



MEDIA RELEASE

21 January 2010

Review of Trading by Directors in 'Blackout' Period - Q3 2009

The Australian Securities Exchange (ASX) has today released its latest review of securities trading by directors during the 'blackout' period.

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).

For the purposes of the review, the blackout period is defined as between the close of a listed entity's financial period and the announcement of its half-year or full-year results. The ASXMS review examined trading by directors during this period for possible contraventions of the publicly disclosed trading policy of the entity concerned.

Trading by directors in a blackout period is not prohibited by ASX rules or the Corporations law, outside the general insider trading or market manipulation provisions. However, especially in the absence of a satisfactory explanation of the trading to the market, it can indicate poor corporate governance practice and create the perception of potential market misconduct.

The review found that 0.7% of all active (i.e. on-market) trades by directors in Q3 2009 contravened the trading policies of the entities concerned, compared to 0.8% in Q1 2009 and 1.1% in Q3 2008.

Of the 713 total active trades by directors during the Q3 2009 period (1,047 in Q1 2009 and 1,418 in Q3 2008):

- 5 trades (0.7% of total active trades) were *confirmed* as contraventions of the trading policy of the entity concerned where permission from the relevant chairman of the board had not been granted for the trading. The confirmed contraventions involved 4 individual directors in the securities of 4 different entities.
- This compares to 8 confirmed contraventions (0.8%) by 6 directors in the securities of 6 different entities in Q1 2009, and 15 confirmed contraventions (1.1%) by 12 directors in 9 entities in Q3 2008.
- The 5 trades confirmed as contraventions represented 2.2% of trades in the blackout period.
- Of the 5 confirmed contraventions of trading policies in Q3 2009, no trades related to an entity which was in either the All Ordinaries Index (AOI) or the S&P/ASX 200 Index. All trades related to entities outside the AOI.
- This compares to 3 trades related to a single entity in the AOI and also in the S&P/ASX 200 Index during Q1 2009, and 2 trades in the AOI, including 1 trade relating to an entity in the S&P/ASX 200 Index, during Q3 2008.

Of the 713 total active trades, 224 trades (31%) occurred during the blackout period, involving 151 individual directors in the securities of 129 different entities. This compares to 346 trades (33%) by 219 individual directors in the securities of 189 different entities during the blackout period in Q1 2009, and 718 trades (50%) by 454 individual directors in the securities of 331 different entities during the blackout period in Q3 2008.

Of the 224 trades by directors during the blackout period in Q3 2009, 29 trades (12.9% of trades in the blackout period) were found to have *potentially* contravened the trading policies of the 17 entities concerned. This compares to

35 (10.1%) potential contraventions in Q1 2009 and 95 (13.2%) in Q3 2008. ASX made enquiries about each potential contravention to 17 different entities to ascertain if a contravention had in fact occurred.

On 4 December 2009, ASX released for public consultation proposed listing rules affecting company policies on trading windows and blackout periods requiring listed entities to:

- Adopt and disclose a trading policy on trading in entity securities by directors and other key management personnel;
- Include restriction and clearance procedures in the policy as to when trading can and cannot occur; and
- Disclose publicly whether any trading by directors occurred during an otherwise restricted period.

Eric Mayne, Chief Supervision Officer of ASX and Chairman of the ASX Corporate Governance Council, said:

"Trading by directors during a blackout period is an important public issue and impacts on overall confidence in the integrity of the Australian market. While such trading might not be prohibited by law, it could be perceived to be against the spirit of good corporate governance, especially if an explanation for the trading is not disclosed to the market.

"A company's trading policy is not intended to operate only in circumstances where the director is in possession of material information - the insider trading provisions of the Corporations Act would prohibit a trade in these circumstances in any event. The trading policy is intended to indicate to investors whether or not directors are permitted to trade in an entity's securities during the blackout period. Any exemptions from the operation of the trading policy should be on the basis that the circumstances were exceptional and these should be disclosed to the market.

"Companies should be vigilant in enforcing their own trading policies and codes. And directors should be mindful of the message their trading behaviour sends to other shareholders and stakeholders. Blackout trading by directors is a matter of corporate governance and one for boards and shareholders to resolve.

