



## Guidance Note 8

## Continuous Disclosure: Listing Rule 3.1

**Issued:** June 2005

### Key topics

1. Continuous Disclosure
2. ASIC *Better disclosure to investors* guidance principles

### Listing Rules

1. Listing rules 3.1 & 3.1A
2. Listing rule 3.1B
3. Listing rule 15.7
4. Listing rules 18.7 & 18.7A
5. Listing rule 19.2

### Cross-reference

1. Chapter 3 Listing Rules
2. Chapter 15 Listing Rules
3. Guidance Note 14 - Company Announcements Platform
4. Guidance Note 17 - Trading Halts
5. Guidance Note 20 - ASX Online

### Guidance Note History

- Re-printed: 1/7/2000  
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- Re-issued: September 2001  
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- March 2002
- January 2003  
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- June 2005  
(Revised to include Corporations Act amendments)

### Introduction

1. This Guidance Note is published to assist listed entities to comply with their obligations under listing rule 3.1 of Australian Stock Exchange Limited (ASX).
2. The Australian Securities & Investments Commission (ASIC) *Better disclosure to investors* guidance principles are also contained in this Guidance Note. ASX endorses those guidance principles and has included commentary on each guidance principle to give listed entities a practical guide to meeting their disclosure obligations.
3. This Guidance Note also outlines ASX and market expectations in relation to best disclosure practice by ASX listed entities. Some working examples of the operation of the continuous disclosure framework are included as an attachment at the end of the Guidance Note.
4. An open and pragmatic working relationship between ASX and listed entities is vital to the integrity of the continuous disclosure framework. ASX encourages listed entities to work closely with it to promote investor confidence and facilitate broad access to market information of the highest quality.
5. Consideration of continuous disclosure issues generally takes place in a market context, in 'real time', and as a result is intensely time critical. This means that the window for consultation is very limited and in the absence of a trading halt or suspension, it is not possible to engage in detailed legal argument and protracted negotiation with a listed entity and its advisers.

## **Background**

6. Listing rule 3.1 is a particularly important listing rule and is regarded as central to the orderly conduct and integrity of the ASX market. It is the cornerstone of ASX's continuous disclosure framework and is based on the following principle.

*Timely disclosure must be made of information which may affect \*security values or influence investment decisions, and information in which \*security holders, investors and ASX have a legitimate interest (refer Introduction to the listing manual).*

7. The rule is given legislative support by section 674 of the Corporations Act which imposes statutory liability for its breach in certain circumstances. Liability is extended under section 674(2A) to a person who is involved in a listed entity's breach (subject to a due diligence defence under section 674(2B)). ASIC and ASX are parties to a Memorandum of Understanding under which ASX takes primary responsibility for monitoring and enforcing compliance with the disclosure requirements of the Listing Rules. ASIC has primary responsibility for enforcing section 674. Where ASX believes that there has been a serious contravention or a possible contravention of the Listing Rules or the Corporations Act, ASX may refer a matter to ASIC for further investigation. ASIC may pursue a variety of remedies in such cases, including possible civil or criminal action, by referral to the Director of Public Prosecutions.
8. For less serious alleged breaches of the continuous disclosure obligations, ASIC may issue the entity with an infringement notice under section 1317DAC. In determining whether to issue an infringement notice to an entity for an alleged breach of section 674(2), ASIC must have regard to these and any other guidelines issued by ASX that relate to an entity's continuous disclosure obligations, so that an entity's compliance with this Guidance Note will be relevant to any decision by ASIC whether or not to issue an infringement notice. The entity may satisfy the infringement notice within the compliance period by paying the specified penalty and disclosing to the market or lodging a document with ASIC about any specific information referred to in the notice. There is no obligation on an entity to comply with an infringement notice, but if the notice is not withdrawn by ASIC following representations from the entity, then ASIC may pursue remedies including possible civil action in respect of the alleged breach. ASIC released a guide in May 2004 titled "*Continuous disclosure obligations: infringement notices*" which can be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au).
9. The rule applies to all listed entities except ASX Foreign Exempt entities. ASX Debt Listings must comply in relation to their debt securities. Entities should ensure that they are familiar with the rule and make their own judgements when considering how to comply with it. In the administration of listing rule 3.1 and related rules ASX will give weight to judgements that are logically and honestly made.
10. Disclosure is made to ASX by sending the information in a form suitable for release to ASX's Company Announcements Platform (CAP) by fax or electronic means. From 1 July 2003, it was mandatory for entities to give information to ASX by electronic means. The information is released to the market through dissemination to a range of data vendors and via ASX's public website [www.asx.com.au](http://www.asx.com.au). The full text of announcements is made available on the ASX website in real time and at no

charge to the user (refer Guidance Note 14 - Company Announcements Platform and Guidance Note 20 - ASX Online).

### **Continuous disclosure – best practice**

11. Listing rule 3.1 expresses broad principles that cannot be defined with absolute clarity. The rule must be complied with in the ‘spirit’ of continuous disclosure. Listing rule 19.2 makes it clear that the Listing Rules should not be interpreted in a restrictive or legalistic fashion. Listing rule 19.2 states:

*An entity must comply with the listing rules as interpreted:*

- *in accordance with their spirit, intention and purpose;*
  - *by looking beyond form to substance; and*
  - *in a way that best promotes the principles on which the listing rules are based.*
12. The integrity of the market is enhanced if continuous disclosure is carried out in the ‘spirit’ of the listing rule. The principles on which the Listing Rules are based encompass the interests of listed entities, maintenance of investor protection and the need to protect the reputation of the market. By virtue of being publicly listed on the ASX market and having access to the capital that the market provides, an entity has a duty not just to its shareholders, but to investors and the market generally. An entity must give equal weight to all three elements when complying with its obligations under listing rule 3.1. The interests of a listed entity should not take precedence over the interests of the market, and more specifically the interests of a fully informed market.
13. ASX acknowledges that it is important to strike an appropriate balance between encouraging timely disclosure of material information and preventing premature disclosure of incomplete or indefinite matters. Premature disclosure may result in a false market and in some cases unduly prejudice an entity’s commercial interests. The purpose of the rule is to elicit disclosure of the highest quality which is of benefit to the market.
14. It is important to emphasise the primacy of listing rule 3.1. The continuous disclosure obligation can only be properly discharged by the listed entity, which is in the best position to assess the elements of that rule in the context of its obligations to the market and the information that is known to the entity.

