



## MEDIA RELEASE

17 November 2009

### Review of Disclosure of Directors' Interest Notices – Q3 2009

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 2009 and 30 September 2009 (Q3 2009). The Notices cover a director's appointment, changes to a director's interests, and ceasing to be a director. This is the fourth such review that ASXMS has completed<sup>1</sup>.

Of the 3,077 Notices lodged during the latest three-month period:

- **91.9% or 2,827 were lodged correctly and within the five business days allowed by the ASX listing rule. Conversely, 8.1% or 250 of the Notices breached the rule because of incompleteness or late disclosure.**
- **ASXMS made 43 telephone calls and sent 197 letters to listed entities seeking explanations, of which 179 letters were released to the market.**

The Q3 2009 compliance level is slightly lower than the prior corresponding period (Q3 2008) when 93.6% of Notices were lodged correctly and within time, with a breach rate of 6.4%. It is also slightly lower than the level when the review was last completed (Q1 2009) when 92.7% of the Notices complied with the ASX listing rule and 7.3% were found to be in breach.

Of the 250 breaches in Q3 2009:

- 53 (1.7% of total Notices lodged) concerned active or 'on market' trades by directors, which excludes trades conducted pursuant to employee share schemes.
- 106 (3.4% of total Notices or 42.4% of all breaches) also involved a potential breach of the Corporations Act by being lodged later than 14 calendar days. Twenty-three (23) of the 106 related to active or 'on market' trades by directors.
- ASXMS has referred all 106 potential breaches of the Corporations Act to ASIC.

Eric Mayne, Chief Supervision Officer of ASX, said: "Timely disclosure of changes to directors' interests helps maintain investor confidence in market integrity. While compliance levels continue to be high – over 90% - there is no satisfactory excuse for failing to meet the disclosure rules every time.

"Directors are expected to set the best example. Failure to properly disclose creates the perception of misconduct. To be useful, information about directors' holdings must be up-to-date and, where changes have occurred, must enable investors to understand the nature of the changes."

---

<sup>1</sup> Prior reviews were conducted for notices lodged between 1 January and 31 March 2008 (Q1 2008), 1 July and 30 September 2008 (Q3 2008), and 1 January and 31 March 2009 (Q1 2009).

The Q3 2009 review of disclosure of Directors' Interest Notices follows this media release.

**Media inquiries:**

Matthew Gibbs  
Manager, Corporate Relations  
(BH) +61 2 9227 0218  
(Mobile) 0411 121219  
[matthew.gibbs@asx.com.au](mailto:matthew.gibbs@asx.com.au)

Roula Rodopoulos  
Corporate Relations Adviser  
(BH) +61 2 9227 0410  
(Mobile) 0418 219496  
[roula.rodopoulos@asx.com.au](mailto:roula.rodopoulos@asx.com.au)



# Review of Disclosure of Directors' Interest Notices – Q3 2009



17 November 2009

## WHAT THIS REPORT IS ABOUT

The rule framework created by ASX 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.<sup>1</sup>

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.<sup>2</sup>

ASXMS conducted a review of all Directors' Interest Notices lodged by all listed entities via CAP between 1 July 2009 and 30 September 2009 (Q3 2009). Similar reviews were conducted for the periods 1 January 2008 to 31 March 2008 (Q1 2008), 1 July 2008 to 30 September 2008 (Q3 2008), and 1 January 2009 to 31 March 2009 (Q1 2009). The results of each review were made public.

## METHODOLOGY

The latest review of Directors' Interest Notices involved a review of 3,077 announcements lodged in Q3 2009. The analysis looked at all Appendices 3X, 3Y and 3Z lodged by all entities under listing rule 3.19A and comprised of:

- 410 Appendices 3X (initial director's interest notice);
- 2,365 Appendices 3Y (change in director interests); and
- 302 Appendices 3Z (ceasing to be a director).

The Appendices were sorted by type, and the date of lodgement and the date of trade were ascertained to determine compliance with the five business day time limit in listing rule 3.19A and the 14 calendar day time limit in Section 205G of the Corporations Act.