"If the proposed listing rule amendments are introduced, ASXMS will be in a position to ensure that all listed entities have in place a trading policy which identifies periods during which trading by directors and key management personnel is restricted, and be able to ensure that trading by directors which occurred during an otherwise restricted period is disclosed publicly to the market.

"ASXMS will be examining the data from the review, as we do as a matter of course with all trading data, to determine if there are possible instances of insider trading by directors and/or breaches of continuous disclosure obligations by listed entities. If evidence is found, ASXMS will refer the matters to ASIC for further investigation."

The review of directors' trading during the blackout period for Q3 2009 follows this media release.

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Review of directors' trading during the 'blackout' period – Q3 2009

21 January 2010

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 (Appendices 3X, 3Y and 3Z), reported to ASX by lodgement of the Directors' Interest Notices under listing rule 3.19A via the Company Announcements Platform (CAP), 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 announced in June 2008 that it would carry out reviews of trading by directors during Q1 and Q3 of each year.³ Using the data from the reviews of directors' trading, ASXMS also conducts reviews of trading by directors during the so-called "blackout period" (that is, the period between the close of an entity's financial period and the release of its half-year or full-year results).

ASXMS considers that disclosure of directors' transactions is primarily one of good corporate governance. Investor confidence in directors and the market overall can be undermined when there is active trading in blackout period, in contravention of an entity's publicly disclosed trading policy and especially in the absence of a satisfactory explanation of the trading to the market.

ASXMS reviewed all Directors' Interest Notices lodged by all listed entities via CAP between 1 January 2008 and 31 March 2008 (Q1 2008), 1 July 2008 and 30 September 2008 (Q3 2008) and between 1 January 2009 and 31 March 2009 (Q1 2009). Following the reviews, ASXMS conducted a review of directors' trading in Q1 2008, Q3 2008 and Q1 2009 to identify whether there were instances of directors engaged in active (ie on-market) trading in securities during the blackout period.

Results of the review for Q3 2009

ASXMS conducted a fourth review of all Directors' Interest Notices lodged between 1 July 2009 and 30 September 2009 (Q3 2009). The results of the Q3 2009 review showed a decline in the level of compliance with listing rule 3.19A compared to the previous corresponding period (Q3 2008) in that approximately 8.1% of Appendices breached the rule compared to 6.4% in Q3 2008. The Q3 2009 result was also marginally unfavourable compared to Q1 2009 where 7.3% of the notices lodged were found to be late and in breach of listing rule 3.19A.

Using the data from the Q3 2009 review, ASXMS conducted a review of trading by directors during the blackout period in Q3 2009. **The results of this review show that 0.7% of all active (ie on-market) trades by directors in Q3 2009 contravened the trading policies of the entities concerned, compared to 0.8% in Q1 2009 and 1.1% in Q3 2008.**

Of the 713 total active trades by directors during the Q3 2009 period (1,047 in Q1 2009 and 1,418 in Q3 2008), 5 trades (0.7% of total active trades) were *confirmed* as contraventions of the trading policy of the entity concerned where permission from the relevant chairman of the board had not been granted for the trading. The confirmed contraventions involved 4 individual directors in the securities of 4 different entities. This compares to 8 confirmed contraventions (0.8%) by 6 directors in the securities of 6 entities in Q1 2009, and 15 confirmed contraventions (1.1%) by 12 directors in the securities of 9 entities in Q3 2008. The 5 trades confirmed as contraventions represented 2.2% of trades by directors in the blackout period. Of the 5 confirmed contraventions of trading policies in Q3 2009, no trades

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 conducted a review of all Directors' Interest Notices lodged by all listed entities via CAP between 1 January 2008 and 31 March 2008. ASXMS conducted a second review of all Directors' Interest Notices lodged via CAP between 1 July 2008 and 30 September 2008. ASXMS conducted a third review of all Directors' Interest Notices lodged via CAP between 1 January 2009 and 31 March 2009. The results of these reviews are at www.asx.com.au.

³ See Companies Update 05/08, 27 June 2008.

related to an entity which was in either in the All Ordinaries Index (AOI) or the S&P/ASX 200 Index. All trades related to entities outside the AOI. This compares to 3 trades related to a single entity in the AOI and also in the S&P/ASX 200 Index during Q1 2009, and 2 trades in the AOI, including 1 trade relating to entities in the S&P/ASX 200 Index, during Q3 2008.

