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Australian Continuous Disclosure Obligations

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Executive Summary

A. Australia has a continuous disclosure regime which applies to all listed entities. The policy underlying this regime is to enhance the integrity and efficiency of Australian capital markets by ensuring that the market is fully informed

B. Entities listed on the Australian Securities Exchange Ltd ("**ASX**") are required under the ASX Listing Rules to immediately disclose, as soon as they become aware, non public material price sensitive information.

C. However, ASX also has power under the ASX Listing Rules to require a listed entity to immediately provide information to correct or prevent a "false market" (which can arise if the listed entity has made a false or misleading announcement or there is a false rumour circulating in the market).

D. Australian law requires listed entities to comply with the ASX Listing Rules and therefore the ASX Listing Rules are given legal effect beyond the contract which they represent between the listed entity and ASX.

E. ASX Listing Rule 3.1 requires listed entities to notify ASX immediately of information concerning the entity that *a reasonable person would expect to have a material effect on the price or value of the entity's securities*.

F. The qualitative test of materiality is whether *a reasonable person would expect (the information) to have a material effect on the price or value of the entity's securities*. This qualitative test is paramount.

G. The disclosure obligation is absolute subject to very limited exceptions.

H. Listed entities are entitled to withhold information from disclosure under limited exceptions specified in the Listing Rules which exempt disclosure but which require certain conditions to be satisfied, in all cases namely that:

- The information is confidential; and
- The information is such that a reasonable person would not expect the information to be disclosed.

I. In addition, in order to be exempted from disclosure, the information must be of a kind or nature which is within one or more of the following classes:

- Information of a kind disclosure of which would involve a breach of law;
- Information which is or relates to an incomplete proposal or negotiation;
- Information which primarily involves matters of supposition or which is insufficiently definite to warrant disclosure;
- Information produced for internal management purposes; or
- Information which constitutes a trade secret.

J. Both the timeliness and quality of disclosures which are required to be made give rise to risks for listed entities. Failure to disclose promptly can result in investors making decisions regarding investments in relevant securities which they would have decided differently had they known and therefore they can suffer loss in consequence of the delay. Even where disclosure is made promptly if the disclosure is misleading or deceptive (which does not require any dishonest intent) and the disclosure leads investors into error then the listed entity and persons involved will be liable for losses suffered.

K. To ensure compliance with continuous disclosure obligations, listed entities should ensure that they have proper and adequate systems and procedures in place, for example a written continuous disclosure policy, a monitoring system and nomination of a compliance officer. Both ASX and the regulator, the Australian Securities & Investments Commission ("**ASIC**"), have given guidance on the relevant principles applicable to such policies and procedures, and recommend that listed entities adopt these principles in implementing compliance systems.

L. Failure to comply with the continuous disclosure regime can give rise to public enforcement actions (criminal and statutory civil penalty provisions), ASIC infringement notices, ASIC enforceable undertakings and/or private enforcement actions (including shareholder class actions).

M. Directors and offices of a listed company and any other person involved in a contravention of continuous disclosure obligations can be liable.

N. There have been a number of successful class actions in Australia in recent years against listed companies and their directors based on breaches of continuous disclosure obligations from investors who have suffered loss in consequence of delayed or defective disclosures. Whilst only one case has proceeded to judgement there have been numerous claims which have been initiated which have settled with large financial payments being made to investor groups.

O. ASIC has also initiated a few successful prosecutions under the statutory civil penalty provisions, with penalties ranging from $100,000 upwards up to $1.2 million. Two of these actions involved "selective disclosure" by the listed entity to analysts. The issue of "selective disclosure" (which involves disclosure by a listed company to select group of persons rather than the market at large) has been a focus of ASIC in recent times. Although ASIC encourages the flow of information to analysts in a way that contributes to market fairness and efficacy, it is expected that this will be balanced with the obligation for a listed entity to ensure that market sensitive information is disclosed first to the ASX.

1. Introduction

Companies that are listed on the ASX are required to comply with their continuous disclosure obligations under the Corporations Act 2001 (Cth) ("**Corporations Act**") and the ASX Listing Rules, subject to certain exceptions.

The objective of this Memorandum is to provide guidance on the continuous disclosure obligations of listed companies under Australian law.

2. Policy & Principles

The policy objective underlying Australia's continuous disclosure regime has been described by the Courts as being "*to enhance the integrity and efficiency of Australian capital markets by ensuring that the market is fully informed.*"[1]

Chapter 3 of the ASX Listing Rules, and in particular, Listing Rule 3.1 provides the basis for the continuous disclosure regime for listed companies. That regime involves the imposition of an absolute and continuous obligation, subject to very limited exceptions, to immediately, on becoming aware, disclose to the market non public material price sensitive information.

ASX and the Australian securities regulator, ASIC have both published guidance in the form of:

- **ASX Guidance Note 8** (recently revised in May 2013) provides guidance to assist ASX listed entities with obligations under ASX Listing Rules 3.1, 3.1A and 3.1B. ASX Guidance Note 8 is available at the following link:

  http://www.asxgroup.com.au/media/PDFs/guidance-note-8-clean-copy.pdf

- **ASIC "Regulatory Guide 62: Better Disclosure for Investors"** provides guidance on practical steps that a listed company can take to ensure that it meets its continuous disclosure obligations. ASIC Regulatory Guide 62 is available at the following link:

  http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/better_disclosure.pdf/$file/better_disclosure.pdf

The principles set out in these guides are designed to assist listed entities, and in particular the directors and officers in managing disclosure obligations. These guides are not only instructive but they establish prima facie standards of acceptable behaviour.

3. Disclosure Framework

3.1 Framework

Listed companies are subject to numerous legal disclosure obligations and the continuous disclosure obligations of a listed entity needs to be considered as part of the overall disclosure framework with which listed entities must comply.

That framework is defined by:

- Periodic disclosure mandatory obligations (typically annual and half yearly, and for certain entities, quarterly) under Chapters 4 and 5 of the ASX Listing Rules;
- Mandatory financial reporting obligations under the Corporations Act; and
- Disclosure obligations in relation to prospectuses, disclosure documents, takeover documents and scheme documents under the Corporations Act.

