram above go to whether the information falls within the carve-outs to immediate disclosure in Listing Rule 3.1A. It should be noted that these questions may need to re-appraised from time to time as circumstances change (eg, as a previously incomplete proposal or negotiation approaches completion or if the information has ceased to be confidential).

## 3. What information does a listed entity have to disclose?

Listing Rule 3.1 requires a listed entity to disclose information "concerning it" that "a reasonable person would expect to have a material effect on the price or value of the entity's securities". This type of information is referred to in this Guide as "market sensitive information".

The notes to Listing Rule 3.1 give the following examples of the type of information that could be market sensitive:

- a transaction that will lead to a significant change in the nature or scale of the entity's activities;
- a material mineral or hydrocarbon discovery;
- a material acquisition or disposal;
- the granting or withdrawal of a material licence;
- the entry into, variation or termination of a material agreement;
- becoming a plaintiff or defendant in a material law suit;
- the fact that the entity's earnings will be materially different from market expectations;
- the appointment of a liquidator, administrator or receiver;
- the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility;
- under subscriptions or over subscriptions to an issue of securities (a proposed issue of securities is separately notifiable to ASX under Listing Rule 3.10.3);
- giving or receiving a notice of intention to make a takeover; and
- any rating applied by a rating agency to an entity or its securities and any change to such a rating.

This list is by no means exhaustive and there are many other examples of information that potentially could be market sensitive.

For these purposes, "information" extends beyond pure matters of fact and includes matters of opinion and intention. It is not limited to information that is generated by, or sourced from within, the entity. Nor is it limited to information that is financial in character or that is measurable in financial terms. Under Listing Rule 3.1, an entity must disclose all information concerning it that it becomes aware of from any source and of any character, if a reasonable person would expect the information to have a material effect on the price or value of its securities.

## 4. When is information market sensitive?

The test for determining whether information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1 is set out in section 677 of the Corporations Act. Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of an entity's securities if the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of" those securities.

It should be noted that the test in section 677 is an objective one and the fact that an entity's officers may honestly believe that information is not market sensitive and therefore does not need to be disclosed will not avoid a breach of Listing Rule 3.1, if that view is ultimately found to be incorrect.

ASX acknowledges that because of this, the test for determining the materiality of information in section 677 can give rise to some difficulty in practice for listed entities in assessing whether or not they have an obligation to disclose information under Listing Rule 3.1. They are effectively required to predict how investors will react to particular information when it is disclosed. In some cases this may be fairly obvious but in others not so. However, this difficulty is inescapable. It is the entity, and only the entity, that can and must form a view as to

whether the information it knows, and the rest of the market does not, is market sensitive and therefore needs to be disclosed under Listing Rule 3.1.

An officer of a listed entity who is faced with a decision on whether information needs to be disclosed under Listing Rule 3.1 may find it helpful to ask two questions:

(1) "Would this information influence my decision to buy or sell securities in the entity at their current market price?"

(2) "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing this information had not been disclosed to the market?"

If the answer to either question is "yes", then that should be taken to be a cautionary indication that the information may well be market sensitive and, if it does not fall within the carve-outs to immediate disclosure in Listing Rule 3.1A (see below), may need to be disclosed to ASX under Listing Rule 3.1.

Given the significant penalties that a breach of Listing Rule 3.1 and section 674 can attract, ASX recommends that listed entities and their officers exercise appropriate caution in assessing whether information is market sensitive or falls within the carve-outs from disclosure in Listing Rule 3.1A, and that they carefully weigh up the potential consequences of not disclosing particular information in any given case.

It should be noted that a listed entity must disclose information under Listing Rule 3.1 and section 674, even if does not appear to be in its short term interests to do so (eg because the information might have a materially negative impact on the price of its securities and jeopardise a transaction that it is trying to conclude). It must also comply with those obligations even where it is party to a confidentiality or non-disclosure agreement that might otherwise require it to keep information confidential.

## 5. The need to assess information in context

In assessing whether or not information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1, the information needs to be looked at in context, rather than in isolation, against the backdrop of:

- the circumstances affecting the listed entity at the time;
- any external information that is publicly available at the time; and
- any previous information the listed entity has provided to the market (eg in a prospectus or PDS, under its continuous or periodic disclosure obligations or by way of earnings guidance).

For example, a small drop in earnings, by itself, may not be considered market sensitive. However, if that small drop in earnings results in the entity breaching a financial covenant and committing an event of default under its banking facilities, the situation is quite different. Conversely, information that an entity has received a formal offer from someone interested in purchasing a major asset at a premium price would usually be considered market sensitive (although, under Listing Rule 3.1A, the entity may not be required to disclose information about the offer for so long as it remains confidential and negotiations on the transaction are incomplete). However, if at the time it receives the offer, the entity has no intention of selling, or no capacity to sell, the asset, or the prospective purchaser does not have the wherewithal to complete the transaction, the information may not be market sensitive.