ASXMS will be examining the data from the review, in conjunction with the usual examination of all trading data, to determine if there are possible instances of insider trading by directors and/or breaches of continuous disclosure obligations by listed entities. If ASXMS forms the view that there may be a breach then ASXMS will refer the matter/s to ASIC for further investigation.

CAMAC recommendations and ASX action

ASXMS notes that the Government referred the issue of directors' trading during the blackout period to the Corporations and Markets Advisory Committee (CAMAC) in November 2008.⁴

On 30 July 2009, CAMAC publicly released a report to Government, 'Aspects of Market Integrity', in summary which concluded directors and executive officers should be prohibited by their respective entities from trading during the black-out period, and except in exceptional circumstances, directors and executive officers should be permitted to dispose of securities during the black-out period only where that person is not aware of inside information and is in severe financial difficulty or other exceptional circumstances and entities should keep a record of any exemptions granted.

On 4 December 2009, ASX released for public consultation proposed listing rules affecting company policies on trading windows and blackout periods.⁵

Under these proposed listing rule amendments, ASX is seeking to require listed entities to:

- adopt and disclose a trading policy on trading in entity securities by directors and other key management personnel;
- include restriction and clearance procedures in the policy as to when trading can and cannot occur; and
- publicly disclose whether any trading by directors occurred during an otherwise restricted period.

ASX has invited comment on the proposals by Friday, 26 February 2010.

Key findings

Blackout trading

- There were 2,365 Appendices 3Y Change of Director's Interest Notices lodged during Q3 2009 compared to 2,596 in Q1 2009 and 3,380 in Q3 2008. Of the Appendices 3Y lodged during Q3 2009, 713 involved active (i.e. on-market) trades compared to 1,047 active trades during Q1 2009 and 1,418 trades during Q3 2008.
- **In total, 0.7% of all active trades by directors in Q3 2009 contravened the trading policies of the entities concerned, compared to 0.8% in Q1 2009 and 1.1% in Q3 2008.**
- **This amounted to 5 trades involving 4 individual directors in the securities of 4 different entities. This compares to 8 confirmed contraventions by 6 individual directors in the securities of 6 different entities in Q1 2009, and 15 confirmed contraventions by 12 individual directors in 9 different entities in Q3 2008.**

⁴ See the reference from the Minister for Superannuation and Corporate Law to CAMAC at [http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFReference/\\$file/Ref_Market_Volatility.pdf](http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFReference/$file/Ref_Market_Volatility.pdf)

⁵ The *Listing Rule Amendments: Company Policies on Trading Windows and Blackout Periods* can be found at http://www.asx.com.au/about/whats_new.htm#listingrules

- Of the 713 active trades (involving 361 entities) conducted during Q3 2009, 224 trades (31%) occurred during the blackout period. These 224 trades were conducted by 151 individual directors in the securities of 129 different entities. This compares with 346 trades (33%) by 219 individual directors in the securities of 189 different entities during the blackout period in Q1 2009, and 718 trades (50.1%) by 454 individual directors in the securities of 331 different entities during the blackout period in Q3 2008.
- Of the 224 active trades during the blackout period in Q3 2009, 29 trades (12.9%) (involving 17 listed entities) *potentially* contravened the trading policies of the entities concerned compared to 35 potential contraventions (10.1%) in Q1 2009 and 95 potential contraventions (13.2%) in Q3 2008.
- Of the *potential* contraventions, ASXMS contacted the 17 listed entities to ascertain whether a contravention of the trading policy may have occurred. The majority of responses indicated that the transactions *did not* breach the relevant trading policy because the chairman of the board had given the appropriate approval for the trade. The principal reason for the chairman's approval was that the chairman was of the opinion that the director was not in possession of material information that had not been released to the market at the time of the trade.
- Of the 29 *potential* contraventions of the trading policies of the 17 entities concerned, **there were 5 confirmed contraventions (2.2% of trades during the blackout period) in Q3 2009 involving 4 entities compared to 8 (2.3%) confirmed contraventions in Q1 2009 and 15 (2.1%) in Q3 2008.**
- Of the 5 confirmed contraventions of trading policies in Q3 2009, no trades related to an entity which was in either in the All Ordinaries Index (AOI) or the S&P/ASX 200 Index. All trades related to entities outside the AOI. This compares to 3 trades related to a single entity in the AOI and also in the S&P/ASX 200 Index during Q1 2009, and 2 trades in the AOI, including 1 trade relating to entities in the S&P/ASX 200 Index, during Q3 2008.