### **Listing Rules 3.1, 3.1A & 3.1B**

15. Listing rules 3.1, 3.1A and 3.1B state:

*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 all of the following are satisfied.*

- 3.1A.1 *A reasonable person would not expect the information to be disclosed.*
- 3.1A.2 *The information is confidential and ASX has not formed the view that the information has ceased to be confidential.*
- 3.1A.3 *One or more of the following 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.*
  - *The information is a trade secret.*
- 3.1B *If ASX considers that there is or is likely to be a false market in an entity's securities, and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information needed to correct or prevent the false market.*

#### **Definition of 'aware'**

16. 'Aware' is defined in listing rule 19.12 which states:

*An entity becomes aware of information if a director or executive officer (in the case of a trust, a director or executive 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 a director or executive officer of that entity.*

17. The definition is based on section 1042G of the Corporations Act. However, it is narrower in that the test is limited to directors and executive officers and does not extend to employees generally. An executive officer is a person concerned in, or taking part in, the management of the entity. Compliance with listing rule 3.1 is the responsibility of the entity.
18. Once a director or executive officer becomes aware of information, he or she must immediately consider whether that information should be given to ASX. An entity cannot delay giving information to ASX pending formal sign-off or adoption by the board, for example.
19. Because of the way the Listing Rules treat an entity as becoming aware of information, the entity should consider appropriate systems to identify material information and decide about disclosure of that information, refer ASIC *Better disclosure to investors* guidance principles.

**Obligation to disclose**

20. The language of the obligation to disclose under listing rule 3.1 is similar to the language used in section 674 of the Corporations Act. An entity must disclose information if a reasonable person would expect that information to have a material effect on the price or value of the securities. A reasonable person is taken to expect information to have a material effect on the price or value of securities if it would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the securities, refer section 677.

21. In *Flavel v Roget*, O’Loughlin J said:

*Much will depend upon the identity of the particular company; what one company should advise the Stock Exchange might not have to be advised by a second company; what should be advised by a company at one stage in its career might not have to be advised at another stage of its career because of changed circumstances.* (1990) 1 ACSR 595, 602-3.

**Disclosure must be made to ASX first – Rule 15.7**

22. An entity must not disclose information that is for release to the market to anyone until it has given the information to ASX, and has received an acknowledgement from ASX that the information has been released to the market, refer listing rule 15.7 and Guidance Note 14 – Company Announcements Platform. This includes the release of information to the media, even on an embargoed basis. ASX does not recognise embargoes. Releasing information to any other party that has not been first provided to ASX will amount to a breach of listing rules 3.1 and 15.7.

23. Rule 15.7 is designed to ensure the efficiency and integrity of the process of release of market information by making the Company Announcements Platform the central collection point for market sensitive information. Risk of insider trading activity and unequal access to information is therefore significantly reduced, as ASX acts as the initial conduit through which information is widely disseminated.

24. Listing rule 15.7 provides for entities with a foreign listing to comply with the rule by releasing information in that market and simultaneously send information to ASX when the Company Announcements Office is closed. However ASX recognises that many listed entities have significant business operations in other jurisdictions that are not listed in those jurisdictions. This sometimes presents difficult timing issues in relation to release of information that are not always assisted by a strict interpretation of listing rule 15.7. In such cases, ASX will assist the entity to manage information release using processes which do not undermine the policy basis of the rule.

25. If the entity becomes aware that material information has become generally available or is available to a sector of the market, and that information has not been given to ASX, the entity should immediately give the information to ASX in a form suitable for release to the market. *The fact that information is generally or selectively available is not an excuse for failing to disclose it under listing rule 3.1.*

### **Information relevant to entity**

26. Listing rule 3.1 is not limited to information from a particular source. Sometimes information from other sources (e.g. a joint venture partner or an unlisted entity in which the entity has an interest, a decision by a government body) may impact on an entity. If that information is likely to have a material impact, the entity must disclose that information immediately it becomes aware of it.
27. An entity is not required to disclose exogenous general information, such as the gold price in the case of a gold mining entity. However, if the information has a particular effect on the entity (e.g. a lower gold price means that a gold mining entity can no longer economically operate a mine) that effect may be required to be disclosed.

### **Exception to Listing Rule 3.1**

#### **General**

28. Listing rule 3.1A sets out an exception from the requirement to make immediate disclosure. The intention of the exception is to protect the legitimate commercial interests of listed entities in those circumstances where market integrity is not adversely affected. The exception operates by providing that where all elements are satisfied, the primary obligation in listing rule 3.1 does not apply to the particular information. In this way, it allows an entity to delay disclosure of that information. To rely on the exception, an entity must satisfy *all* of the three requirements set out in listing rules 3.1A.1, 3.1A.2 and 3.1A.3. The exception only operates while all of the three requirements are satisfied. If one or more of the requirements ceases to be satisfied, the exception no longer applies and the entity must disclose the information immediately.
29. There may be circumstances where the three requirements of rule 3.1A appear to be satisfied, but ASX considers there is or is likely to be a false market in the entity's securities under rule 3.1B. If ASX does consider that to be the case, it will tell the entity immediately. Depending on the particular circumstances, ASX will ask the entity to disclose the information or part of it, or to make a clarifying statement to the market, refer paragraph 47.
30. The exception recognises that premature announcements may jeopardise the legitimate commercial interests of a company and its shareholders. However, the exception only operates for as long as the integrity of the market is not undermined by circumstances such as the inadvertent or selective release of information. This may result for example, in the market trading on an uninformed basis.

