

# Listed@ASX Compliance Update no. 02/25

5 March 2025

## 1. Continuous disclosure – naming counterparties to market sensitive contracts

Section 4.15 of Guidance Note 8 sets out guidelines on the contents of announcements made under Listing Rule 3.1, including guidelines on the naming of counterparties to market sensitive contracts.

In this update, ASX will explain its revised approach to monitoring and enforcing compliance with Listing Rule 3.1 as it relates to the naming of counterparties/customers in announcements about market sensitive contracts.

This change in practical approach does not represent a change in ASX policy, which continues to be the policy set out in Guidance Note 8.

### Overview

- ASX's current guidelines on the contents of announcements under Listing Rule 3.1 remain in effect. These guidelines are set out in section 4.15 of Guidance Note 8 and for convenience are repeated at the end of this update.
- ASX is supplementing these guidelines to provide listed entities with greater scope not to name the counterparty in an announcement about a market sensitive contract if the entity considers that the identity of the counterparty is not, of itself, market sensitive information.
- If a listed entity chooses not to disclose the identity of the counterparty in an announcement about a market sensitive contract, ASX will expect the announcement to include specific statements about the counterparty and the entity's compliance with its continuous disclosure obligations.
- These statements are set out below under the heading '**Additional limited circumstances where ASX may not require disclosure of the identity of the counterparty**'. If an entity does not make these statements in its announcement and there is a material movement in the entity's security price following the release of the announcement, ASX may take the actions set out below under the heading '**Approach to monitoring and enforcement**'.
- ASX's general expectation continues to be that counterparties will be named in announcements about market sensitive contracts. Situations where the identity of the counterparty is not market sensitive are likely to be rare. ASX will use its enforcement powers if it is concerned that an announcement about a contract is a 'ramping announcement' (as described in section 7.10 of Guidance Note 8).
- ASX will review its approach if it becomes concerned that its policy objectives are not being met following the implementation of the changes outlined in this update.

### **Disclosing the identity of counterparties/customers – identity is generally considered market sensitive**

ASX considers that if a transaction is sufficiently material to warrant disclosure under Listing Rule 3.1, the identity of the other party will generally itself be material information that must also be disclosed under that rule.

The disclosure of the name of the counterparty/customer with whom the entity has entered into a market sensitive contract is often particularly significant. It allows the market to assess the standing and creditworthiness of the counterparty/customer. In the case of a customer contract, it also allows the market to assess the quality of the customers the entity is dealing with and the quality of the revenue it is receiving from them.

### ***Existing limited circumstances where ASX may not require disclosure of the identity of the counterparty***

In very limited circumstances, where ASX is satisfied that the counterparty/customer has strong and legitimate reasons for not wanting to be named in a market announcement, ASX has accepted a description of the counterparty/customer that is sufficiently detailed to allow the market to assess the counterparty's standing and creditworthiness without the counterparty/customer being named.

ASX has set a high threshold for when it will accept announcements about material contracts that contain a description of the counterparty/customer, rather than their name, and has sought to limit this to narrow situations involving government agencies or entities in the defence or security industries.

In taking this approach, ASX's concern has been to minimise the occurrence of 'ramping announcements' (as described in section 7.10 of Guidance Note 8). However, ASX recognises that there are other circumstances where a counterparty/customer will have strong and legitimate reasons for not wanting to be named in a market announcement. In some of these situations, it may be possible to adopt an alternative approach to limiting the occurrence of ramping announcements.

### ***Additional limited circumstances where ASX may not require disclosure of the identity of the counterparty***

ASX has reviewed its current approach and will slightly broaden the circumstances when it will accept announcements about market sensitive contracts that contain a description of the counterparty/customer, rather than their name, provided that the announcement is complete, accurate and not misleading.

As set out in section 4.20 of Guidance Note 8, ASX has no issue with an entity structuring an announcement about a particular transaction to avoid disclosing commercially sensitive matters, provided it includes sufficient information in the announcement to enable the market to assess the impact of the transaction on the price or value of the entity's securities.

Accordingly, ASX will not ordinarily require disclosure of the counterparty's/customer's name in an announcement about a market sensitive contract if the announcement:

1. confirms that the entity does not consider the identity of the counterparty/customer to be information that a reasonable person would expect to have a material effect on the price or value of the entity's securities;
2. confirms that the announcement contains all material information relevant to assessing the impact of the contract on the price or value of the entity's securities, and is not misleading by omission; and
3. includes a description of the counterparty/customer that is sufficient to describe any market sensitive information about the counterparty/customer, including its standing and creditworthiness.

In relation to point 3 above, ASX will usually accept the entity's description (subject to the entity confirming the other matters above), but ASX reserves the right to make further enquiries and require additional disclosure in all cases.