The need to assess information in context also means that new information may need to be disclosed because of its impact on information previously disclosed. For example, information that an entity has investigated and decided not to pursue a particular material business opportunity may not be market sensitive, if the market has no knowledge or expectation that the entity has been considering the opportunity. However, if the entity has previously announced that it was intending to pursue the opportunity, the fact that it has changed its mind may well be market sensitive and therefore need to be disclosed under Listing Rule 3.1.

## 6. When does an entity become "aware" of information?

Under the Listing Rules, an entity becomes *aware* of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.

The term "officer" has the same meaning as in the Corporations Act and includes directors, secretaries and certain senior managers.

The extension of an entity's awareness beyond the information its officers in fact know to information that its officers "ought reasonably have come into possession of" effectively deems an entity to be aware of information if it is known by anyone within the entity and it is of such significance that it ought reasonably to have been brought to the attention of an officer of the entity in the normal course of performing their duties as an officer. Without this extension, an entity would be able to avoid or delay its continuous disclosure obligations by the simple expedient of not bringing market sensitive information to the attention of its officers in a timely manner.

In light of this extension, it is important that listed entities have in place appropriate reporting and escalation processes to ensure that information which is potentially market sensitive is promptly brought to the attention of its officers so that there are no gaps between the information they in fact know and the information they are deemed to know for the purposes of Listing Rule 3.1.

In applying the definition of "aware", it must be remembered that the information which has to be disclosed under Listing Rule 3.1 is market sensitive information, that is, information that a reasonable person would expect to have a material effect on the price or value of an entity's securities. An entity may receive information about a particular event or circumstance in instalments over time. Sometimes the initial information about the event or circumstance is such that the entity cannot reasonably form a view on whether or not it is market sensitive and the entity may need to await further, more complete, information, or to make further enquiries or obtain expert advice, in order to be able to make that determination. In such a case, the entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when an officer has, or ought reasonably to have, come into possession of sufficient information about the event or circumstance in order to be able to appreciate its market sensitivity.

It should not be thought, however, that this opens up an avenue for an entity to avoid or delay its disclosure obligations – for example, by forming a convenient view that it needs further information before it can assess market sensitivity or by not making or delaying any further enquiries or request for expert advice needed for that purpose. The test for whether or not information is market sensitive is an objective one and, if the entity in fact has information that is market sensitive, the subjective opinion of its officers that it needs further information before it can assess market sensitivity will not avoid a breach of Listing Rule 3.1. Also, the extension of an entity's awareness to information that an officer ought reasonably have come into possession of will effectively require the entity, when it is on notice of information that potentially could be market sensitive, to make any further enquiries or obtain any expert advice needed to confirm its market sensitivity within a reasonable period.

## 7. The requirement to disclose information "immediately"

Under Listing Rule 3.1, market sensitive information must be disclosed to ASX ***immediately*** upon the entity becoming aware of the information, unless it falls within the carve-outs from disclosure in Listing Rule 3.1A (see below).

The word "immediately" does not mean "instantaneously", but rather "promptly and without delay".

Doing something "promptly and without delay" means doing it as quickly as it can be done in the circumstances (acting promptly) and not deferring, postponing or putting it off to a later time (acting without delay).

A period of time will necessarily pass between when an entity first becomes obliged to give information to ASX under Listing Rule 3.1 and when it is able to give that information to ASX in the form of a market announcement. This passing of time, of itself, does not mean that there has been a "delay" in the provision of the information to ASX. Some announcements may be able to be prepared and given to ASX relatively quickly, while others may take longer to complete. The question is each case is whether the entity is going about this process as quickly as it can in the circumstances and not deferring, postponing or putting it off to a later time.

ASX recognises that how quickly an entity can give an announcement of particular information to ASX will be dictated by the circumstances confronting it at the time. Relevant factors may include:

- where and when the information originated;
- the forewarning (if any) the entity had of the information;

- the amount and complexity of the information concerned;
- the need in some cases to verify the accuracy or bona fides of the information;
- the need for an announcement to be carefully drawn so that it is accurate, complete and not misleading;
- the need in some cases for an announcement to comply with specific legal or Listing Rule requirements, such as the requirement for an announcement that relates to mining or oil and gas activities to comply with Chapter 5 of the Listing Rules; and
- the need in some cases for an announcement to be approved by the entity's board or disclosure committee (see below).

ASX will take these factors into account in assessing whether an entity has complied with its obligation to disclose information under Listing Rule 3.1 promptly and without delay.

