



MEDIA RELEASE

31 October 2008

Review of Trading by Directors

The Australian Securities Exchange (ASX) has today released its latest review of disclosure of Directors' Interest Notices lodged by listed entities.

The review was conducted by ASX Markets Supervision (ASXMS) on all Directors' Interest Notices lodged between 1 July and 30 September 2008 (Q3 2008). The notices cover a director's appointment, changes to a director's interests and ceasing to be a director.

ASXMS completed a similar review of notices lodged between 1 January and 31 March 2008 (Q1 2008).

Of the 4,318 notices lodged during the latest three-month period:

- 278 or 6.4% breached the ASX listing rule because of incompleteness or failure to disclose to the market within five business days. This indicates that 93.6% of Q3 notices were lodged correctly and on time.

This is an improvement on Q1 results, where 538 or 13% of the 4,137 notices lodged breached the rule, with 87% in compliance.

Of the 278 Q3 breaches:

- 74 (1.7% of total notices lodged) concerned active or 'on market' trades by directors;
- 115 (2.7%) also potentially breached the Corporations Act by failing to disclose to the market within 14 calendar days (289 in Q1);
- 30 of these 115 were 'on market' trades; and
- All 115 potential breaches of the Corporations Act have been referred to ASIC.

Eric Mayne, Chief Supervision Officer of ASX, said: "Disclosure of directors' transactions and other interests is primarily a matter of good corporate governance and helps maintain an informed and orderly market. This is particularly important during the current period of market turbulence. Investors have a legitimate interest in this information.

"Failure to properly disclose creates the perception of market misconduct and undermines confidence in market integrity. Directors and listed companies should show leadership and set the best example of complete and timely disclosure.

"Improved compliance during this review, with both the listing rules and Corporations Act, can in part be attributed to ASXMS's campaign of raising awareness. We reminded all 2,200-plus companies of their disclosure obligations via a Companies Update in June 2008 and we have been seeking explanations where disclosure has been inadequate. During the period, ASXMS sent 154 'please explain' letters to listed entities and released 128 of them to the market.

"ASX will continue to actively monitor the lodgement of Directors' Interest Notices and take appropriate supervisory action for late or incomplete disclosure."

The full Q3 review of disclosure of Directors' Interest Notices follows this media release.

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Review of directors' trading – Q3 2008



31 October 2008

EXECUTIVE SUMMARY

What this report is about

The rule framework created by listing rules 3.19A and 3.19B requires listed entities to disclose directors' interests in securities and transactions in securities. This framework complements the director notification requirements of Section 205G of the Corporations Act. The Listing Rules and Section 205G, together with the prohibitions on insider trading and market manipulation, help to maintain an informed and orderly market.¹

Directors' Interest Notices are reported to ASX through the lodgement of Appendices 3X, 3Y and 3Z under listing rule 3.19A via the Companies Announcements Platform (CAP), and are monitored by ASX Markets Supervision Pty Limited (ASXMS) as a matter of course. ASXMS also undertakes periodic reviews of entities' compliance with the requirements of this listing rule.²

ASXMS conducted a review of all Directors' Interest Notices - Appendices 3X, 3Y and 3Z - lodged by all listed entities via CAP between 1 July 2008 and 30 September 2008 (Q3 2008). This review found that 6.4% of Directors' Interest Notices were lodged later than the five business day deadline required under listing rule 3.19A.

The results for Q3 compare favourably with the results for Q1 2008 (1 January to 31 March 2008) where the breach rate was 13%. The improved compliance with listing rule 3.19A demonstrated by the Q3 review can in part be attributed to the June 2008 Companies Update and to ASXMS' continuing efforts in monitoring Appendices lodged under the rule.