Summary of results of Q3 2009, Q1 2009 and Q3 2008 reviews of blackout trading

Blackout trading			
Quarter	Q3 2008	Q1 2009	Q3 2009
Number of Appendix 3Y forms lodged	3,380	2,596	2,365
Total number of active trades	1,418	1,047	713
Total number of active trades during blackout period as % of active trades	718 (50.1%)	346 (33%)	224 (31%)
Number of potential contraventions of trading policy as % of active trades <i>during blackout period</i>	95 (13.2%)	35 (10.1%)	29 (12.9%)
Confirmed contraventions of trading policy as % of active trades <i>during blackout period</i>	15 ^{***} (2.1%)	8 ^{**} (2.3%)	5 [*] (2.2%)
<i>Confirmed contraventions of trading policy as % of total active trades</i>	<i>1.1%</i>	<i>0.8%</i>	<i>0.7%</i>

^{***} 2 trades occurred in 2 separate entities in the AOI, of these, 1 was also in the S&P/ASX 200 Index. None of the other entities were in either index.

^{**} 3 trades occurred in a single entity which was in both the AOI and S&P/ASX 200 Index. None of the other entities were in either index.

^{*} None of these entities were in either the All Ordinaries Index (AOI) or the S&P/ASX 200 Index.

Background

Listing rule 3.19A and the Corporations Act

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, ASXMS has conducted ongoing analysis of compliance to help identify strategies to improve compliance. This includes education initiatives through Companies Updates, Guidance Notes and the Education and Research Program, or possible rule changes to establish guidelines for appropriate enforcement activity.⁶

The Listing Rules and Section 205G, together with the prohibitions on insider trading and market manipulation, help to maintain an informed and orderly market. ASXMS 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.

ASXMS 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. ASXMS considers that disclosure of directors' transactions is primarily a matter of good corporate governance.

Blackout trading

Limiting trading by directors and others during the blackout period also is a matter of good corporate governance. Public confidence in an entity can be eroded if there is insufficient understanding about the entity's policy on trading by potential insiders, such as directors, officers and employees. Investor confidence in directors and the market can be undermined when there is trading in blackout periods in contravention of entities' securities trading policies.

A trading policy which includes a provision for a blackout on trading by directors and others in the period between the close of books and the announcement of full or half-year results acts as a mechanism for minimising the potential for any perception that directors or others are dealing in an entity's securities while in possession of inside information. Trading policies frequently permit trading in 'windows' following the full and half-year results announcements.

Blackout trading does not breach the Corporations Act nor ASX rules. However, directors and others who trade with information that is not generally available are subject to the insider trading provisions of the Corporations Act and directors are subject to the notification provisions of listing rule 3.19A and Section 295G of the Corporations Act.

In November 2008, the Government referred the issue of blackout trading to CAMAC requesting it to report on how overseas jurisdictions regulate blackout trading and to advise whether changes are required to the Australian regulatory framework to provide for greater confidence in the integrity of the Australian market, particularly in relation to director trading.

On 4 December 2009, ASX released for public consultation proposed listing rules affecting company policies on trading windows and blackout periods.

ASX Corporate Governance Council's Recommendations

The ASX Corporate Governance Council's (Council) 2007 *Corporate Governance Principles and Recommendations* (Revised Recommendations) recommend that entities establish a trading policy concerning trading in the entity's securities.⁷ The Revised Recommendations suggest that a trading policy identify whether trading windows or blackouts are used and, if so, details of how they apply.⁸ It is also recommended that entities disclose their trading policies or summaries of those policies. The Revised Recommendations outline that public confidence in a company

⁶ ASXMS released Guidance Note 22 in 2002 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.

⁷ See the 2003 *Principles* Recommendation 3.2 at page 26 and the *Revised Recommendations* Recommendation 3.2 at page 23.

⁸ See the 2003 *Principles* Box 3.2 at page 27 and the *Revised Recommendations* at page 23.

can be eroded if there is insufficient understanding about the company's policies governing trading by potential insiders.

