



## **MEDIA RELEASE**

30 April 2009

### **Review of Disclosure of Directors' Interest Notices – Q1 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 January and 31 March 2009 (Q1 2009). The notices cover a director's appointment, changes to a director's interests and ceasing to be a director. This is the third such review that ASXMS has completed<sup>1</sup>.

Of the 3,393 notices lodged during the latest three-month period:

- 3,147 or 92.7% were lodged correctly and within the five business days allowed by the ASX listing rule. Conversely, 246 or 7.3% breached the rule because of incompleteness or late disclosure.
- ASXMS made 36 telephone calls and sent 121 letters to listed entities seeking explanations, of which 108 were released to the market.

The result for Q1 2009 compares favourably to the result for the prior corresponding period (Q1 2008) where the compliance rate for the 4,137 notices lodged was 87% and the breach rate was 13%. It is marginally down compared to when the review was last conducted (Q3 2008 - 1 July to 30 September 2008), where 93.6% of the 4,318 notices lodged complied with the ASX listing rule and 6.4% were found to be in breach.

Of the 246 Q1 2009 breaches:

- 54 (1.6% of total notices lodged) concerned active or 'on market' trades by directors, which excludes trades conducted pursuant to employee schemes.
- 96 (2.8%) also potentially breached the Corporations Act by failing to disclose to the market within 14 calendar days (6.4% in Q1 2008 and 2.7% in Q3 2008). 37 of these 96 were 'on market' trades.
- All 96 potential breaches of the Corporations Act have been referred to ASIC.

Eric Mayne, Chief Supervision Officer of ASX, said: "Timely disclosure of changes to directors' interests is a vital part of good corporate governance practice and helps maintain investor confidence in market integrity.

"Directors and listed companies are expected to set the best example. Failure to properly disclose creates the perception of misconduct. Keeping the market properly informed is particularly important during the current financial crisis.

"ASX Markets Supervision will continue to actively monitor the lodgement of Directors' Interest Notices and take appropriate supervisory action, including making referrals to ASIC, for late or incomplete disclosure."

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

The Q1 2009 review of disclosure of Directors' Interest Notices follows this media release.

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# Review of Disclosure of Directors' Interest Notices – Q1 2009

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30 April 2009

## EXECUTIVE SUMMARY

### 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 January 2009 and 31 March 2009 (Q1 2009). This review found that 92.7% of Directors' Interest Notices were lodged correctly and within time. Conversely, 7.3% of notices were lodged later than the five business day deadline required under listing rule 3.19A. The result for Q1 2009 compares favourably to the result for the prior corresponding period (pcp) - Q1 2008 (1 January to 31 March 2008) - where the breach rate was 13%. It is marginally down compared to when the review was last conducted (Q3 2008 - 1 July to 30 September 2008), where 93.6% of the 4,318 notices lodged complied with the ASX listing rule and 6.4% were found to be in breach.

The improved compliance between Q1 2009 and Q1 2008 can, in part, be attributed to a June 2008 Companies Update from ASXMS that reminded entities of their obligations and to greater awareness among entities of ASXMS's heightened monitoring of Appendices lodged under the rule. The decrease in compliance between Q3 2008 and Q1 2009 may be attributed to the December 2008–January 2009 holiday period.

## METHODOLOGY

The review of Directors' Interest Notices involved a review of 3,393 announcements lodged between 1 January and 31 March 2009. The analysis looked at all Appendices 3X, 3Y and 3Z lodged by all entities under listing rule 3.19A which were comprised of:

- 401 Appendices 3X;
- 2,596 Appendices 3Y; and
- 396 Appendices 3Z.

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 business day time limit in listing rule 3.19A and the 14 calendar time limit in Section 205G of the Corporations Act.

## KEY FINDINGS FOR Q1 2009

### Directors' Interest Notices

- There were 3,393 Appendices 3X, 3Y and 3Z lodged under listing rule 3.19A of which 3,147 or 92.7% were lodged correctly and within time. Conversely, 246 or 7.3% breached the rule due to lateness or incompleteness. The Q1 2009 result compares favourably to the pcp (Q1 2008) where approximately 87% of Appendices were lodged correctly and within time.
- As a result of the Q1 2009 review ASXMS made 36 telephone calls and sent 121 letters to listed entities seeking explanations, of which 108 were released to the market.

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<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 as well as between 1 July 2008 and 30 September 2008. The results of these reviews were released on 27 June 2008 and 31 October 2008 respectively.

- 54 breaches of listing rule 3.19A during Q1 2009 (1.6% of total Appendices lodged) concerned active or 'on market' trades by directors, which excludes trades conducted pursuant to employee schemes.
- 96 (2.8%) Appendices also involved a potential breach of Section 205G of the Corporations Act by being lodged later than 14 days. ASX has referred these potential breaches of Section 205G to ASIC. Of these potential Section 205G breaches there were 37 potential breaches relating to active or 'on market' trades by directors.

### Comparison of Q1 2009 and Q3 2008 results

Directors' Interest Notices Quarter	Appendix 3X		Appendix 3Y		Appendix 3Z		Total	
	Q1 2009	Q3 2008	Q1 2009	Q3 2008	Q1 2009	Q3 2008	Q1 2009	Q3 2008
Total lodged	401	533	2,596	3,380	396	405	3,393	4,318
Total breaches of LR 3.19A	43 (10.7%)	49 (9.2%)	167 (6.4%)	191 (5.6%)	36 (9.1%)	38 (9.4%)	246 (7.3%)	278 (6.4%)
Total breaches of Section 205G	5 (1.2%)	8 (1.5%)	91 (3.5%)	107 (3.2%)	N/A	N/A	96 (2.8%)	115 (2.7%)

## ASXMS ACTIVITY

### ASXMS monitoring of Appendices 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. 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 246 breaches recorded, 96 breaches were recorded as lodged more than 14 days after the date of trade. Hence, 39% of all breaches for all Appendices involved lodgements more than 14 days late in Q1 2009 compared to 41.4% in Q3 2008 and 49.4% in Q1 2008.

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

- There were 36 telephone calls made to listed entities where Issuers Advisers noted the breach.
- There were 121 letters sent to listed entities, of which 108 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 Appendix or Appendices 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 Appendices related to 'on market' trades or 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 96 identified potential breaches of Section 205G of the Corporations Act to ASIC. Thirty seven of these breaches relate to active, that is, 'on market' trades by directors.

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

## 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; and
- Education and Research Program seminars.

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. It 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 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>

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

### **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.