KEY FINDINGS FOR Q3 2008

Directors' Interest Notices

- There were 4,318 Appendices 3X, 3Y and 3Z lodged under listing rule 3.19A of which 278 (6.4%) breached the rule because of lateness or incompleteness. This indicates that approximately 93.6% of Appendices lodged during Q3 2008 were lodged correctly and within time.
- The results for Q3 compare favourably with the results for Q1 2008 where approximately 87% of Appendices were lodged correctly and within time, a breach rate of 13%.
- As a result of the Q3 review ASXMS sent 154 letters to listed entities, of which 128 were released to the market.
- 74 breaches of listing rule 3.19A during Q3 2008, 1.7% of total Appendices lodged, concerned active or "on market" trades by directors and 115 or 2.7% of Appendices also involved a potential breach of Section 205G of the Corporations Act. ASX has referred these potential breaches of Section 205G to ASIC. Of these potential Section 205G breaches there were 30 potential breaches relating to active or "on market" trades by directors.

Comparison of Q1 and Q3 results

Directors' Interest Notices Quarter	Appendix 3X		Appendix 3Y		Appendix 3Z		Total	
	Q1	Q3	Q1	Q3	Q1	Q3	Q1	Q3
Total lodged	580	533	3,218	3,380	339	405	4,137	4,318
Total breaches of LR 3.19A	133 (22.9%)	49 (9.2%)	359 (11.2%)	191 (5.6%)	46 (13.6%)	38 (9.4%)	538 (13.0%)	278 (6.4%)
Total breaches of Section 205G	78 (13.4%)	8 (1.5%)	188 (5.8%)	107 (3.2%)	N/A	N/A	266 ³ (6.4%)	115* (2.7%)

*Thirty of these trades were active or "on market" trades, which excludes trades conducted pursuant to employee schemes. This compares to 70 "active" trades identified in the Q1 review.

¹ ASX released a Companies Update in October 2005 reminding entities of their obligations under listing rules 3.19A and 3.19B and outlining possible ASX action where entities do not comply with the Listing Rules. ASX also wrote to each entity to advise of the ASX enforcement program. ASX released a further Companies Update in June 2008 advising of ASX action in cases of non-compliance with the Listing Rules.

² ASXMS carried out a review of all Directors' Interest Notices lodged between 1 January 2008 and 31 March 2008. The results of this review were released on 27 June 2008.

³ The figure previously reported in this category included Appendix 3Z which is not included in this category here or in the Q3 review.

ASXMS ACTIVITY

ASXMS current monitoring of Appendices

All announcements made by listed entities lodged via CAP are monitored by ASXMS Issuers Advisers. This includes every Appendix 3X, 3Y and 3Z lodged on CAP. Where an Issuers Adviser identifies a case of possible non-compliance with the listing rule, except where the non-compliance relates to technical changes which present no market concerns, action is taken and recorded. In all instances of breaches, action is taken by Advisers by letter, email or telephone call.

Review of Directors' Interest Notices and ASXMS action taken for non-compliance

The analysis of the data covered Q3 2008 and all Appendices 3X, 3Y and 3Z lodged under listing rule 3.19A on CAP by all entities. There were 4,318 Appendices lodged under listing rule 3.19A of which 278 (6.4%) breached the rule because of lateness or incompleteness.

Of the 278 breaches recorded, 115 breaches were recorded as lodged more than 14 days after the due date. This figure indicates that 41% of all breaches for all Appendices involved lodgements more than 14 days late in Q3 2008 compared to approximately 54% in Q1 2008.

The actions taken in relation to the breaches were as follows:

- There were 30 telephone calls made to listed entities where Issuers Advisers noted the breach.
- There were 154 letters sent to listed entities, of which 128 letters were released to the market.⁴

In its letters to listed entities ASXMS reminded entities of their obligations under the Listing Rules and asked each entity to answer the following questions:

- Why the Appendix or Appendices was or were lodged late?
- What arrangements the entity has in place with its directors to ensure that it is able to meet its disclosure obligations under listing rule 3.19A?
- If the current arrangements are inadequate or not being enforced, what additional steps does the entity intend to take to ensure compliance with listing rule 3.19B?

In cases where the Appendices related to "on market" trades or were lodged more than two business days late, the correspondence between ASXMS and the entity was released to the market.

Referral to ASIC

ASX has referred the details of the 115 identified potential breaches of Section 205G of the Corporations Act to ASIC. Thirty of these breaches relate to "active", that is, on market trades by directors.