While listed entities are not required to follow the Council's Recommendations, they are required under listing rule 4.10.3 to disclose the extent to which they have followed the Council's Recommendations in the corporate governance statement in their annual report. Where entities have not followed the Recommendations they must identify the Recommendations they have not followed and give reasons for not following them, the "if not, why not" approach. Central to the "if not, why not" approach is the need for an entity to explain how its practices accord with the spirit of the relevant Principle.⁹

While an entity is not required to have a trading policy or to have a trading policy that provides for blackout periods, it should nonetheless explain how its practices meet the spirit of the Principle.

ASXMS's review of annual reports has shown a continued improvement in the number of entities establishing a trading policy with over 92% of entities having disclosed in annual reports for the period ended 31 December 2008 that they have trading policies compared to 86% in annual reports for the period ended 30 June 2008. ASXMS currently is reviewing annual reports for the period ended 30 June 2009 in terms of complying with listing rule 4.10.3 and disclosing the extent to which listed entities have followed the Council's Recommendations in the corporate governance statement in their annual report. The results of this review are expected to be released towards the end of June 2010.

ASXMS monitoring of Appendices and blackout trading

All announcements made by listed entities lodged via CAP are monitored by ASXMS Issuers Advisers. This includes every Appendix 3Y lodged on CAP.

ASXMS announced in June 2008 that it would carry out reviews of trading by directors during Q1 and Q3 of each year. Using the data from the reviews of directors' trading ASXMS also conducts reviews of trading by directors during the blackout period. The review of blackout trading involved examining all 2,365 Appendix 3Y Notices lodged in Q3 2009.

ASXMS response to contraventions

A review of the publicly available information on share trading policies showed that prima facie 29 of the active trades (involving the securities of 17 entities) conducted during the blackout period in Q3 2009 may have contravened the entities' own trading policies (the potential contraventions).

ASXMS wrote to all 29 entities where prima facie (or potentially) it appeared that an active trade during the blackout period may have contravened the entity's own trading policy. In these letters, ASXMS asked entities:

- Whether the trades occurred outside a designated trading window.
- If the trades occurred outside a designated trading window, the reason for the departure from the entity's trading policy.
- In the event that the trades deviated from the usual trading window specified in the entity's trading policy with the approval of the managing director or chairman, when the approval was obtained and why it was granted.
- What arrangements the entity has in place with its directors to ensure compliance with the trading policy.
- If the current arrangements are inadequate or are not being enforced, what additional steps the entity intends to take to ensure compliance with its trading policy.

⁹ See the *Revised Recommendations* at page 6.

The majority of responses to these letters indicated that the transactions did not contravene the relevant trading policy because the chairman of the board had given the appropriate approval for the trade. The principal reason for the chairman's approval was that the chairman was of the opinion that the director was not in possession of material information that had not been released to the market at the time of the trade.

ASXMS considers that where trading occurs outside the usual trading windows specified in an entity's trading policy, the entity should provide additional explanation in relation to the trade. If the departure from the usual trading window has been approved by the board, this, together with the reasons for the departure, should be communicated to the market along with any other relevant information. This additional explanation could be provided either in the Appendix 3Y form or at the time the Appendix 3Y is lodged. However, currently it is for boards and shareholders to address these issues.

The data from the Q3 2009 blackout trading review will also be further analysed to determine whether there are possible instances of insider trading by directors and/or breaches of the continuous disclosure requirements by listed entities, in which case, they will be referred to ASIC for further investigation.

Methodology

ASXMS analysed all 2,365 Appendix 3Y Change of Director's Interest Notices lodged from 1 July 2009 to 30 September 2009 inclusive. The changes of relevant interest were initially classified as 'active' or 'passive'. Changes of relevant interest were deemed to be passive if they involved the acquisition of securities through an employee incentive scheme, if the issue had been approved by security holders or otherwise presented no market concerns; for example, issues under dividend reinvestment plans, share purchase plans and rights issues – in each case directors participate on identical terms to all other security holders.

The active changes of relevant interest were then assessed to determine whether the trade occurred during the blackout period; that is, the period between the close of the financial period and the release of half-year or full-year results. The publicly available information on share trading policies was reviewed to determine whether or not any of the active trades conducted during the blackout period had also contravened an entity's own trading policy.