ASX will also take into account the state of the market in assessing whether an entity has complied with the spirit, intention and purpose of Listing Rule 3.1 and whether it ought to refer a possible breach of the rule to ASIC. In this regard, ASX recognises that the sensitivity of the market to information is at its highest during trading hours on licensed Australian securities markets, which is when and where most trading in ASX-listed securities takes place and when the need to issue information promptly takes on greater significance. Thus, if the obligation to disclose information under Listing Rule 3.1 is triggered during a period that licensed Australian securities markets are not trading (eg, overnight or on a weekend), it will generally be sufficient from ASX's perspective for the entity to give the information to ASX for release to the market before trading next resumes. Conversely, if the obligation to disclose information under Listing Rule 3.1 is triggered while licensed Australian securities markets are trading, the entity will be expected to give the information to ASX as quickly as it can in the circumstances, or else to request a trading halt (see below).

ASX will expect an entity to act particularly quickly if ASX asks it to make an announcement under Listing Rule 3.1B because of a sudden and significant movement in the market price or traded volumes of its securities or otherwise to correct or prevent a false market in its securities. In such cases, if the entity is not in a position to issue its announcement to the market straight away, ASX will generally expect it to request a trading halt.

ASX will also expect an entity to act particularly quickly if the information to be announced is especially damaging and likely to cause a significant fall in the market price of the entity's securities (eg, information that the board of the entity has resolved to appoint an administrator or that a lender has declared an event of default and appointed a receiver). Again, in such a case, if the entity is not in a position to issue its announcement to the market straight away, ASX will generally expect the entity to request a trading halt.

Given the requirement in Listing Rule 3.1 for immediate disclosure and the significant legal and financial consequences that can follow from a breach of that rule, it is important that listed entities have in place appropriate compliance systems to ensure that information which is potentially market sensitive is promptly assessed to determine whether it requires disclosure under that rule and, if it does, that it is promptly given to ASX.

Annexure C of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* has further guidance on the policies that a listed entity should implement to comply with its obligations under Listing Rule 3.1.

## 8. The use of trading halts and voluntary suspensions to manage disclosure issues

If the market is or will be trading at any time after a listed entity first becomes obliged to give market sensitive information to ASX under Listing Rule 3.1 and before it can give an announcement with that information to ASX for release to the market, the entity should consider carefully whether it is appropriate to request a trading halt or, in an exceptional case, a voluntary suspension.

The application of a trading halt or voluntary suspension in an appropriate case can often be beneficial for both the market and the entity. It will ensure that the entity's securities are not trading on ASX and other licensed securities markets in Australia on an uninformed basis. It will also signal to investors that market sensitive information may be about to be released and that they should be wary of trading in, or entering into derivative

transactions over, the entity's securities off-market or on other trading venues. Both of these things may help to reduce the exposure of the entity and its officers to the legal and financial consequences that could follow if the entity is ultimately found to have breached its obligation to disclose information in accordance with Listing Rule 3.1.

A trading halt or voluntary suspension will not be suitable in every case. In particular, since a trading halt can only last for a maximum of two trading days, a trading halt will not be appropriate or of assistance for those more complex or protracted disclosure issues which are unlikely to be resolved within two trading days (although, in an exceptional case, a voluntary suspension might be).

An entity's primary obligation under Listing Rule 3.1 and section 674 is to give market sensitive information to ASX for release to the market promptly and without delay. ASX would not expect an entity to request a trading halt or voluntary suspension before it has assessed whether particular information is in fact market sensitive and therefore needs to be disclosed under Listing Rule 3.1. Having made that assessment, if the entity is able to give the required announcement to ASX promptly and without delay then, in most cases, it will not need a trading halt or voluntary suspension to manage its disclosure obligations.

A trading halt may, however, be necessary in the following scenarios:

- there are indications that the information may have leaked ahead of the announcement and it is having, or (where the market is not trading) is likely when the market resumes trading to have, a material effect on the market price or traded volumes of the entity's securities;
- the entity has been asked by ASX to provide information to correct or prevent a false market; or
- the information is especially damaging and likely to cause a significant fall in the market price of the entity's securities (eg, information that the board of the entity has resolved to appoint an administrator or that a lender has declared an event of default and appointed a receiver),

and in each such scenario:

- where the market is trading, the entity is not in a position to give an announcement to ASX straight away; or
- where the market is not trading, the entity will not be in a position to give an announcement to ASX before trading next resumes.

As indicated above, these are each scenarios where ASX will expect an entity to act particularly quickly and, if it is not in a position to issue an announcement to the market straight away, to request a trading halt.

A trading halt or voluntary suspension will also be necessary if for any reason there is going to be a delay in the release of an announcement under Listing Rule 3.1 and the market is trading during any part of the delay. Examples include:

- where the entity considers the announcement to be so significant that it ought to be approved by its board before it is released to the market but, due to the unavailability of directors, the board meeting is not able to be held promptly and without delay; and
- where the situation is uncertain or evolving but is likely to resolve itself within a relatively short period (in the case of a trading halt, within two trading days) and the entity considers that it would be better for the announcement to be delayed until there is greater certainty or clarity around the outcome – a case in point would be where the announcement is required because of a leak of information about a transaction under negotiation, where the entity reasonably expects to conclude the negotiations within a short period and it considers that it would be better to delay its announcement until after the negotiations have concluded and it can give a more definitive and informative announcement about the transaction, rather than to make an immediate announcement about the current state of the negotiations.