#### **Listing Rule 3.1A.1 – the reasonable person**

31. The first requirement of the exception is that a reasonable person would not expect the information to be disclosed. A reasonable person would not expect information to be disclosed if the result would be unreasonably prejudicial to the entity.

32. If listing rules 3.1A.2 and 3.1A.3 are satisfied but a reasonable person would expect the information to be disclosed (for example, where there is a material variation in financial results from the previous corresponding period or previous announcements), the exception is not available and the entity must disclose the information.
33. ASX will balance the needs of the market and the interests of the entity, bearing in mind the principle on which the listing rule is based, when considering if this requirement is satisfied. The use of the word 'reasonable' indicates an objective test. However, as market practices and expectations evolve what is considered reasonable will also change.

**Listing Rule 3.1A.2 - confidential**

34. The second requirement of the exception is that the information is confidential, and ASX has not formed the view that confidentiality is lost. It would be usual practice for ASX to consult with the entity about any disclosure concerns relating to confidentiality. If ASX forms that view that confidentiality has been lost, it will tell the entity immediately. 'Confidential' in this context has the sense of 'secret'. It means that the information is in the possession of only those who will not trade in the entity's securities and there is control over the use of the information. If it is clear that the information is no longer confidential or ASX has formed that view, listing rule 3.1A.2 is no longer satisfied and the exception no longer applies. This is the case even if the entity has entered into confidentiality arrangements and/or the information has come from a source other than the entity.
35. Loss of confidentiality may be indicated by otherwise unexplained changes to the price of the entity's securities, or by reference to the information in the media or analysts' reports. ASX will take all the circumstances of each case into consideration in deciding whether it considers that confidentiality has been lost. It would be more likely to consider that confidentiality has been lost where references to the entity or its proposals are significant and credible and the details are reasonably specific.
36. ASX will also take into account the extent to which confidentiality has been lost. If a proposed transaction is revealed, ASX may ask the entity only to confirm to the market that negotiations are taking place, and not require disclosure of details of the transaction which remain confidential.
37. ASX accepts that confidentiality is not lost simply because information is given to an entity's advisers, a person with whom the entity is negotiating, or regulatory authorities, if it is to be given on a basis that restricts its use to the stated purpose. However, any release of the information from any source, however inadvertent, will mean that listing rule 3.1A.2 is no longer satisfied.
38. Entities should ensure that employees having access to information that is not public are made aware of its confidential status, and the importance of maintaining that status.

39. It is important to note that there may be instances where even though confidentiality has not been lost, the surrounding circumstances are such that, in the absence of a response by the entity, there would be a false market in the entity's securities. In those circumstances, ASX would require the entity to respond but only to the extent needed to correct or prevent the false market, refer paragraph 47.
40. There may be circumstances where confidentiality has been lost in which the entity is not able to make immediate disclosure. In those cases, the entity can apply for a trading halt until disclosure can be made. ASX encourages entities to consider this option, refer paragraphs 52 to 54.

**Listing Rule 3.1A.3 – certain categories**

41. The third requirement of the exception is that the information is of the type in one of the following categories. If it is not, or if it loses that character, then the requirement is not satisfied.
- 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.
  - The information is a trade secret.

**False Market – listing rule 3.1B**

42. Listing rule 3.1B states that if ASX considers that there is or is likely to be a false market in an entity's securities, the entity must give ASX the information that it asks for to correct or prevent the false market. It would be ASX's usual practice to consult with the entity about any concern that a false market may exist before taking any action under the rule.
43. If ASX forms the view that there is a false market, it will tell the entity immediately. An entity must disclose information needed to correct or prevent a false market because it would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the securities.
44. A false market could arise in a number of circumstances. An entity may have information that it has not yet disclosed because the exception under rule 3.1A applies. Comment about the information or part of it might then be made through the media or other sources. However, when the comment is inaccurate or only partly accurate, even though confidentiality has not been lost, the inaccurate or partly accurate comment might result in a false market in the entity's securities. In such an instance the entity will be required to clarify the position.

45. A false market may also arise where the entity does not have disclosable information, and comment is made about the entity that is completely inaccurate, and the entity does not clarify the position. In such a case, ASX will ask the entity to do so.
46. ASX will take all the circumstances of each case into consideration in deciding whether there is or is likely to be a false market in the entity's securities. In many instances ASX may not be in a position to consider if a false market exists until it has had the opportunity to discuss the issue with the entity and gain a full understanding of the background of the matter at hand. It would be more likely to consider that a false market exists where comment about the entity or its proposals is significant and credible and the details are reasonably specific or the market moves in a way that appears to be referable to such comment.
47. The extent of the information ASX asks for under rule 3.1B will also depend on the circumstances in each case. The disclosure that will be required by ASX to correct or prevent a false market is information that is appropriate in the particular circumstances. ASX may ask the entity only to confirm to the market that the comment is accurate, or advise the market that it is inaccurate, refer Example C.