[1] NSW Court of Appeal, James Hardie Industries NV v ASIC [2010] NSWCA 332 [paragraph 355]

Once periodic disclosures are released to the market, separate disclosure of the information included in periodic disclosures is not required under ASX Listing Rule 3.1. All things being equal, entities are not expected to release the information in a periodic disclosure document ahead of the scheduled release date except in circumstances where it becomes apparent that the information ought to be disclosed immediately.

3.2 Continuous Disclosure Obligation

ASX Listing Rule 3.1 provides that:

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.

ASX Listing Rule 3.1B further provides that:

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 immediately give ASX that information.

Section 674 of the Corporations Act imposes a statutory liability for breach of continuous disclosure requirements under the ASX Listing Rules which gives the Listing Rules the force of law.

It is important to note that this liability is extended under section 674(2A) to a person who is involved in a listed entity's breach which includes directors, officers and others. In **James Hardie Industries NV v ASIC** [2010] NSWCA 332, the directors were found to have breached their duties in allowing a defective ASX announcement to be released to the market.

3.3 Exceptions

Listing Rule 3.1A sets out exceptions to Listing Rule 3.1 where information, otherwise required to be disclosed, need not be disclosed if **all** of the following conditions are satisfied:

(a) The information is confidential and ASX has not formed the view that the information has ceased to be confidential; **and**

(b) A reasonable person would not expect the information to be disclosed; **and**

(c) One or more of the following applies:

- It would be a breach of the 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.

4. Relevant Concepts

4.1 Aware

"Aware" is defined in ASX Listing Rule 19.2 which provides as follows:

"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".

An "officer" includes a director, secretary or a senior manager of a listed entity.[2]

In consequence of ASX Listing Rule 19.2 an entity is deemed to be constructively aware of information if it is known by any director or executive officer and the information 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 his duties as an officer. This requirement illustrates the benefit of having an effective system to capture potentially materially price sensitive information from different sources so as to ensure that it is "captured" by the system and reported to relevant persons for evaluation.

4.2 Immediately

"Immediately" is not defined in the ASX Listing Rules or the Corporations Act.

Judicial authority suggests that "immediately" should not be read as meaning "instantaneously", but rather as "promptly and without delay".[3] 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).[4]

The question in 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."*[5]

The following factors are taken into account by ASX in assessing whether an entity has complied with its obligation to disclose information under ASX Listing Rule 3.1 promptly and without delay:

- 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 veracity 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 ASX Listing Rule requirements; and
- The need in some cases for an announcement to be approved by the entity's board or disclosure committee.[6]

The sensitivity of the market to information is at its highest during trading hours on licensed Australian securities markets and therefore timing of disclosure of relevant information will be different depending on whether ASX is open for trading, as follows:

- If the disclosure obligation is triggered when the share market is not trading (i.e. overnight or on the weekend), then from ASX's perspective, it would be sufficient to give the information to ASX for release to the market before trading next resumes; and

[2] s 9, Corporations Act 2001 (Cth).
[3] Per Cockburn J in Queen v Berkshire Justices (1879) 4 QBD 460 and cited with approval by Forster CJ in Dorsman v Nichol (1978) 20 ALR 231
[4] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[5] ibid.
[6] ibid.

- If the disclosure obligation is triggered when the share market is trading, then the entity will be expected to give the information to ASX as quickly as it can in the circumstances and without delay or else to request a trading halt.

4.3 Market Price Sensitive Information

ASX Listing Rule 3.1 requires disclosure of information that "a reasonable person would expect to have a material effect on the price or value of the entity's securities", commonly referred to as "market sensitive information".[7]

Examples of the type of information that, depending on the circumstances could be considered "market sensitive information" includes:

- A material acquisition or disposal;
- The fact that the entity's earnings will be materially different from "market expectations";
- Under subscriptions or over subscriptions for an issue of securities; and
- Any rating applied by a rating agency to an entity or its securities and any change to an existing rating.

Whether or not information has a "material effect" on the price of an entity's securities will be judged from the perspective of a "reasonable person".

Materiality is not defined in the ASX Listing Rules but it is primarily the qualitative test under section 677 of the Corporations Act which should be applied8 namely that:

"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".

In **Jubilee Mines NL v Riley** (2009) 27 ACLC 164, the Court of Appeal of Western Australia confirmed that the predecessor to section 677 applied to the listing rule. In the James Hardie case, the Court held that the test of materiality is an objective one and Gzell J observed as follows:

"The matters a company takes into account and the reasons it has for deciding that information is not disclosable may be relevant, in that they provide part of the factual matrix in which the determination of materiality has to be made. However, the company's deliberations and ultimate decision are not determinative of whether information is material. That is the court's decision after an evaluation of the whole of evidence."[9]

In deciding whether or not a company has breached ASX Listing Rule 3.1, the entity will look at whether or not there has been a "material effect" on the price of an entity's securities. In doing so, ASX will generally apply the materiality guidelines in the Australian Accounting and International Financial Reporting Standards as a reasonable measure of materiality. If information appears to ASX to have moved the market price of an entity's securities (relative to prices in the market generally or in the entity's sector) by roughly:

- 10% or more, ASX will generally regard that as confirmation that the information was market sensitive and therefore a potential breach of the entity's continuous disclosure obligation; and
- 5% or less, ASX will generally regard that as confirmation that the information was not market sensitive.[10]

[7] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.

[9] James Hardie Industries NV v ASIC [2010] NSWCA 332

[10] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.

If the market price moves between 5-10% then ASX will consider a number of factors (including market capitalisation of the entity's securities, the bid-offer spread at which the entity's securities normally trade) to determine if the information is market sensitive.[11]

These quantitative guidelines are a guide and not conclusive.