A voluntary suspension is generally only going to be appropriate where:

- the entity has been in a trading halt but the relevant disclosure issue has not been resolved within the maximum period permitted for a trading halt;

- the situation would warrant the granting of a trading halt but the entity does not believe that the relevant disclosure issue will be resolved within the maximum period permitted for a trading halt; or
- the entity is in serious financial difficulties and it is reasonably of the view that continued trading in its securities is likely to be materially prejudicial to its ability to successfully complete a complex transaction that is, or a series of interdependent transactions that are, critical to its continued financial viability.

ASX would strongly encourage an entity which is unsure about whether it should be requesting a trading halt or voluntary suspension to cover the period required to prepare an announcement, to contact its listings adviser at ASX to discuss the situation.

If the entity decides not to request a trading halt or voluntary suspension to prevent the market trading ahead of an announcement, ASX would also strongly encourage the entity to monitor:

- the market price of its securities;
- major national and local newspapers;
- if it has access to them, major news wire services such as Reuters and Bloomberg;
- any investor blogs, chat-sites or other social media it is aware of that regularly post comments about the entity; and
- enquiries from analysts or journalists,

for signs that the information to be covered in the announcement may have leaked and, if it detects any such signs, to contact ASX immediately to discuss whether it is appropriate to request a trading halt.

It should be noted that the Listing Rules, including Listing Rule 3.1, continue to apply while an entity's securities are in a trading halt or voluntary suspension. Hence, the mere fact that an entity has requested and been granted a trading halt or voluntary suspension technically does not relieve it of the obligation to announce information under Listing Rule 3.1 promptly and without delay. However, ASX does not apply the Listing Rules in a technical manner but rather in a manner that accords with their spirit, intention and purpose, and in a way that best promotes the principles on which they are based. Whether and how promptly an entity has requested a trading halt or voluntary suspension so as to prevent trading in its securities happening on an uninformed basis are significant factors that ASX takes into account in assessing whether the entity has complied with the spirit, intention and purpose of Listing Rule 3.1 and whether it ought to refer a possible breach of the rule to ASIC.

## 9. The approach ASX takes to requests for disclosure-related trading halts/voluntary suspensions

As stated in ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions*:

> "*The general principle applied by ASX in considering requests for a trading halt or a voluntary suspension is that interruptions to trading should be kept to a minimum and, therefore, a trading halt or a voluntary suspension should only be permitted where there is a material risk that trading in a particular security:*
>
> - *might occur while the market as a whole is not reasonably informed; or*
> - *otherwise might result in a false or disorderly market.*"

ASX recognises that, faced with the difficulty of predicting whether information will have a material effect on the price or value of its securities and the serious legal consequences that may follow if information is not disclosed when required, a listed entity may err on the side of caution and seek to disclose information where there may be some doubt as to whether the information is in fact market sensitive. Not all announcements an entity may wish to make will warrant a trading halt or voluntary suspension. It is for this reason that when an entity requests ASX for a trading halt or voluntary suspension to allow it the time it needs to prepare an announcement under Listing Rule 3.1, ASX will usually ask the entity to outline the nature of the information in question and assess for itself whether the circumstances warrant the granting of a trading halt or voluntary suspension.

If ASX considers that the information is of a character that is likely to be market sensitive and that the circumstances warrant a trading halt or voluntary suspension, ASX will invariably agree to the request so as to afford the entity the time it needs to prepare and issue an announcement. In that case, provided the entity has requested a trading halt or voluntary suspension promptly after it became obliged to disclose the information under Listing Rule 3.1 and, after the trading halt or voluntary suspension has been granted, then acts to issue an announcement as quickly as it can in the circumstances, ASX will regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1.

If ASX considers that the information is of a character that is unlikely to be market sensitive or that the circumstances do not warrant the granting of a trading halt or voluntary suspension, ASX may decline the request and ask the entity to complete and lodge its announcement as quickly as it can. In that case, should the information ultimately turn out to be market sensitive, provided the entity approached ASX promptly after it became obliged to disclose the information under Listing Rule 3.1 to discuss its request for a trading halt or voluntary suspension and, after the request was refused, then acted to issue an announcement as quickly as it could in the circumstances, ASX will regard the entity as having complied with the spirit, intention and purpose of Listing Rule 3.1.