METHODOLOGY

The review of Directors' Interest Notices involved a review of 4,318 announcements lodged between 1 July and 30 September 2008. The analysis looked at all Appendices 3X, 3Y and 3Z lodged by all entities under listing rule 3.19A which were comprised of:

- 533 Appendix 3X
- 3,380 Appendix 3Y
- 405 Appendix 3Z.

⁴ Some of these letters related to more than one breach by the same listed entity.

The analysis then involved sorting the Appendices by type and ascertaining the date of lodgement and the date of trade in order to determine compliance with the five-day time limit in listing rule 3.19A and the 14-day time limit in Section 205G of the Corporations Act.

BACKGROUND

The framework created by listing rules 3.19A and 3.19B was introduced by ASX in 2001 and requires listed entities to disclose directors' interests in securities and transactions in securities. This framework complements the director notification requirements of Section 205G of the Corporations Act.

Since the introduction of listing rules 3.19A and 3.19B in 2001, ASX has conducted ongoing analysis of compliance to help identify strategies to improve compliance. This includes education initiatives through Companies Updates, Guidance Notes or possible rule changes to establish guidelines for appropriate enforcement activity.

In 2002 ASX released Guidance Note 22 which provides information to assist listed entities in complying with their obligations under listing rules 3.19A and 3.19B, and also provides an overview of ASX policy in relation to disclosure of directors' interests and transactions in securities.

The Listing Rules and Section 205G, together with the prohibitions on insider trading and market manipulation, help to maintain an informed and orderly market. ASX considers that investors in a listed entity and the market in general, have a legitimate interest in trading by directors. To be useful, this information about holdings must be up-to-date and, where changes have occurred, must enable investors to understand the nature of the changes.

ASX recognises that a director may choose to trade an entity's securities for a broad range of reasons and that trading by directors is not necessarily an indicator of an entity's prospects. ASX considers that disclosure of directors' transactions is primarily a matter of good corporate governance.

Listing rule 3.19A and its relationship with Section 205G of the Corporations Act

The Listing Rule framework complements the director notification requirements of Section 205G of the Corporations Act. Where an entity complies with listing rule 3.19A, the obligations of the relevant director under Section 205G will also have been satisfied, subject to certain conditions - see paragraph 17 of Guidance Note 22. Conversely, if the information required by listing rule 3.19A is not given to ASX, the director may contravene Section 205G - see paragraph 20 of Guidance Note 22 in relation to ASIC relief under subsection 205G(6).

Listing rule 3.19A requires disclosure of the information required by Section 205G of the Corporations Act, together with some additional information that promotes a better understanding of the information required by the Corporations Act. To that extent, the Listing Rule requirements are separate from the requirements of the Corporations Act. Importantly, the Listing Rules require disclosure within a five business day period, rather than the 14-day period as prescribed by the Corporations Act.

Key elements of listing rules 3.19A and 3.19B

Listing rule 3.19A requires a listed entity to lodge with ASX via CAP a notice of a director's notifiable interests using the appropriate Appendix within five business days after any of the following events:

- The director's appointment - Appendix 3X
- The admission of the entity to the official list - Appendix 3X
- A change to a director's notifiable interests - Appendix 3Y
- A director ceasing to be a director - Appendix 3Z

Listing rule 3.19B requires every listed entity to enter into arrangements with its directors to ensure that all necessary information in relation to changes of directors' interests is given by the directors. This is so that the listed entity can comply with its obligations under listing rule 3.19A to provide the information in relation to a director's notifiable interests within the five business day time limit.⁵

Compliance with five-day time limit in listing rule 3.19A and 14 days in Section 205G

Lodgement of the appropriate Appendix 3X, 3Y or 3Z within the five business day time limit will serve to satisfy the requirements of Section 205G of the Corporations Act 2001 - see paragraphs 6, 7, and 16 to 19 of Guidance Note 22. Under Section 205G, a director is obliged to notify ASX of changes to his or her relevant interests in securities, and interests in contracts relating to securities, within 14 calendar days of the change.

⁵ See also paragraph 9 of Guidance Note 22.