5. Exceptions to Disclosure

5.1 Threshold Issues

In order for information to qualify to be withheld under one of the exceptions, both of the conditions below must be satisfied:

- The relevant information must be confidential; and
- A reasonable person would not expect the relevant information to be disclosed.

5.2 Confidential Information

"Confidential" means "secret".

Whether or not the information has the quality of being confidential is a question of fact not intention. If:

- a listed entity considers information to be confidential; and
- disclosure of such information would amount to breach of confidentiality; and
- that information is in fact disclosed by those who know it,

then that information is no longer a secret and ceases to be confidential information for the purposes of this rule.

In order to rely on this exception, listed entities should ensure that they have in place suitable and effective arrangements to preserve confidentiality (for example a confidentiality agreement).

ASX may form the view that information 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 that cannot be explained by other events or circumstances.

The "leakage" of information to the market or media can practically force a company engaged in confidential and sensitive discussions to make disclosure to the market of information previously withheld under an exception (for example if the company has received an indicative non binding proposal for merger or takeover which is leaked). Media tends to unrelentingly focus on such speculation as "news" and continue to run stories in a self feeding frenzy which infects the market. As discussed with Goldman Sachs there have been some recent examples in Australia of information being leaked (somehow) which has led to the target company either being compelled to make disclosure or voluntarily making disclosure in order to avoid further "rumour based" market speculation in the hope of quelling media or market speculation. There are no recent examples that we can cite of companies enforcing Confidentiality Agreements in this situation. This is for at least two reasons. Once the information is "out" it is too late and often it is not possible to pin point the source of the leak.

[11] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.

5.3 Reasonable Person Test

The test as to whether disclosure of the information is "expected" is also an objective one and is to be judged from the perspective of an independent judicious bystander and not from the perspective of someone whose interests are aligned with the listed entity or the investment community.

Specific examples of situations where a reasonable person would **not** expect such information to be disclosed under Listing Rule 3.1A.3 are as follows:

- Confidential information that an entity is planning to make a unilateral takeover bid. A reasonable person would not expect this information to be disclosed until the bidding entity formally launches its takeover bid for the target; or
- Confidential information that an entity has received an offer from another entity proposing to enter into a transaction. A reasonable person would not necessarily expect this information to be disclosed until any negotiations entered into concerning the transaction are successfully concluded.

As a general rule, information that falls within one or more of the prescribed classes and which meets the confidentiality requirements, will also satisfy the reasonable person test.

5.4 Classes of Information

If the relevant information is confidential and a reasonable person would not expect it to be disclosed, the information must fall into one of the following categories in order to be exempted from disclosure.

(a) **Breach of Law**

For this purpose disclosure of the relevant information must breach a specific statute, regulation, rule, administrative order or court order binding on the entity.

Breaches of contractual, tort or equitable obligations do not qualify. For example, disclosure which may give rise to a legal action for damages or for injunctive or other relief is not of itself sufficient.

(b) **Incomplete Proposal or Negotiation**

This type of information is excluded from disclosure because of the prejudice that it could cause if entities were required to develop corporate proposals and conduct commercial negotiations in public.

The term "proposal" refers to a course of action put forward for adoption, which may be unilateral (for example, proposal to declare a dividend) or multi-lateral (for example, a proposal to or from another party to enter into a transaction).

A proposal involving a listed entity is incomplete unless and until the entity has adopted it and is committed to proceeding with it.

Negotiations are incomplete unless and until they result in a legally binding agreement or the entity is otherwise committed to proceeding with the transaction being negotiated.

Examples of incomplete proposals and negotiations include:

- An company entering into confidential discussions with a party regarding a potential transaction proposed by the other party;
- The receipt by a company of a confidential indicative, non binding and conditional proposal for a potential transaction; and

- A company entering into discussions regarding an indicative, non binding and conditional proposal for a potential transaction.

As the company moves closer to an "agreement" regarding a proposed transaction the position becomes more complex.

It is not acceptable for a listed entity to commit itself to an agreement (by way of "hand shake" or a side letter) and then to delay execution in an attempt to delay disclosure.12 Once an agreement becomes legally binding or the listed entity is otherwise committed to proceeding with the relevant transaction, the proposal inherent in that agreement and the negotiations about it are "complete" in the relevant sense, and accordingly, the exception no longer applies and disclosure is required.[13]

The fact that an agreement to implement or to give effect to a transaction is subject to conditions that must be satisfied before it becomes legally binding or before the transaction can proceed to completion, does not mean that the negotiation/proposal is incomplete in the required sense. At that point, it is no longer an incomplete proposal or negotiation so the exception can no longer be relied on and disclosure is required.

(c) **Matters of Supposition that are Insufficiently Definite to Warrant Disclosure**

"Supposition" refers to something which is assumed or believed without knowledge or proof.[14]

"Insufficiently definite to warrant disclosure" refers to information which is:

- So vague, embryonic or imprecise; or
- The veracity of the information is so open to doubt; or
- The likelihood of the matter occurring, or its impact if it does occur, is so uncertain,

that a reasonable person would not expect it to be disclosed to the market.[15]

With respect to the last point, in matters where the entity knows about an event/circumstance and the entity is also aware that the event/circumstance will have a material effect on the price or value of its securities but where it may take time for the entity to or estimate the financial impact of the event/circumstance, disclosure will generally be required immediately and it is not appropriate for the entity to delay in disclosure on the basis that it is not in a position to state the financial impact of the event/circumstance in its announcement.[16]

In these circumstances the listed entity should announce whatever information is in its possession immediately but signal that it will make a further announcement when it has had the opportunity to assess the financial impact of the information. If the entity is concerned that releasing the information without disclosure of financial impact could result in a false market in its securities, it should discuss with ASX whether it would be appropriate to request a trading halt or voluntary suspension to give the entity more time to assess the financial impact and to make a more complete announcement to the market.

(d) **Information Generated for Internal Management Purposes**

This category of information includes information generated for internal management purposes of the listed entity itself and for any child entity or other entity in which the listed entity may have an economic interest.

[12] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[13] ibid.
[14] ibid.
[15] ibid.
[16] ibid.