When approached by an entity for a trading halt or voluntary suspension, ASX will usually explore with the entity the scope and timing of the announcement that will bring an end to the halt or suspension. In some cases where the situation is uncertain or evolving but is likely to resolve itself within a relatively short period (in the case of a trading halt, within two trading days), ASX may agree that it is appropriate for the announcement to be delayed until there is greater certainty or clarity around the outcome so that a more definitive and informative announcement can be made to the market. In other cases, it may be appropriate for an announcement to be made as soon as possible that simply explains the current situation so that the entity can come out of the halt or suspension at the earliest opportunity.

ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions* has further guidance on how to apply for a trading halt or voluntary suspension.

## 10. Does the board need to approve an announcement under Listing Rule 3.1?

The courts have acknowledged that it is appropriate for some particularly significant continuous disclosure announcements to be considered and approved by the board of directors of a listed entity before they are released. They have also made it clear, however, that this is not legally necessary in all cases.

Given the requirement for announcements under Listing Rule 3.1 to be issued immediately, a listed entity should have suitable arrangements in place to enable this to occur. Such arrangements may include giving appropriate delegations to senior management to release some announcements of their own accord and, if the matter falls outside those delegations, having a disclosure committee that can meet by phone or on short notice to consider the announcement.

Where an entity considers an announcement to be so significant that it ought to be approved by its full board before release, it needs to think carefully about how it will manage its disclosure obligations. This will require a close consideration of the nature of the information to be disclosed, the applicability of the exceptions in Listing Rule 3.1A and whether the circumstances warrant requesting a trading halt.

Where it is the decision of the board itself that is the information to be disclosed under Listing Rule 3.1 (such as a decision by the board to declare a dividend, to implement a scheme of arrangement or to appoint an administrator), the obligation to disclose generally will not arise until the board has made that decision. It usually will not be necessary to request a trading halt ahead of that decision (although that could change if there are signs that information about the impending board decision has leaked and this has or could have a material impact on the market price or traded volumes of the entity's securities).

Where the information to be disclosed falls within the exceptions to immediate disclosure in Listing Rule 3.1A but the board determines that it is now appropriate and timely to announce the matter to the market, it will be that decision of the board that is the trigger for the announcement rather than any legal obligation under Listing Rule 3.1. Again, it usually will not be necessary to request a trading halt ahead of that decision (although that could change if there are signs that information about the matter has leaked ahead of the announcement and this has or could have a material impact on the market price or traded volumes of the entity's securities).

Where, however, the information to be disclosed relates to something that has already happened and:

- it does not and never did fall within the exceptions to immediate disclosure in Listing Rule 3.1A, or
- it originally fell within those exceptions but has since ceased to do so,

the obligation to disclose will usually already have arisen before the board comes to consider the matter – in the former case at the point when the entity first became "aware" of the information and in the latter case at the point when Listing Rule 3.1A ceased to apply. To comply with the timing requirements of Listing Rule 3.1, an announcement with that information must be given to ASX promptly and without delay. In turn, this means that the requisite board meeting to consider the announcement must be convened and the board must settle and approve the announcement promptly and without delay. Consideration of the announcement cannot be delayed to a previously scheduled regular board meeting or to a meeting to be convened at a future date.

In addition, if the market will be trading at any time after the entity first became obliged to give market sensitive information to ASX under Listing Rule 3.1 and before the board can approve the giving of an announcement with that information to ASX for release to the market, the entity should consider carefully whether it ought to request a trading halt to prevent the market trading on an uninformed basis over that period, applying the guidance above on how and when to use trading halts and voluntary suspensions to manage disclosure issues.

Again, ASX would strongly encourage an entity which is unsure about whether it should be requesting a trading halt to cover the time required for the board to approve an announcement, to contact its listings adviser at ASX to discuss the situation.

## 11. What other steps can a listed entity take to facilitate compliance with Listing Rule 3.1?

Steps that a listed entity can take to help manage the requirement to disclose information immediately under Listing Rule 3.1 include:

1. Have a template letter requesting ASX to grant a trading halt ready for use at all times. In this way, if it needs to request an urgent trading halt, it can do so without delay.

2. Anticipate what might happen if information about a confidential transaction being negotiated leaks and have a template announcement ready that can be updated and issued straight away.

3. Where it has advance notice of an event that is likely to require an announcement under Listing Rule 3.1, prepare a draft announcement ahead of time that can be issued straight away.

4. Where the event that gives rise to the need to make an announcement is within its control (for example, the signing of a material contract), be sensitive to the hours when licensed markets in Australia are trading and, where possible, try to ensure that the event happens and the announcement is made before trading commences or after trading has closed, to avoid disrupting the normal course of trading on licensed markets.

5. Ensure that the person (or each of the persons) appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters:

    - has the organisational knowledge to have meaningful discussions on disclosure matters;
    - can request a trading halt and issue an announcement to the market, if that is what is required,

    and that person (or at least one of those persons) is readily contactable by ASX by telephone and available to discuss any pressing disclosure issues that may arise during normal market hours and for at least one hour either side thereof (that is, from 9am to 5pm Sydney time on each trading day).