#### **Listing rules 18.7 & 18.7A**

48. Listing rule 3.1 is supported by listing rules 18.7 and 18.7A. Listing rule 18.7 states that an entity must give ASX any information, document or explanation that ASX asks for to enable it to be satisfied that the entity is, and has been, complying with the Listing Rules. Listing Rule 18.7A provides that correspondence between ASX and an entity may be released to the market. An exchange of correspondence will be released by ASX where ASX has reserved the right to do so and considers it is necessary for an informed market.

#### **Form and content generally**

49. Information to be disclosed should be in a form that is suitable for release to the market. The information contained in a market release or announcement should be factual and relevant and expressed in an objective and clear manner. The use of emotive or intemperate language should be avoided. CAP should not be used for promotional purposes or as a forum for subjective debates (e.g. with journalists where an entity takes issue with opinions expressed in the media, or between the target and offeror in a hostile takeover). Announcements must be balanced and truthful.
50. The use of imprecise and confusing language such as "double digit" or "single digit" growth should be avoided as it does not allow investors to assess and value the information for the purpose of making an investment decision.
51. Announcements can only be given to ASX for release to the market by the listed entity. Announcements which purport to be material information for the purposes of listing rule 3.1 cannot be given to ASX by individual directors, shareholders or other third parties.

### **Preliminary announcements, trading halts and suspension**

52. Although an entity relying on the exception may delay giving detailed disclosure, it may be possible for it to provide some information, provided that information does not mislead the market (e.g. the fact that negotiations are taking place may be able to be disclosed, if not the details of the negotiation).
53. If an entity is not able to make a preliminary announcement, or is concerned that such an announcement is not sufficient to properly inform the market, the entity can ask ASX for a trading halt for up to two trading days, refer ASX Guidance Note 16 - Trading Halts. Similarly, an entity may consider asking ASX to suspend trading in its securities. ASX expects and encourages entities to consider these possibilities.
54. Entities should view the trading halt mechanism as a tool of good disclosure policy, to be used in the interests of a fully informed, fair and transparent market. A trading halt can also be an appropriate way of managing an unexplained price and/or volume change until an announcement can be made. Trading halts have been specifically designed to protect listed entities from premature disclosure in cases where a more detailed announcement is imminent.

### **Market speculation**

55. ASX does not expect an entity to respond to all comments made in the media, or all market speculation. However when the market moves in a way that appears to be referable to the comment or speculation, and the entity has not already made a statement in response, ASX would be likely to ask the entity for information or clarification to ensure that the market remains properly informed, or correct or prevent a false market in the entity's securities, refer paragraph 47. Similar principles may apply in relation to speculation posted on forums such as internet bulletin boards or 'chat room' sites.
56. Generally, in determining whether an announcement is required, ASX will examine the context in which the media comment or speculation occurs, the details and materiality of the information and the likely reaction of the market or the entity's share price to the information. ASX will also take into account previous relevant announcements by the entity and previous relevant media commentary. Where the media comment expresses the view or supposition of analysts or market commentators about a likely strategy or transaction and there is no apparent movement in the share price or volume, it is not likely that ASX will form the view that an announcement is required. Where the media comment appears to be reporting in specific detail a material change in strategy or that a material transaction is to occur, the source of the comment appears referable to those involved, and there is an apparent or likely movement in the share price or volume, ASX is likely to take the view that an announcement would be required.
57. ASX does not generally require the disclosure of trade secrets, internal management documents or incomplete negotiations that an entity is entitled not to disclose. But it is ASX policy that, whatever the information, and however much it might otherwise have been reasonable not to disclose it, the information should be released to the whole market once it becomes known to any part of the market. In

any event, the exception from listing rule 3.1 no longer applies, as the information is no longer confidential.

58. Entities are encouraged to develop procedures for responding to rumours and speculation in the media and other forums, refer ASIC *Better disclosure to investors* guidance principles and ASX Commentary.

#### **Analysts' reports**

59. Analysts can play an important role in providing information to the market. However an entity must ensure that only public information is given when answering an analyst's questions or reviewing an analyst's draft report. It is inappropriate for a question to be answered, or draft report corrected, if doing so involves providing material information that is not public. One consequence is that the exception from disclosure ceases to operate, as the information is no longer confidential. When analysts visit the entity care should be taken to ensure that they do not obtain material information that is not public, refer ASIC *Better disclosure to investors* guidance principles.
60. In some circumstances, for example where an entity's business is complex and/or comprised of many different divisions, it is possible that analysts may draw on out of date data, or misread or misinterpret historical information. In such cases it is appropriate for an entity to clarify historical information and correct any factual errors in analysts' assumptions which are significant to the extent that they may mislead the market, provided any clarification is confined to drawing the analyst's attention to information that has already been made available to the market.
61. The continuous disclosure framework is founded on the principle that all investors have equal and timely access to material information which is relevant to the taking of investment decisions. Accordingly, no investor, analyst or journalist should receive a selective release of material information.
62. As a matter of best practice, ASX encourages broad dissemination of information to investors to complement official release of that information to the market. In this context it is not appropriate for entities to 'blacklist' or exclude analysts with the purpose of minimising or eliminating reasonable opportunities for qualified analysts to ask relevant questions of the entity in relation to publicly available information. Similarly, it is inappropriate for entities to extend more favourable treatment and access to a select group of analysts.

#### **Dual Listing – overseas exchanges**

63. Entities also listed on one or more overseas exchanges should note that, generally, information must be given to ASX no later than the time that it is given to the overseas market. However, it may be given to another exchange first if ASX is closed and that other exchange's listing rules require its disclosure immediately. In that case, the information must be given to ASX with advice that it has been released, refer listing rule 15.7. Additional information that might be necessary (e.g. exchange rates) should be included with the original release.