Information generated externally may also fall under this category if it is going to be used for the internal management purposes.

This will usually cover management documents (e.g. budgets, forecasts, management accounts, business plans, strategic plans, minutes of management meetings, board papers, board minutes) and professional advice (from lawyers, accountants and financial advisers).

(e) **Trade Secrets**

A "trade secret" is something which has economic value to a business because it is not generally known or easily discoverable by observation and for which efforts have been made to maintain its secrecy.

Examples include formulas, recipes, devices, programs, methods, techniques or processes.

6. Compliance System

6.1 Continuous Disclosure Policy

ASX considers that listed entities should have an effective written policy on continuous disclosure which is aimed at ensuring that market sensitive information (or information which may be market sensitive information) which may require disclosure under ASX Listing Rule 3.1:

- Is brought to the attention of its directors, secretaries and senior managers in a timely manner;
- Is promptly assessed to determine whether it requires disclosure under ASX Listing Rule 3.1; and
- If it does, the required disclosure is promptly given to ASX.

ASX Corporate Governance Council's publication on "Corporate Governance Principles and Recommendations" recommends that listed entities have a written compliance policy that includes vetting and authorisation processes designed to ensure that:

- All investors have equal and timely access to material information concerning the entity – including its financial position, performance, ownership and governance; and
- Announcements by the entity are factually balanced and expressed in a clear and objective manner that allows investors to assess the impact of the information when making investment decisions.

It is suggested by ASX that the listed entity's disclosure policy also:

- Address how and when to use trading halts to manage continuous disclosure issues;
- Provide clear delineation between those announcements that require prior board approval and those that management can make; and
- Ensure continuous disclosure announcements are copied to board members and senior managers by email immediately after they have been released to ASX.

Other guidance for written continuous disclosure policies include:

- ASIC Regulatory Guide 62 which sets a list of ten principles, including, developing procedures for responding to market rumours, leaks and inadvertent disclosures and developing procedures for reviewing briefings and discussions with analysts to check whether any price sensitive information has been inadvertently disclosed; and

- Chartered Secretaries Publication "Good Governance Guide Disclosure and Communications Policy" which sets out guidance on the types of issues that should be covered in a continuous disclosure policy.

The nature and extent of policies and procedures directed at ensuring effective compliance with continuous disclosure obligations are matters considered by the Board and management.

Directors of listed entities should ensure that they have an effective compliance system in place in order to discharge their duties of care and diligence in monitoring affairs of the company.

6.2 Compliance System Methodology

Set out below is a summary of some key elements of continuous disclosure compliance system methodology:

(a) **Procedures & Policies**

As discussed, it is recommended by ASX that all listed entities develop, maintain and comply with their own written policy on continuous disclosure.

Within such policies, there should be specific procedures outlined to ensure compliance with different aspects of continuous disclosure law, for example:

- Procedures for dealing with market rumours, market speculation and media enquiries;
- Process for seeking trading halts, including preparation of draft trading halt requests and details of who has authority to seek a trading halt; and
- Procedures for conducting briefings with analysts and institutional investors.

(b) **Monitoring**

Entities relying on exceptions under ASX Listing Rule 3.1A should as a matter of course be monitoring for indicators that information which has been withheld may no longer be confidential and to that end should check:

- The market price of its securities and the securities of any other listed entity involved in the transaction;
- Major national and local newspapers;
- Any investor blogs, chat sites or other social media it is aware of that regularly posts comments about the entity; and
- Enquiries from analysts and journalists.[17]

Entities that are covered by analysts should generally monitor analysts' forecasts and/or consensus estimates so that they have a clear understanding of "market expectations" for earnings.

(c) **Compliance Officer**

ASIC recommends that a listed entity nominate a senior officer to have responsibility for:

- Ensuring that the entity complies with its continuous disclosure requirements;
- Overseeing and co-ordinating disclosure of information to the stock exchange, analysts, brokers, shareholders, media and the public; and

[17] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.

- Ensuring that directors and staff are educated on the entity's disclosure policies and procedures and raising awareness of the principles underlying continuous disclosure.[18]

(d) **Trading Halts & Suspensions**

If a listed entity becomes obliged to give information to ASX under Listing Rule 3.1 and at that time the market is or will be trading, the entity should consider whether it would be appropriate to request a trading halt (under Listing Rule 17.1) or in an exceptional case, a voluntary suspension (under Listing Rule 17.2).

As suggested, the continuous disclosure policy should set out circumstances in which trading halts may be required and the relevant procedure if and when those circumstances arise.

A trading halt or voluntary suspension will not be suitable in every case, and in particular, a trading halt which can only last for a maximum of two trading days will not be appropriate for those more complex or protracted disclosure issues which are unlikely to be resolved within two trading days (in certain cases, a voluntary suspension may be suitable).[19] ASX has indicated that trading halts may be necessary in the following scenarios:

- There are indications that the information may have leaked ahead of the announcement and it is having (where the market is not trading) or 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;

and in such circumstances:

- 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.[20]

ASX encourages entities which are unsure about whether to request a trading halt or voluntary suspension to contact its listings adviser.

ASX Guidance Note 16 on Trading Halts and Suspensions sets out ASX's guidance on ASX's dealing with such requests. ASX Guidance Note 16 can be accessed at the following link:

http://www.asxgroup.com.au/media/PDFs/gn16_trading_halts.pdf

The general principle applied by ASX in considering such requests is that "interruptions to trading should be kept to a minimum and therefore a trading halt or a voluntary suspension should only be permitted either 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 where it is needed to correct or prevent a false or disorderly market".[21]

[18] ASIC, ASIC Regulatory Guide 62: Better Disclosure for Investors".
[19] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[20] ibid.
[21] ASX, "ASX Guidance Note 16: Trading Halts & Suspensions", 1 May 2013.

7. Penalties & Enforcement

7.1 ASX Monitoring & Surveillance

ASX conducts monitoring and surveillance activities to detect possible breaches of Listing Rule 3.1.