## 12. The requirement to give market announcements to ASX first

Generally speaking, under Listing Rule 15.7, an entity must not release information that is required to be given to ASX under Listing Rule 3.1 to anyone else, unless and until it has been given to ASX and the entity has received

an acknowledgement from ASX that the information has been released to the market. This includes releasing the information to the media or to analysts, even on an embargoed basis.

The reason for this requirement is to make ASX's Market Announcements Platform the central collection and dissemination point for market sensitive information. This ensures that such information is quickly and broadly disseminated to all sections of the market, enhancing the efficiency and integrity of that process and helping to reduce of risk of informational inequities and insider trading.

ASX acknowledges that the requirement to give information to ASX first can pose practical difficulties for listed entities that have business operations in countries in different time zones to Australia. ASX encourages any entity in this situation which has advance warning that it may need to make an announcement in another country at a time when the ASX Market Announcements office is not open, to contact its ASX home branch to discuss the arrangements that can be made to facilitate that occurring in a manner that does not undermine the policy behind Listing Rule 15.7.

ASX also recognises that sometimes events will occur outside of the hours of operation of the ASX Market Announcements office, whether in Australia or overseas, which require an immediate public announcement (eg, a major natural disaster affecting the operations of a listed entity where an announcement may be required for health and safety reasons or for the peace of mind of staff and relatives). If a listed entity has a pressing commercial or legal need to make a market sensitive announcement outside of the hours of operation of the ASX Market Announcements office, provided it gives a copy of the announcement to the ASX Market Announcements office at the same time as it makes the announcement, so that it is queued for processing by the ASX Market Announcements office before licensed markets in Australia next open for trading, ASX will generally not take any action against the entity for infringing Listing Rule 15.7.

## 13. The exceptions to immediate disclosure

Listing Rule 3.1A sets out exceptions to the requirement to make immediate disclosure of market sensitive information under Listing Rule 3.1. These exceptions seek to balance the legitimate commercial interests of listed entities and their security holders with the legitimate expectations of investors and regulators concerning the timely release of market sensitive information. They also seek to ensure that information is not disclosed prematurely when, rather than inform the market, it could misinform or mislead the market.

Unless the requirements in all three of Listing Rules 3.1A.1, 3.1A.2 and 3.1A.3 are satisfied in respect of particular market sensitive information, Listing Rule 3.1A does not apply and the entity must disclose the information immediately under Listing Rule 3.1.

If the requirements in all three of Listing Rules 3.1A.1, 3.1A.2 and 3.1A.3 are initially satisfied in respect of particular market sensitive information but any one of them ceases to be satisfied thereafter, Listing Rule 3.1A ceases to apply at that point and the entity must then disclose the information immediately under Listing Rule 3.1.

### 13.1 Listing Rule 3.1A.1 - the categories of information excluded

The first requirement for Listing Rule 3.1A to apply is that the information must fall within one of the categories mentioned below:

- it would be a breach of a law to disclose the information;
- the information concerns an incomplete proposal or negotiation;
- the information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- the information is generated for the internal management purposes of the entity; or
- the information is a trade secret.

More detailed guidance on each of these categories can be found in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*.

### 13.2 Listing Rule 3.1A.2 - the requirement for information to be confidential

The second requirement for Listing Rule 3.1A to apply has two components: (1) the information must be confidential; *and* (2) ASX has not formed the view that the information has ceased to be confidential.

The word "confidential" in Listing Rule 3.1A.2 means "secret". Thus, information will be confidential for the purposes of that rule if:

- it is known to only a limited number of people;
- the people who know the information understand that it is to be treated in confidence and only to be used for permitted purposes; and
- those people abide by that understanding.

Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it is no longer a secret and it ceases to be confidential information for the purposes of this rule.

It is therefore incumbent on a listed entity which wishes to rely on the carve-out from disclosure in Listing Rule 3.1A to ensure that it has in place suitable and effective arrangements to preserve confidentiality. Guidance on the steps that can be taken in this regard can be found in the joint publication by Chartered Secretaries Australia and the Australasian Investor Relations Association entitled *Handling confidential, price-sensitive information: Principles of good practice*.

Even with strong confidentiality safeguards, it is important to recognise that the more people who know information, the greater the risk that it will cease to be confidential. So, for example, if a party proposing to acquire a business wants, as part of its due diligence, to make enquiries of employees, customers or suppliers, or a party proposing to undertake an issue of securities wants to take soundings from brokers and potential investors, it and the other parties involved in the transaction need to be prepared for the chance that information about the transaction will not be kept in confidence.