64. In certain circumstances an entity may be planning to make a significant announcement where timing and geographical issues are critical to the orderly release of the information. ASX encourages entities to liaise with ASX at the earliest opportunity in order to put appropriate procedures in place in such cases.
65. Listing rule 3.1 requires an entity to give ASX any material information which it gives to an overseas stock exchange. This is likely to include any financial documents that an entity lodges with an overseas exchange or other regulator which is available to the public, for example a quarterly report including profit and loss figures, which would contain material information. The information given to ASX must be in English.

### **Relationship between continuous disclosure & “structured” disclosure**

66. “Structured” disclosure by listed entities is required in a number of circumstances. This type of disclosure falls into a number of categories, for example:
- The Listing Rules require regular periodic financial reports.
  - The Corporations Act requires certain Australian entities to prepare half-yearly and annual reports and accounts.
  - Entities may also issue prospectuses, offer information statements, target’s statements and bidder’s statements.
67. In the course of preparing these forms of disclosure, entities may become aware of material information previously unknown to them, or information which was previously insufficiently definite to warrant disclosure may become more precise. Entities should be mindful that material information which requires disclosure under listing rule 3.1 may emerge during the preparation of structured disclosure, and that an entity cannot defer releasing this information until the structured disclosure document is finalised.
68. While release of a structured disclosure document which contains the material information may satisfy the requirement to disclose the information in the strictest sense, it is clearly within the spirit of the Listing Rules for an entity to make specific disclosure immediately the entity becomes aware of the information in a separate announcement, in order to bring it to the attention of the market.
69. Separate disclosure of the information *will be required* if the structured disclosure document is not ready for release when disclosure of the information must be made under listing rule 3.1.

### **Periodic disclosure – financial reports – quarterly, half year, preliminary final and change of balance date reports**

70. Where structured disclosure is of financial information, for example the quarterly, half year or preliminary final reports required by the Listing Rules, information that emerges in the preparation of a report may be relevant to the achievement of projections or indications of profit or revenue, or of business plans previously released to the market.

71. Entities must bear in mind that any periodic disclosure obligations run parallel with and are in addition to the continuous disclosure obligation under listing rule 3.1. *Compliance with periodic disclosure requirements does not extinguish an entity's obligation under listing rule 3.1.* Similarly, compliance with continuous disclosure does not of itself entail a requirement to provide forecasts or report on a quarterly basis. Entities should consider whether they have adequately addressed any consequential effects financial information may have on profits or business plans, and whether this is information that should be disclosed under listing rule 3.1. If it is, it must be disclosed immediately, refer Example B.
72. Where periodic disclosure is in the form of Appendices 4B (which will not apply to periods ending on or after 30 June 2003), 4C or 5B, which make limited provision for accompanying narration, entities are encouraged to provide additional information in narrative form to assist the market to more fully understand the report. Although such information is not strictly required, it is an aspect of good disclosure practice to provide information which places the report in context and makes it more readily understandable to the market. Entities should note that Appendices 4D, 4E and 4F, which apply to periods ending on or after 30 June 2003, expressly require a brief explanation of the financial figures in the reports and Appendix 4E also requires a commentary on the results.
73. Entities should also be aware of listing rules 4.3D and 4.5A, which require an entity to tell ASX immediately of circumstances materially affecting information contained in a preliminary final report and in any event no later than when it gives ASX its statutory full year accounts. These listing rules emphasise the primacy of continuous disclosure over periodic disclosure. If information is material, it must be disclosed immediately and cannot be withheld until a specified reporting date.

#### **Disclosure about oil and gas exploration**

74. If test results or progress in drilling programs are information that a reasonable person would expect to have a material effect on the price or value of the securities of the entity concerned, listing rule 3.1 requires that it be disclosed. It is unlikely that all the prerequisites to the exception to listing rule 3.1 would be met in relation to oil and gas exploration results, especially those in listing rule 3.1A.3, refer paragraph 41.
75. ASX expects entities to adopt a regime of structured disclosure at regular intervals for each drilling program following disclosure of information about progress in that program under listing rule 3.1. Entities should apply that regime consistently. Historically, reporting on a weekly basis has been required. This may continue to be appropriate, but the interval an entity adopts should be one that means, in the circumstances of the entity, useful information is provided on a regular basis.
76. Information that is likely to be relevant in regular structured disclosure includes each of the following.
  - The name of the well.
  - The permit in which the well is located.
  - The well's position in the permit with respect to previous wells, known oil or gas fields, or towns.

- The depth of the well.
- Progress since the last disclosure.
- Details of any indications of hydrocarbons and fluids observed while drilling.
- The entity's beneficial percentage interest in the well.
- The time to which progress is reported.

### ***Better disclosure to investors* - ASIC Guidance Principles**

77. In August 2000 ASIC and ASX joined forces to provide listed entities with principles designed to improve their disclosure of material information. The principles were released by ASIC under the name "*Better disclosure for investors*" and are reproduced here with the permission of ASIC. They suggest practical steps to achieve the following objectives.

- Management of disclosure obligations under listing rule 3.1, and minimisation of the risk of breaching the Corporations Act.
- Ensuring that the widest audience of investors have access to information given to ASX for market release.