If ASX identifies any abnormal trading in an entity's securities, it will contact the person responsible person for ASX communications at the company to discuss the situation. If ASX is satisfied from that discussion that the information remains confidential and is otherwise protected from disclosure under an exception, ASX will not release or require the entity to release that information. If the entity is not aware of such information then ASX will generally issue a price query letter asking the entity to confirm that fact in writing.

If ASX has concerns about whether a listed entity has disclosed market sensitive information at the time it should have under Listing Rule 3.1, ASX will typically issue an "aware letter" to the entity. If ASX has concerns that a listed entity may have failed to disclose information that it should have disclosed under Listing Rule 3.1 or an announcement that is disclosed may be inaccurate, incomplete or misleading, ASX may ask the entity to provide it with any information, documents or an explanation about the matter to enable ASX to be satisfied that the entity is in compliance with its listing rule obligations.

Responses to price query letters and aware letters will generally be published on the ASX announcements platform and may be used as evidence in criminal or civil proceedings.

In circumstances, where ASX is concerned that failure to provide such information has resulted in or will likely result in a false market (see Listing Rule 3.1B) in an entity's securities, ASX will contact the entity directly to require them to take steps to correct the situation either by making an announcement immediately to correct the misinformation or for the entity to request a trading halt until the market is properly informed.

If ASX suspects that a listed entity has committed a significant contravention of the listing rules or the listed entity or other person has committed a significant contravention under the Corporations Act, ASX is required under section 792B(2)(c) of the Corporations Act to give a notice to ASIC with details of the contravention.

7.2 Types of Penalties & Enforcement Actions

Failure to comply with section 674 of the Corporations Act may give rise to:

- Public Enforcement Legal Action Initiated by ASIC (including prosecution for an offence or civil penalty proceedings)

  The consequences for a listed entity breaching the continuous disclosure provisions are potentially serious. It is a criminal offence and a financial services civil penalty provision, punishable by a fine of up to 1,000 penalty units (for a criminal offence) and up to $1,000,000 (for a civil penalty provision). The Court will determine the penalty based on the seriousness of the transgression and all surrounding circumstances. Individuals who are involved in the breach can also be exposed to similar penalties, disqualification and the payment of compensation.

  In addition, persons who suffer loss or damage as a result of a listed entity's breach of section 674 may recover that amount from the entity under section 1317HA of the Corporations Act. ASIC may bring representative proceedings on behalf of such persons. A director, secretary or other officer of a listed entity who is "involved in" a listed entity's contravention may breach section 674(2A) which is also a civil penalty provision punishably by a penalty of up to $200,000.

Criminal prosecutions in Australia under the continuous disclosure regime are not common in Australia. However, ASIC has initiated four successful prosecutions under the statutory civil penalty continuous disclosure provisions.

- Infringement Notices Issued by ASIC

  This method appears to be ASIC's primary enforcement mechanism. If an ASIC infringement notice is complied with, ASIC cannot generally bring proceedings against the recipient. If the notice is not complied with, ASIC may take civil (including civil penalty) and administrative proceedings under the Corporations Act.

  The penalty payable under an infringement notice is determined by the market capitalisation of the company and whether the company has a prior conviction under section 674. Assuming no prior conviction, a company is fined $100,000 when its market capitalisation exceeds $1,000 million (Tier 1), $66,000 when its market capitalisation exceeds $100 million (Tier 2) and $33,000 when its market capitalisation is below $100 million (Tier 3).

  The use of infringement notices by ASIC is explained in ASIC Regulatory Guide 73: Continuous Disclosure Obligations – Infringement Notices, which can be accessed at the following link:

  http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rg73-published-5-June-2012.pdf/$file/rg73-published-5-June-2012.pdf

- Enforceable Undertakings Agreed with ASIC

  Enforceable undertakings can be initiated by a company, an individual or responsible entity as a result of a discussion between that party and ASIC. There is considerable flexibility in the drafting of such undertakings and there is no limit to the civil penalty that may be imposed. ASIC can enforce compliance with an undertaking by seeking a court order.

- Private Enforcement Actions

  Such actions are typically undertaken by way of class action. A number of recent major class actions are discussed in Section 8.2 of this Memorandum.

  As already noted, a person involved in the contravention of a listed entity's continuous disclosure obligations, may be liable (under section 674(2) A) for civil penalties. In addition, an officer (for example, director of the entity) may also be found to be in breach of his or her directors' duties.

7.3 Civil Penalties

The three main cases in which ASIC has successfully initiated prosecutions under the statutory civil penalty continuous disclosure provisions are summarised below:

(a) Newcrest Mining[22]

This is a very recent case relating to contraventions which arose from:

- a loss of confidentiality in relation to Newcrest's management's expectations concerning the 2014 financial year gold production and capital expenditure following selective disclosure of that information to investors and analysts between 28 May and 5 June 2013; and
- a failure by Newcrest to make such disclosure immediately of that information to ASX following that loss of confidentiality.

[22] ASIC v Newcrest Mining Limited [2014] FCA 698

The Court imposed a pecuniary penalty of $800,000 for contravention relating to the production information and $400,000 for the contravention relating to the capex information. As at the date of this paper, this penalty is the largest ever penalty imposed by ASIC for a breach of the continuous disclosure provision. This decision emphasises the importance of listed companies in adopting a governance structure and appropriate policies to ensure compliance with continuous disclosure obligations, and ensuring that management actually adheres to those procedures and policies.

(b) Southcorp[23]

This case related to an email that was sent by Southcorp's executive general manager of corporate affairs to analysts on 18 April 2002. The email disclosed that the group's profit for 2003 would be diminished by$30 million. This information was not simultaneously disclosed to ASX. From the time the email was sent until a trading halt called at 1.07pm on 19 April 2002, Southcorp's share price fell by 7%. Southcorp admitted that it had contravened the continuous disclosure provisions by selectively releasing information to analysts and had not at the same time provided such information to the ASX and that information was not generally available to the market. In this case, the Court applied a civil penalty of$100,000.