An entity which is relying on Listing Rule 3.1A not to disclose information about a market sensitive transaction it is negotiating should as a matter of course be monitoring, either itself or through its advisers:

- the market price of its securities and of the securities of any other listed entity involved in the transaction;
- major national and local newspapers;
- if it or its advisers have access to them, major news wire services such as Reuters and Bloomberg;
- any investor blogs, chat-sites or other social media it is aware of that regularly post comments about the entity; and
- enquiries from analysts or journalists,

for signs that information about the transaction may no longer be confidential and have a draft letter to ASX requesting a trading halt and a draft announcement about the negotiations ready to send to ASX to cater for that eventuality. The closer the transaction gets to being concluded, the higher the risk of leaks and the more diligent that monitoring should be.

In relation to the second component of Listing Rule 3.1A.2, ASX may form the view that information about a matter involving a listed entity has ceased to be confidential if there is:

- a reasonably specific and reasonably accurate media or analyst report about the matter;
- a reasonably specific and reasonably accurate rumour known to be circulating the market about the matter; or
- a sudden and significant movement in the market price or traded volumes of the entity's securities that cannot be explained by other events or circumstances.

Each of these is an indication that the matter is no longer confidential and therefore Listing Rule 3.1A.2 no longer applies.

In the case of the first two bullet points immediately above, ASX will have regard to the degree of specificity in the media or analyst report or market rumour in assessing the extent to which there has been a loss of confidentiality. For example, if the report/rumour simply refers to a listed entity being about to enter into a particular transaction with another party without including any of the transaction details, ASX will generally only require the entity to disclose the fact that it is in negotiations with that party concerning that transaction, without disclosing any of the details under negotiation. If the report/rumour includes some specific and accurate transaction details, ASX will generally expect the entity to confirm those details. If it includes some inaccurate transaction details, the response required will depend on the circumstances – in some cases, it may be appropriate to correct those details, while in others it may be appropriate simply to indicate that they are inaccurate or that they are still under negotiation.

In relation to the third bullet point immediately above, ASX occasionally finds a listed entity or its advisors wanting to debate whether a sudden and significant movement in the market price or traded volumes of its securities can fairly be attributed to information about a particular matter ceasing to be confidential. ASX considers any such debate to be misplaced. If an entity advises ASX that there is market sensitive information that has not been disclosed in reliance on Listing Rule 3.1A (as it must, under Listing Rules 18.7 and 18.8 and section 1309 of the Corporations Act, when it is asked that question by ASX) and it is not able to point to any other event or circumstance which explains the movement in the market price or traded volumes of its securities, ASX has no choice but to assume that the information in question has become known to some of those trading in the market and therefore is no longer confidential. Upon the entity being advised by ASX that it is of the view that the information has ceased to be confidential, Listing Rule 3.1A will no longer apply and the entity will then be obliged to make an immediate announcement about the information under Listing Rule 3.1.

### 13.3 Listing Rule 3.1A.3 - the reasonable person test

The third requirement for Listing Rule 3.1A to apply is that a reasonable person would not expect the information to be disclosed.

The reasonable person test is an objective one. It is to be judged from the perspective of an independent and judicious bystander and not from the perspective of someone whose interests are aligned with the listed entity or with the investment community.

As a general rule, information that falls within the prescribed categories in Listing Rule 3.1A.1 and that meets the confidentiality requirements in Listing Rule 3.1A.2 will also satisfy the reasonable person test in Listing Rule 3.1A.3. The very reason why the categories in Listing Rule 3.1A.1 are prescribed is because they reflect a value judgment on the part of ASX that a reasonable person would not expect that type of information to be disclosed, at least while it remains confidential.

Consequently, the reasonable person test in Listing Rule 3.1A.3 has a very narrow field of operation. It will only be tripped if there is something in the surrounding circumstances sufficient to displace the general rule described above. Two prime examples would be:

- where an entity has "cherry-picked" its disclosures, disclosing "good" information of a particular type that is likely to have a positive effect on the price or value of its securities but then declining to disclose "bad" information of the same type that is likely to a negative effect on the price or value of its securities, on the pretence that it is not market sensitive or protected from disclosure by Listing Rule 3.1A (Example H5 in Annexure A of Guidance Note 8 is an illustration); or

- where the information needs to be disclosed in order to prevent an announcement of other information under Listing Rule 3.1 from being misleading or deceptive.

The reasonable person test also performs two subsidiary purposes: it reinforces the fact that Listing Rule 3.1A does not operate to protect information from disclosure if it has ceased to be confidential or if it is required to correct or prevent a false market. In the former case, this is because a reasonable person would expect that once information has become known to, and is being traded on by, some in the market (as evidenced, for example, by a sudden and significant movement in the market price or traded volumes of an entity's securities), that information should be disclosed immediately to the whole market. In the latter case, this is because a reasonable

person would expect a listed entity, acting responsibly, to immediately disclose any information necessary to correct or prevent a false market in its securities.