78. The *Better disclosure for investors* guidance principles (the guidance principles) are not mandatory. They are intended to provide assistance to entities seeking to establish practices and procedures to ensure compliance with listing rules 3.1 and 15.7. The preamble to the guidance principles states:

*These guidance principles suggest practical steps that a listed company can take to ensure that it meets both the letter and the spirit of the continuous disclosure requirements in the Corporations Act and the stock exchange listing rules. The principles are intended to assist company directors and executives to manage their disclosure obligations and minimise the risk of breaching the law. The principles also aim to ensure that the widest audience of investors have access to company information released under the continuous disclosure rules. The objective of these principles is to outline what ASIC considers to be good disclosure practice, not to impose regulatory requirements.*

*ASIC encourages companies to adopt the measures suggested below, but they should be implemented flexibly and sensibly to fit the situation of individual companies. Each listed company needs to exercise its own judgement and develop a disclosure regime that meets legal requirements and its own needs and circumstances.*

79. Listing rules 3.1 and 15.7 require only that an entity give ASX information for release to the market. They do not impose a requirement for the entity to take any further steps to achieve wider dissemination of the information to investors. However, it is clearly within the spirit of the Listing Rules for an entity to provide investors with timely and direct access to information given to ASX. ASIC and ASX encourage entities to adopt practices which will result in wider dissemination of information once it has been given to ASX in accordance with listing rules 3.1 and 15.7. The guidance principles are also intended to provide assistance to entities in relation to this aspect of good disclosure practice.

80. The ASIC guidance principles are set out below in boxed italics, with ASX commentary in plain text following each guidance principle. The guidance principles can also be obtained from the ASIC website at [www.asic.gov.au](http://www.asic.gov.au).

*Preventing selective disclosure*

*Establishing policies and procedures for better disclosure*

1. *Establish written policies and procedures on information disclosure. Focus on continuous disclosure and improving access to information for all investors.*

**ASX Commentary**

81. Having written policies and procedures provides a good framework for compliance with disclosure obligations under the Listing Rules. However, it is important that policies and procedures are applied and followed, and not just used as “window-dressing”. An entity must look to the substance of the obligation, not the form.

*Using current technology*

2. *Use current technology to give investors better access to your information. In particular, post price sensitive information on your company’s website as soon as it is disclosed to the market.*

**ASX Commentary**

82. ASX recommends that as minimum best practice listed entities place all relevant announcements and other information, including analysts’ briefings, on an entity’s website, or retain a third party to do so. The information should be placed on the website only after the entity has given the information to ASX and received the usual acknowledgement that the announcement has been released, refer ASIC guidance principle 6.
83. Entities may also wish to consider other methods of disseminating information to the market as not all investors have access to every form of media. Alternatives include faxstream and email to media outlets, e.g. news-wire services; press releases; media conferences; video or teleconferences; and mail-outs to securityholders. The key element is equity of access to information, which is best achieved by dissemination across the widest practicable range.

*Developing disclosure procedures*

*Overseeing and co-ordinating disclosure*

3. *Nominate a senior officer to have responsibility for:*

- *making sure that your company complies with continuous disclosure requirements;*
- *overseeing and co-ordinating disclosure of information to the stock exchange, analysts, brokers, shareholders, the media and the public; and*
- *educating directors and staff on the company's disclosure policies and procedures and raising awareness of the principles underlying continuous disclosure.*

*In smaller companies, this person is likely to be the company secretary.*

**ASX Commentary**

84. Listing rules 1.1 condition 12 and 12.6 require that an entity will appoint an officer with the appropriate degree of seniority and authority to be responsible for communications with ASX in relation to its obligations under the Listing Rules, including its obligations under rule 3.1. More than one person may be nominated for the purpose of the rule, but ASX expects that at least one person will be available to ASX at any given time.
85. In many cases the appropriate person to manage disclosure matters will be the company secretary, however this is a matter for the listed entity, taking into account the structure of that entity. For example, where an entity outsources its company secretarial functions, it may be that the appropriate person is someone more closely involved in the entity's operations.

*Authorising company spokespersons*

4. *Keep to a minimum the number of directors and staff authorised to speak on your company's behalf. Make sure that these persons know they can clarify information that the company has released publicly through the stock exchange, but they should avoid commenting on price sensitive matters. The senior officer responsible for disclosure should outline the company's disclosure history to these persons before they brief anyone outside the company. This will safeguard against inadvertent disclosure of price sensitive information.*

**ASX Commentary**

86. Control of price sensitive information within an organisation is an important part of managing an entity's obligations under rule 3.1. If information becomes known to the market, the element of confidentiality is no longer satisfied, and the exception from rule 3.1 no longer applies, refer paragraphs 34 to 40.

*Monitoring disclosures*

5. *The senior officer responsible for disclosure should be aware of information disclosures in advance, including information to be presented at private briefings. This will minimise the risk of breaching the continuous disclosure requirements.*

**ASX Commentary**

87. The relevant officer should either be involved with the day to day management of the entity and have a high degree of familiarity across the breadth of its operations, or have ready access to senior management who have responsibility for day to day management of the entity. This will assist to ensure that the officer is kept informed of any planned disclosures, including activities such as analysts' briefings and press conferences.

*Releasing company information*

6. *Price sensitive information must be publicly released through the stock exchange before disclosing it to analysts or others outside the company. Further dissemination to investors is desirable following release through the stock exchange. Posting information on your company's website immediately after the stock exchange confirms an announcement has been made is one method of making it accessible to the widest audience. Investor information should be posted in a separate area of your website from promotional material about the company or its products.*

**ASX Commentary**

88. Release of information to ASX should be viewed as the first step in the dissemination of information to all sectors of the market. In practice, some investors will receive and respond to information more quickly than others. It is essential that information be distributed as widely as possible.

7. *Develop procedures for responding to market rumours, leaks and inadvertent disclosures. Even if leaked or inadvertently disclosed information is not price sensitive, give investors equal access by posting it on the company website.*

**ASX Commentary**

89. Where information is no longer confidential, the exception to listing rule 3.1 no longer applies and an entity should consider whether the information should be disseminated to the market more generally. If the information is material, the entity should then take steps to release the information to ASX as soon as possible. If there is market rumour or speculation, ASX may contact the entity to require it to respond to that speculation, in order to ensure that the market is trading on a fully informed basis, refer paragraphs 42 to 47.