(c) Chemeq[24]

This case involved two contraventions of the continuous disclosure provisions. The first contravention related to failure by the company to notify ASX about the increased costs of constructing and commissioning its manufacturing facility, and the second contravention involved failing to disclose adequate information between 1.22am on 6 October 2004 and 3.36pm on 7 October 2004 about the commercial impact of a patent granted in the US in 2004. In this case, Chemeq was fined $150,000 for the first contravention and $350,000 in respect of the second contravention.

(d) James Hardie[25]

This case also involved two contraventions of the continuous disclosure provisions. The first contravention related to a resolution by the James Hardie Industries Limited Board to execute a deed of covenant and indemnity and failure by the company to disclosure the information in the deed pursuant to the continuous disclosure provisions. The second contravention related to the failure by James Hardies Industries NV to notify ASX of information relating to the ABN 60 Foundation. The Court imposed a civil penalty of $80,000 for these breaches, in addition to finding that the company had engaged in misleading and deceptive conduct.

7.4 Class Actions

There have been a number of shareholder class actions in Australia that have been brought against listed companies for breach of continuous disclosure obligations. However, to date, no shareholder class action for breach of continuous disclosure obligations has proceeded to final judgment, although a number of shareholder class actions have settled for large sums of money.

Examples of recent class actions which have settled and the outcomes are as follows:

(a) **Multiplex Funds Management Ltd**

This case involved a class action in which it was alleged that Multiplex had breached sections 674 and 675 of the Corporations Act in failing to keep the market informed of the substantial costs and delays associated with its Wembley Stadium project in the UK and the likely impact of those matters on the company's profits. Specifically, shareholders had alleged that

[23] ASIC v Southcorp Limited (No 2)(2003) 130 FCR 406
[24] ASIC v Chemeq Limited (2006) 58 ACSR 169
[25] ASIC v Macdonald (No 11) (2009) 230 FLR 1

Multiplex was aware of delays in the construction schedule and costs blowout in August 2004 but did not inform the market until 2005. All the allegations were denied by Multiplex, but they agreed in September 2010 to pay $110 million including costs to settle the claims without admission of liability.

(b) **Sigma Pharmaceuticals**

This case related to earnings guidance provided at the time the entity undertook a $300 million capital raising in September 2009. Six months after the capital raising, the company unveiled a $389 million loss causing its share price to plummet. Shareholders alleged that the earnings guidance was misleading and deceptive and that the company breached its continuous disclosure obligations by failing to inform the market of information which it ought to have been aware of throughout the period (including the significant deterioration in Sigma's share of the genetic pharmaceuticals market to the extent that it varied from management's expectations). The case was settled in October 2012 for approximately $57.5 million.

(c) **Centro**

The shareholders in this class action alleged that Centro Retail Limited and Centro Properties Limited breached their continuous disclosure obligations and engaged in misleading and deceptive conduct by failing to adequately disclose the full extent of their maturing debt obligations, the risk that they may not be able to refinance their maturing debts at forecast cost or at all and the risk that there was no longer a reasonable basis for their respective profit forecasts. The Federal Court of Australia approved a settlement amounting to $200 million including costs relating to Centro group entities.

8. Specific Disclosure Issues

8.1 Selective Disclosure

Essentially selective disclosure means disclosure by a listed company to select group of persons rather than the market at large (e.g. analysts and key investors).

At present ASIC has a very clear focus on selective disclosure by listed entities primarily related to communications between companies and investment analysts that cover their stock. On 8 July 2013, ASIC announced that it planned to conduct spot checks with selected companies when financial results were released to the market. This initiative arose out of recent events concerning Newcrest Mining Limited's disclosure of a $6 billion write-down on 7 June 2013 and the decline in the company's share price prior to the 7 June 2013 announcement by the company. In the days leading up to the announcement, several analysts downgraded their outlook for the company which resulted in the share price decline. ASIC's investigation of Newcrest on this matter eventually led to the Federal Court imposing civil penalties of $1.2 million against Newcrest in July 2014 for two contraventions of the continuous disclosure provisions of the Corporations Act (further information on this case is provided in Section 7.3(a)).[26] In imposing the highest ever penalty under the continuous disclosure provisions, the Court said that "the penalties are such as to send a strong message to market participants to be mindful of the care and caution needed when interacting with analysts".

On 31 July 2013, ASIC's Commissioner, John Price gave a speech on selective disclosure issues in which he highlighted the following:

- ASIC encourages the flow of information to analysts in a way that contributes to market fairness and efficacy but this must be balanced with the obligation for a listed company to ensure that market sensitive information is disclosed first to the ASX; and

[26] ASIC v Newcrest Mining Limited [2014] FCA 698

- ASIC expects that companies will have procedures in place (and follow those procedures) so as to ensure that they do not inadvertently or intentionally disclose market sensitive information in their communications with analysts.

On 27 May 2014, ASIC released ASIC Report 393: Handling of Confidential Information – Briefings & Unannounced Corporate Transactions, which is a report which summarises ASIC's review of the way in which listed entities and their advisers handle confidential market-sensitive information. Based on ASIC's recent investigations and findings from their review, ASIC has made the following recommendations which listed entities can undertake to minimise the risk of regulatory action:

- Refraining from attempting to manage the expectations of the market by selectively briefing analysts and key investors;
- Having policies in place to ensure as broad as possible access to analyst and investor briefings as broad as possible access to analyst and investor briefings. Some examples for entities to consider are:

  (i) providing advance notice and dial-in details of group briefings to the market; and

  (ii) if the entity undertakes an "investor roadshow", giving wide access to one of the roadshow briefings (or making a recording immediately available);

- making available full transcripts or recordings of group briefings—for example, by posting webcasts, podcasts and/or transcripts on ASX and/or archiving these on the entity's website for public access after the event; and
- having compliance systems in place to support the handling of confidential, market-sensitive information. For example, it may be appropriate in certain circumstances to have a system that allows for the segregation of certain teams who conduct briefings.