If an announcement is structured in this manner, ASX does not expect the entity to consult with ASX before lodging the announcement. As with any announcement, care must be taken to ensure that it is accurate, includes all material information that would influence investors in deciding whether to buy or sell the entity's securities and is not misleading. If the announcement is not capable of being drafted to meet these requirements without including the identity of the counterparty/customer, then Listing Rule 3.1 will require that information to be disclosed.

For completeness, ASX notes that if an entity has marked an announcement about a contract as non-sensitive and there is a material movement in the entity's security price following the release of the announcement, ASX may take further action (as outlined below) if the announcement does not include the information set out in points 1-3 above.

### ***Approach to monitoring and enforcement***

ASX's starting position will continue to be that if a transaction is sufficiently material to warrant disclosure under Listing Rule 3.1, the identity of the counterparty/customer will generally itself be material information that must also be disclosed under that rule.

Even if an announcement is not market sensitive, the identity of the counterparty/customer is information that is usually of interest to the market. Failure to disclose the identity of the counterparty/customer may attract speculation that could result in a false market.

Accordingly, ASX strongly recommends that entities disclose the counterparty/customer in any announcement about a contract, whether market sensitive or otherwise. ASX expects that an entity would use all reasonable endeavours to obtain consent to name the counterparty/customer in an announcement, and that consent will have been refused, before the entity would elect not to disclose their identity.

Listed entities are also reminded that they must comply with their disclosure obligations under Listing Rule 3.1, even where they are party to a confidentiality or non-disclosure agreement that might otherwise require them to keep information confidential. ASX therefore will not accept as an excuse from a listed entity for not disclosing an appropriate level of information about the other party or parties to a material transaction that the entity is subject to confidentiality obligations prohibiting that disclosure.

If an entity elects not to name the counterparty/customer in an announcement, ASX may take action in relation to that announcement if (without limitation):

1. ASX is concerned that the announcement is a 'ramping announcement' or is otherwise concerned that the announcement is incomplete, inaccurate or misleading;
2. there is a material movement in the entity's security price following the release of the announcement and the announcement does not include the information in points 1-3 set out in the section above;
3. there is a material movement in the entity's security price following a leak of, or speculation about, the identity of the counterparty/customer; or
4. there is a material movement in the entity's security price after the entity makes an announcement that discloses the identity of the counterparty/customer for the first time.

In the first three scenarios above, ASX may take steps to halt or suspend trading in the entity's securities pending the release of further information about the contract. In those situations, ASX may issue a direction to the entity under the Listing Rules to name the counterparty/customer in a market announcement.

ASX has a number of additional supervisory and enforcement options available to it including issuing aware letters, requiring an entity to review its compliance policies or to engage an independent expert to do so, referral to ASIC, censure and removal.

It may be some time after an announcement has been released before ASX decides to take action. It will take time for ASX to identify announcements of concern, investigate them and make any enquiries it considers appropriate in the circumstances.

***Guidelines for announcements about market sensitive contracts remain current***

As noted above, ASX's guidelines on the contents of announcements under Listing Rule 3.1 are set out in section 4.15 of Guidance Note 8 and they remain current.

As stated in section 4.15 of Guidance Note 8, depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive acquisition or disposal to include information about:

- the counterparty to the contract;
- where there is little or no information regarding the counterparty in the public domain (for example, because it is a private or recently incorporated entity), a description of the counterparty and a summary of the due diligence undertaken by the listed entity on the counterparty's financial and other capacity to perform their obligations in relation to the transaction;
- a description of the assets or businesses proposed to be acquired or disposed of;
- the consideration for the acquisition or disposal;
- the expected due date for completion of the acquisition or disposal;

- in the case of an acquisition, the intended source of funds to pay for the acquisition and, if that involves a capital raising, details of the capital raising, including the timetable and its effect on the total issued capital of the entity;
- in the case of a disposal, the intended use of funds (if any) received for the disposal;
- any material conditions that need to be satisfied before the contract becomes legally binding or proceeds to completion;
- any security holder approvals that may be required in relation to the transaction and the timetable for those approvals;
- any changes to the board or senior management proposed as a consequence of the transaction; and
- any other material information relevant to assessing the impact of the transaction on the price or value of the entity's securities.

Similarly, depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract with a customer to include information about:

- the name of the customer;
- the term of the contract;
- the nature of the products or services to be supplied to the customer;
- the significance of the contract to the entity;
- any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and
- any other material information relevant to assessing the impact of the contract on the price or value of the entity's securities.

Again, the above is currently reflected in Guidance Note 8.

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Listed entities are reminded that they must have a nominated person responsible for communication under Listing Rule 12.6 and ensure that the person is readily contactable and available on short notice to discuss urgent disclosure issues by telephone during normal market hours and for at least one hour either side thereof (ie, from 9am to 5pm Sydney time) on each day that ASX is trading.

The entity should also ensure that the person's contact details are up to date on ASX Online at all times.

Further information on what ASX expects from the entity's nominated ASX contact and how to notify ASX of any changes (including temporary changes) made to the entity's nominated ASX contact is available [here](#).

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