*Briefing analysts*

*Reviewing discussions*

8. *Have a procedure for reviewing briefings and discussions with analysts afterward to check whether any price sensitive information has been inadvertently disclosed. If so, give investors access to it by announcing it immediately through the stock exchange, then posting it on the company website. Slides and presentations used in briefings should be given to the stock exchange for immediate release to the market and posted on the company website.*

**ASX Commentary**

90. If material information that is not public is disclosed selectively, it must be released to the market at large immediately. This is because the entity no longer has control of that information. An entity may be queried by ASX in such circumstances, as an unexplained price or volume change may indicate that a sector of the market is in possession of price sensitive information.
91. It is not appropriate for an entity to release analysts' reports over CAP, as this may imply endorsement of the report or raise the question of selective disclosure.

9. *Be particularly careful when dealing with analysts' questions that raise issues outside the intended scope of discussion. Some useful ground rules are:*
- *only discuss information that has been publicly released through the stock exchange;*
  - *if a question can only be answered by disclosing price sensitive information, decline to answer or take it on notice. Then announce the information through the stock exchange before responding.*

**ASX Commentary**

92. A listed entity may be able to answer an analyst's question in general terms while not giving detailed disclosure, and so continue to meet the requirements of the exception. For example, the fact of a bid in a tendering process may be publicly known and therefore confirmed, but not the details of the bid or the tender process. However, the entity must have released that information to ASX before disclosing it to any other party.

*Responding on financial projections  
and reports*

10. *Confine your comments on market analysts' financial projections to errors in factual information and underlying assumptions. Seek to avoid any response which may suggest that the company's, or the market's current projections are incorrect. The way to manage earnings expectations is by using the continuous disclosure regime to establish a range within which earnings are likely to fall. Publicly announce any change in expectations before commenting to anyone outside the company.*

**ASX Commentary**

93. Listing rule 3.1 provides examples of information that, if material, would require disclosure. One of those examples is a change in the entity's previously released financial forecast or expectation. As a general policy, a variation in excess of 10% to 15% may be considered material, and should be announced by the entity as soon as the entity becomes aware of the variation. If the entity has not made a forecast, a similar variation from the previous corresponding period will need to be disclosed. In certain circumstances a smaller variation will be disclosable.

**Guidance Note 8**  
**Continuous Disclosure**

94. Similarly, a larger variation may not necessarily be disclosable provided it is not material. In making such disclosure, the entity must provide some details, however qualified, of the extent of the variation. For example a statement by an entity may indicate that, based on internal management accounts, its expected net profit or EBIT will be an approximate amount (e.g. approximately \$6m) or alternatively within a stated range (e.g. between \$5m and \$7m). Alternatively the entity may indicate an approximate percentage movement (e.g. “up [or down] by 25%”). ASX accepts that this information may not be precise and may be changed or amended on completion of the final accounts. ASX discourages entities from using terms such as “single digit” and “double digit” when disclosing financial forecasts or profit variations as they are considered to be insufficiently precise and potentially misleading to investors in assessing the impact of information and making investment decisions.
95. In some cases, it may be appropriate for a listed entity to disclose material variations from analysts’ consensus forecasts and expectations. This may occur where previous results do not provide the most relevant reference point or the market is moving in such a way as to indicate that there is a false market in an entity’s securities. Officers of listed entities should refrain from publicly commenting they are “happy” or “comfortable” with analysts’ consensus forecasts or a range of analysts’ forecasts. If an entity makes comments of this nature, ASX will be likely to ask the entity to immediately release to the Company Announcements Office an expected profit of an approximate amount or an amount within a stated range.

## ATTACHMENT

### ASX Working Examples Operation of Listing Rule 3.1

*The following examples illustrate general principles only and should not be regarded as having any effect on the operation of the rule. Commentary is confined to a listed entity's obligations under the Listing Rules. For simplicity, X Ltd is a listed entity and the transactions referred to in each example should be regarded as having a material effect on the price or value of the entity's securities. The effect may be material in either a quantitative or strategic sense.*

#### Example A

X Ltd is giving consideration to acquiring a business that will complement its existing operations.

1. X Ltd has identified 3 businesses, A, B and C, that may be suitable. It has made contact with A and B but discussions with both are at a very preliminary stage.

Disclosure would not usually be required.

2. X Ltd has entered into negotiations with B. Due diligence is under way. A number of alternative ways in which the acquisition might proceed are being explored but X Ltd has made no firm decision whether or not to proceed. A respected and widely read business column, "Close Call", contains speculation that X Ltd and B have been in discussions and are about to merge and that this will have a positive impact on the financial results of X Ltd.

Disclosure of the fact negotiations are taking place would be required. While the proposal is clearly one that is incomplete, it is apparent that the negotiations have not remained confidential and X Ltd would be expected to confirm to the market that it is in discussions with B, but that no decision has been made whether or not to proceed.

3. X Ltd and B are close to reaching agreement, but have yet to resolve one outstanding aspect of the transaction. It is expected that this could take up to 24 hours. The following day, The Financial News publishes an article stating that X Ltd is about to make a significant acquisition and comments on the effect of the proposal.

Disclosure would be required. While the proposal is still one that is incomplete, it is clear that the negotiations have not remained confidential. In the circumstances that entry into the agreement is imminent, it would be appropriate for X Ltd to apply for a trading halt, pending the release of an announcement.