Listed companies must disclose any price sensitive information to the ASX first. In particular, companies must not "soften the market" by providing any potentially price sensitive information or suggestion of impending "bad news" to analysts before disclosing to the ASX. In addition, Listed Companies should ensure that analysts that are briefed are provided with the same information, and accordingly, group briefings are preferable as information is more likely to be leaked in casual meetings with only a few people.

8.2 Misleading & Deceptive Conduct

Since the introduction of the Trade Practices Act in 1974 Australian law has had a statutory prohibition on false, misleading and deceptive conduct.

The concept is today reflected in section 18 of the Australian Consumer Law (which replaced the Trade Practices Act). In addition various provisions of the Corporations Act prohibit false, misleading and deceptive conduct in relation to the affairs of companies including in relation to fund raising, takeovers, share buy backs and financial products. Not surprisingly the concept applies to performance of continuous disclosure obligations.

The concept of "misleading or deceptive" conduct is not defined in any of the relevant statutes but the Courts have indicated that it has the same meaning across various statutory provisions. In simple terms, conduct is misleading or deceptive if it leads the victim into error. Questions of intent or negligence are irrelevant. The matter is judged by the effect or likely effect of the conduct. Conduct or statements can be misleading or deceptive by commission or omission, that is, based on what is done or said or not done or said as the case may be.

In assessing whether a matter has the effect of is likely to have the effect of misleading or deceiving the conduct as a whole is reviewed. What this means in practice, because it is the whole of the conduct which is considered, is that an explanation of the limitations of information provided will be of value in mitigating the misleading or deceptive risk but a broad disclaimer will not.

The cause of action provided by such provisions is in addition to other remedies provided at law, in equity, contract, tort or otherwise.

Claims for loss or damage arising from misleading or deceptive conduct are regularly raised in commercial litigation claims before the courts and there is a whole body of well developed law in this area.

There are a wide range of remedies available to courts where a party is found to have engaged in misleading or deceptive conduct. The class actions referred to in Section 9.1 provide examples of these claims.

In the context of continuous disclosure this means that in order to minimise misleading or deceptive risk disclosures, listed companies need to ensure that disclosures are:

- Concise and effective;
- Factually accurate;
- Contain all material information relevant to the subject matter;
- Contain appropriate descriptions of limitations on the information provided;
- Where opinions are expressed such opinions must be reasonably based;
- Where forward looking statements are made, whether financial or otherwise, they must be based on reasonable assumptions; and
- Presented in a balanced way so as to inform the investment decisions of investors.

If these criteria are not satisfied then there will be a much higher risk that disclosure will be misleading or deceptive than where they are satisfied.

Listed companies need to exercise extreme care to ensure that disclosures which are made under the continuous disclosure regime are not false, misleading or deceptive.

8.3 Responding to Third Party Information

Information in the market consists of facts, opinions and speculation.

Where a company has provided relevant material information to the market of whatever kind the company will be legally obliged to correct what it has said if it becomes apparent to the company that the information previously provided is incorrect.

If there is false or misleading information circulating in the market, ASX may require the entity to give ASX any information it asks for to correct or prevent the false market.

Where the market is operating on the basis of speculation by or opinions of other persons unrelated to the company then the company needs to consider its position. ASX does not expect a listed entity to respond to every comment concerning the company that appears in the media or every analyst's report or every rumour about the company in the market.[27] However, if a media or analyst report or market rumour appears to be based on credible market sensitive information (whether accurate or not) and:

- There is a material change in the market price or traded volumes of the entity's securities which appears to relate to the report or rumour; or

[27] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.

- If the market is not trading at the time, but the report or rumour is of a character that when the market opens, it is likely to have a material effect on the market price or traded volumes of the entity's securities,

then, ASX considers that the listed entity has a responsibility to the market to respond to the report or rumour in a timely manner.[28] If an entity fails to do so voluntarily, ASX may exercise its power under ASX Listing Rule 3.1B to require the entity to provide a response.

8.4 False Market

A "false market" is in reference to a situation where there is material misinformation or materially incomplete information in the market, for example, where a listed entity has made a false or misleading announcement or there is other false or misleading information (false rumours) circulating in the market.

Pursuant to ASX Listing Rule 3.1B, ASX has the power to require an entity to immediately provide any information that ASX asks for to correct or prevent a false market.[29]

8.5 Earnings Guidance & Forward Looking Statements

Whilst there are specific requirements under Australian law for a listed entity to report its past earnings for a particular period there is no requirement to give future earnings guidance to the market.

Some entities have a practice of providing earnings guidance to the market. Where guidance is given "forward looking" statements (financial or otherwise) must be based on reasonable assumptions and the onus of proving that any statement made is based on reasonable assumptions falls on the person who made the statement, that is, there is a reverse onus of proof which falls on the maker of the statement.

An entity is also taken to provide "de facto guidance" if it makes statements that could be construed as such, for example, comments that the entity expects its earnings to be in line with analysts' forecasts or the entity expects its earnings to be within a particular percentage range relative to the corresponding prior period. In some respects this opens a "pandora's box" in the sense that such referential guidance may be more dangerous than direct guidance.

Nevertheless, there will be "market expectations" of a listed entity's earnings which will typically be established by:

- Earnings guidance given by the entity;
- For entities covered by sell-side analysts, the earnings forecasts of those analysts; or
- For entities not covered by sell-side analysts, the earnings results of the entity reported for the prior corresponding period.

These expectations may also be set or modified by "outlook statements" included in an entity's annual report or other "ad hoc" disclosures made to the market.

With respect to using analysts' forecasts for a reporting period to measure "market expectations", there are a number of methods that may be used, including:

- "Consensus Estimates" obtained from an information vendor or as calculated by the company.[30]

[28] ibid.
[29] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[30] ibid.