ASX is aware that some listed entities and their advisers have taken the view that the reasonable person test may have a broader operation than ASX has suggested above and require the disclosure of information that is of a particular type or quality. ASX does not agree. The issue of whether information is of a type or quality that is protected from immediate disclosure under Listing Rule 3.1A is answered by whether it falls within or outside the prescribed categories in Listing Rule 3.1A.1. If it falls within those categories, it will only require immediate disclosure if it does not meet the confidentiality requirements in Listing Rule 3.1A.2 or if there is something in the surrounding circumstances sufficient to displace the general rule described above.

## 14. Market sensitive information in financial statements

All other things being equal, a listed entity is not expected to release the information in its half yearly or annual financial statements ahead of their scheduled release date. Sometimes, however, in the course of preparing financial statements, market sensitive information may become apparent that ought to be disclosed immediately under Listing Rule 3.1. Two areas where this issue commonly arises are earnings surprises and material post-balance date events.

If, in the course of preparing a periodic disclosure document, it becomes apparent to a listed entity that its reported earnings will differ materially from market expectations to an extent which is market sensitive, the entity must disclose that information to ASX immediately under Listing Rule 3.1. It cannot wait until its financial statements are released. The same is true for information about a market sensitive post-balance date event.

## 15. Earnings surprises

All other things being equal, a listed entity's earnings for a particular reporting period are not required to be reported to the market until the due date for the release of that information under Chapter 4 of the Listing Rules.

However, for many listed entities, the market's expectations of its earnings over the near term will often be a material driver of the price or value of its securities. Those expectations may have been set by:

- earnings guidance the entity has given to the market;
- in the case of larger entities covered by sell-side analysts, the earnings forecasts of those analysts; or
- in the case of smaller entities not covered by sell-side analysts, the earnings results of the entity for the prior corresponding reporting period.

Those expectations may also have been set or modified by "outlook statements" included in a previous period's annual report or results announcement and by other disclosures the entity has made to the market over the reporting period.

If an entity becomes aware that its earnings for the current reporting period will differ materially (downwards or upwards) from market expectations, it needs to consider carefully whether it has a legal obligation to notify the market of that fact. This obligation may arise under Listing Rule 3.1 and section 674, if the difference is of such magnitude that a reasonable person would expect it to have a material effect on the price or value of the entity's securities. Alternatively, in the case of an entity which becomes aware that its earnings for a reporting period will differ materially from earnings guidance it has published to the market, it may arise under section 1041H, because failing to inform the market that its published guidance is no longer accurate could constitute misleading conduct on its part.

Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* has more detailed guidance on earnings surprises and some worked examples illustrating how they should be handled under the Listing Rules.

## 16. Entities in financial difficulties

The fact that information may have a materially negative impact on the price or value of an entity's securities does not mean that a reasonable person would not expect the information to be disclosed. Quite the contrary, in many cases, this is precisely the type of information that a reasonable person would expect to be disclosed.

ASX recognises that for a listed entity in financial difficulties, the requirement to disclose materially negative market sensitive information immediately can be an impediment to completing a financial restructure or reorganisation necessary for its survival. However, the proper course for the entity in such a situation is not to disregard its continuous disclosure obligations but instead to approach ASX to discuss the possibility of a trading halt or, if the situation is unlikely to resolve itself within two trading days (the maximum period for which a trading halt may be granted), a voluntary suspension.

ASX Guidance Note 16 *Trading Halts and Voluntary Suspensions* has further guidance on how to apply for a trading halt or voluntary suspension.

## 17. ASX's and ASIC's enforcement activities

As a licensed market operator, ASX is obliged to have adequate arrangements to monitor and enforce compliance with its Listing Rules. To meet this obligation, ASX conducts various monitoring and surveillance activities to detect possible breaches of Listing Rule 3.1. Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B* summarises those activities and, in particular, outlines the action that ASX will take when as part of its surveillance activities it detects abnormal trading in an entity's securities. It also explains ASX's processes regarding 'price query letters' and 'aware letters'.

If ASX suspects that a listed entity has committed a significant contravention of Listing Rule 3.1, or that a listed entity or any other person (such as a director, secretary or other officer of a listed entity) has committed a significant contravention of the Corporations Act, it is required under that Act to give a notice to ASIC with details of the contravention. The purpose of such a notice is so that ASIC can then consider what enforcement action, if any, it may wish to take in relation to the suspected contravention.

As mentioned in the introduction, breaching Listing Rule 3.1 also potentially breaches section 674 of the Corporations Act and this has very serious legal consequences.

## 18. For further information

This Guide is an abridged version of much more detailed guidance that ASX has provided in Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. That Guidance Note, for example, includes material on the headers and contents of announcements under Listing Rule 3.1 and outlines ASX's position on when and how listed entities should respond to comment or speculation in media or analyst reports and to market rumours.

If a listed entity or its officers need further information about their continuous disclosure obligations, they should consult that Guidance Note or speak to the entity's designated listings adviser at ASX.