4. The negotiations between X Ltd and B reach a stalemate and the parties determine that the proposed acquisition will not proceed. Discussions have been terminated. The securities of X Ltd are still in a trading halt.

Disclosure would be required. An announcement of the fact that the negotiations with B have collapsed would be required to lift the trading halt that is currently in place, given the market expectation that agreement was about to be reached.

5. X Ltd has completed negotiations with C to purchase its business. The terms of the agreement between X Ltd and C are finalised and the agreement is executed. At C's insistence the finalised agreement contains confidentiality provisions under which the terms of the acquisition cannot be disclosed.

Disclosure of the main terms of the finalised agreement would be required. The confidentiality provisions of the agreement do not override the disclosure obligation of X Ltd. In this instance disclosure of the following would be required.

- Details about C's business, including the type of business, length of operation, financial history, numbers of staff and details of directors or owners.
- The total consideration paid.
- Whether the consideration is to be cash or securities of X Ltd, or funded by debt.
- If the consideration is funded or partly funded by the issue of shares, the number of shares to be issued and the price at which they are issued.
- The expected impact on revenues and profit.

X Ltd must immediately disclose the main terms of any agreement that it has entered into that is material under listing rule 3.1.

### **Example B**

1. On reviewing management accounts part way through a half year period, X Ltd becomes aware that actual revenues and profits for the period will vary from one or more of the following to a material extent.
  - The financial results for the previous corresponding period
  - Forecast projections contained in any prospectus
  - Projections and indications previously provided to the market in relation to the half-year period

Disclosure would be required. In making such disclosure, the entity must provide some details, however qualified, of the extent of the variation. For example a statement by an entity may indicate that based on internal management accounts, its expected net profit or EBIT will be an approximate amount (e.g. approximately \$10m) or alternatively within a stated range (e.g. between \$9m to \$11m). Alternatively, the entity may indicate an approximate percentage movement (e.g. “up [or down] by 25% on the previous corresponding period”). ASX accepts that this information may not be precise and may be changed or amended on completion of the final accounts.

ASX does not require entities to make forecasts. The disclosure required would be limited to information known to the company - for example, close to or following the end of the reporting period.

2. On reviewing management accounts part way through a half year period, X Ltd becomes aware that it will incur a large trading loss for the half year. Due to projected revenues from contracts expected to be completed in the second half year, X Ltd still expects to achieve full year results broadly in line with that of the previous full year.

Disclosure would be required. As the half year result differs materially from the previous corresponding period, the market would not be expecting that result and must be immediately informed. X Ltd should confirm to the market that despite this result it still expects to achieve full year results broadly in line with that of the previous full year.

3. During the second half of its financial year, and due to unforeseen circumstances, X Ltd becomes aware that settlement of key contracts will be delayed. The revenues expected from these contracts will now be received in the next accounting period. As a result X Ltd will not achieve its expected full year result and the variation is expected to be material.

Disclosure would be required.

**Guidance Note 8**  
**Continuous Disclosure**

4. It is two weeks prior to the due date for lodgement of a preliminary final report. While the trading results for X Ltd are broadly in line with the previous corresponding period, year end adjustments and write downs will result in a significant reduction in the company's result.

**Immediate disclosure would be required. It is not appropriate for X Ltd to delay the release of this information until the time of lodgement of the preliminary final report.**

**Example C**

1. X Ltd now proposes to acquire D Ltd, a listed entity in the same industry. Although the acquisition has been contemplated by the board of X Ltd for some time no formal approach has previously been made. X Ltd and D Ltd have just begun confidential negotiations with a view to X Ltd effecting a "friendly" takeover of D Ltd. Information about the negotiations is strictly limited to the parties and their advisors. Coincidentally a small item appears in the Financial News speculating about rationalisation in the industry, and mentioning both X Ltd and D Ltd among others, as potential targets.

**ASX would normally not require a response. The comment appears to be speculative and based on generally known circumstances about the industry and industry analysis of that information rather than the specific circumstances of X Ltd.**

2. Discussions between X Ltd and D Ltd proceed as before but are significantly advanced. Only one significant issue remains unresolved. After a few days of intense discussions it becomes apparent that neither party will concede and the proposal is abandoned. A day or so later, two of D Ltd's advisers are in a lift discussing the failed proposal. Only part of their conversation is overheard by a senior reporter with the Financial News, and on the following day, that paper features an article about a proposed deal between the parties under the headline "X Ltd to make bid for D Ltd".

**Both entities should confirm to the market that following negotiations there is no intention to proceed with a bid. In the absence of any clarification from the entities, the inaccurate media comment would be likely to create a false market in the securities of both entities, as investors would not know whether the comment is accurate or not.**

3. After a number of months and a change in circumstances relating to the “road-block” issue, the discussions between X Ltd and D Ltd are resumed. After working late one night, two of X Ltd’s advisers go to Lyon’s Bar and over several drinks discuss a number of key details of the negotiations. They are overheard by a freelance analyst and author of a popular securities newsletter available by subscription only. Early the next morning, the analyst prepares a report on X Ltd which includes details of the negotiations and circulates the report to his subscribers by e-mail. Both X Ltd and D Ltd are alerted to the existence of the report by enquiries from shareholders. The price of X Ltd’s securities decreases by 5% and the price of D Ltd’s securities increases by 10% immediately the market opens.

ASX would require both entities to disclose the fact that negotiations are taking place. Such disclosure would be required as the negotiations are no longer secret and their existence has been disseminated to a sector of the market. It is irrelevant who disclosed the details of the negotiations or how dissemination occurred. Details of the terms of the proposed takeover need not be revealed until they are finalised.

It would be appropriate for both entities to request a trading halt pending the release of announcements by the entities.