- Plotting the various forecasts and if all or most of them are clustered within a reasonable range, treating that range as representing the market's view of their likely earnings.[31]

A legal obligation to make an announcement **may** arise if and when the company becomes aware that its earnings for the current period will differ materially from the market expectations of the entity. This obligation arises under ASX 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"* (i.e. referred to by ASX as a "market sensitive earnings surprise"). In the case of an entity that becomes aware that its earnings for a reporting period will materially differ from earnings guidance that it has published to the market (which includes entities that have given "de facto guidance"), a legal obligation will arise under statute (section 1041H) to notify the market, because failure to inform the market that the published guidance is no longer accurate could constitute misleading and deceptive conduct.

The notification obligation will only arise under ASX Listing Rule 3.1 if the earnings surprise is market sensitive. In assessing whether or not this is the case, ASX suggests that the entity consider of a number of factors such as:

- Whether near term earnings is a material driver of the value of the entity's securities;
- Whether the difference is attributed to a non-cash item that may not impact underlying earnings;
- Whether the difference is a permanent one or is simply due to a timing issue;
- Whether the difference is attributable to one-off or recurring factors; or
- Whether the relative outlook for the entity in coming financial periods is positive or negative.[32]

ASX also recommends that relevant officers faced with such a decision on this issue ask the following two questions:

- Would this information influence my decision to buy or sell securities in the entity at their current market price?
- 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?[33]

If the answer to either question is yes, then that should be a cautionary indication that the information may well be market sensitive and need to be disclosed.

In deciding materiality, ASX suggests that entities apply the guidance on materiality in Australian Accounting and International Financial Reporting Standards, that is:

- Treat an expected variation in earnings compared to its published guidance equal to or greater than 10% as material and presume that its guidance needs updating; and
- Treat an expected variation in earnings compared to its published guidance equal to or less than 5% as not being material and presume that its guidance therefore does not need updating,

unless in either case, there is evidence or other convincing argument to the contrary.

Where the expected variation in earnings is between 5% and 10%, the entity needs to make a judgment as to whether or not this is material. According to ASX, smaller listed entities or those that

[31] ibid.
[32] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[33] ibid.

have relatively variable earnings may consider that a materiality threshold of 10% or close to it is appropriate, but large listed entities or those that normally have very stable or predictable earnings, may consider that materiality closer to 5% than 10% is more appropriate.

An entity will only need to disclose market sensitive information about an expected difference in its earnings for the current reporting period under Listing Rule 3.1 where there is a reasonable degree of certainty that there will be such difference.

Where an entity has published earnings guidance for the current reporting period, the entity will need to give careful consideration to its potential exposure under section 1041H for misleading and deceptive conduct (in addition to its notification obligation under Listing Rule 3.1 and section 674). Section 674 requires an entity to release updated information where a reasonable person would expect information to have a material effect on the price or value of the entity's securities, whereas section 1041H imposes an obligation on an entity to update its published earnings guidance where failure to do so would mislead or be likely to mislead investors. ASX suggests that an entity consider updating its published earnings guidance for the current reporting period if and when it expects its earnings for the period to differ materially from the guidance previously given.[34]

An entity does not have a legal obligation, under the Listing Rules or otherwise to correct the earnings forecast of any individual analyst or the consensus estimate of any individual information vendor to bring those external forecasts into alignment with the entity's own internal forecasts. However, ASX suggests that where an entity becomes aware that an analyst's forecast is materially different from its own, it would be in the entity's interest to explore with the analyst the reasons for the difference and if it turns out that the analyst may have made a factual or computational error, to point out that to the analyst.[35] This should assist in setting market expectations at an appropriate level and avoid any later market sensitive earnings surprises which could raise potential disclosure issues under Listing Rule 3.1.

8.6 Insider Trading Prohibition

To the extent that information is withheld under an exception, it is by definition non-public material price sensitive information. If such information is disclosed to an outsider, that person becomes an "insider" and will breach the insider trading provisions in the Corporations Act if it deals with securities with the benefit of that information. The insider can only be cleansed if the information ceases to be material price sensitive information or it is disclosed to the market, which can present challenges for listed companies, for example if the relevant information has been disclosed to a potential transaction counterparty and the only way the transaction can proceed is if the information is disclosed to the market but the company is unwilling or unable to disclose the information to the market for the same reasons as it was originally withheld. For such reasons companies need to be very careful regarding what disclosures they make to outsiders and they must be prepared to ultimately disclose such information to the market in order for the market to be properly informed.

In addition, where information has been disclosed "selectively" to certain analysts (please refer to discussion on "Selective Disclosure" in Section 8.1), there is a possibility that such analysts may be implicated in breaches of continuous disclosure rules through insider trading laws. ASIC has identified (in ASIC Report 393: Handling of Confidential Information – Briefings & Unannounced Corporate Transactions) that where companies engage in selective briefings and disclose market-sensitive information to only a part of the market, it creates opportunities for insider trading. Further, we note that in August 2013, ASIC Commissioner Cathie Armour publicly stated that "analysts who obtain price-sensitive, non public information from a company, then share it with fund managers, could be guilty of so-called "tipping" offences punishable by up to 10 years jail". The "tipping" offence referred to by the ASIC Commissioner is where an insider communicates inside information when the insider knows or ought reasonably to know that the other person would likely trade, or procure trading in securities the subject of the inside information. Accordingly, this would cover analysts who communicate the information to their clients, as those analysts would have known (or ought to have known) that their clients would trade in securities based on the inside information.

[34] ASX, "ASX Guidance Note 8: Continuous Disclosure", 1 May 2013.
[35] ibid.

9. Conclusion

The continuous disclosure obligations of listed entities are onerous and compliance requires at minimum a combination of:

- An appropriate system to indentify and assess relevant information:
- The ability to assess and determine if disclosure is required; and
- Where disclosure is required the ability to make the appropriate disclosure in a timely manner and such that it is not misleading or deceptive.

Each of these steps can present challenges to listed companies unless there is a diligent and systematic approach to the collection, evaluation and disclosure of relevant information.

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Aequus Counsel Pty Ltd is a legal and corporate adviser based in Sydney Australia with significant expertise and experience in cross border transactions in the hospitality industry.

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