## KEY FINDINGS FOR Q3 2009

- 91.9% or 2,827 of the 3,077 Directors' Interest Notices were lodged correctly and within time. Conversely, 8.1% or 250 of the Notices breached the five business day deadline due to lateness or incompleteness.
- The Q3 2009 compliance level is slightly lower than the prior corresponding period (Q3 2008) when 93.6% of Notices were lodged correctly and within time, with a breach rate of 6.4%. It is also slightly lower than the level when the review was last completed (Q1 2009) when 92.7% of the Notices complied with the ASX listing rule and 7.3% were found to be in breach.
- As a result of the Q3 2009 review ASXMS made 43 telephone calls and sent 197 letters to listed entities seeking explanations, of which 179 letters were released to the market.
- 53 rule breaches during Q3 2009 (1.7% of total Notices lodged) concerned active or 'on market' trades by directors, which excludes trades conducted pursuant to employee share schemes.
- 106 Notices (3.4% of total Notices or 42.4% of all breaches) also involved a potential breach of Section 205G of the Corporations Act by being lodged later than 14 calendar days. ASXMS has referred these potential breaches of the Act to ASIC. Of these potential Section 205G breaches, 23 related to active or 'on market' trades by directors.

---

<sup>1</sup> 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.

<sup>2</sup> ASXMS carried out a review of all Directors' Interest Notices lodged between 1 January 2008 and 31 March 2008 (Q1 2008), between 1 July 2008 and 30 September 2008 (Q3 2008), and between 1 January 2009 and 31 March 2009 (Q1 2009). The results of these reviews were released on 27 June 2008, 31 October 2008 and 30 April 2009 respectively.

## Comparison of Q3 2009 and Q1 2009 results

Directors' Interest Notices Quarter	Appendix 3X		Appendix 3Y		Appendix 3Z		Total	
	Q3 2009	Q1 2009	Q3 2009	Q1 2009	Q3 2009	Q1 2009	Q3 2009	Q1 2009
Total lodged	410	401	2,365	2,596	302	396	3,077	3,393
Total breaches of LR 3.19A	39 (9.5%)	43 (10.7%)	172 (7.3%)	167 (6.4%)	39 (12.9%)	36 (9.1%)	250 (8.1%)	246 (7.3%)
Total breaches of Section 205G	14 (3.4%)	5 (1.2%)	92 (3.9%)	91 (3.5%)	N/A	N/A	106 (3.4%)	96 (2.8%)

## ASXMS ACTIVITY

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

All announcements made by listed entities lodged via CAP are monitored by ASXMS Issuers Advisers, including every Appendix 3X, 3Y and 3Z lodged (the Directors' Interest Notices). 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 by letter, email or telephone call.

Of the 250 breaches recorded, 106 breaches were recorded as lodged more than 14 days after the date of trade and in potential breach of the Corporations Act. Hence, 42.4% of all breaches for all Appendices involved lodgements more than 14 days late in Q3 2009 compared to 39.0% in Q1 2009 and 41.4% in Q3 2008.

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

- There were 43 telephone calls made to listed entities where Issuers Advisers noted the breach.
- There were 197 letters sent to listed entities, of which 179 letters were released to the market.<sup>3</sup>

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

- **Why** was or were the Notice/s lodged late?
- **What arrangements does the entity have 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 late Notices related to 'on market' trades or to passive trades lodged more than two business days late (ie two days later than the five-day lodgement period), the correspondence between ASXMS and the entity was released to the market.

### Referrals to ASIC

ASX has referred the details of the 106 potential breaches of Section 205G of the Corporations Act to ASIC. Twenty-three of these breaches related to active or 'on market' trades by directors.

## 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.

<sup>3</sup> Some of these letters related to more than one breach in relation to the same listed entity.

ASXMS conducts ongoing analysis of compliance to help identify strategies to improve compliance. This includes **education initiatives** through:

- Companies Updates;
- Guidance Notes; and
- ASXMS Education and Research Program seminars.

In 2002 ASX released Guidance Note 22 that provides information to assist listed entities in complying with their obligations under listing rules 3.19A and 3.19B. It also provides an overview of ASX policy on 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.

### **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 16 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. 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 calendar 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 an 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.<sup>4</sup>

### **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.

© 2009 ASX Limited ABN 98 008 624 691

---

<sup>4</sup> See also paragraph 9 of Guidance Note 22.