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Our ref 838

Dear Ms Tan

ASX Consultation Paper: Review of ASX Listing Rules Guidance Note 8

Clayton Utz is pleased to provide ASX with its comments on the proposed new Guidance Note 8: Continuous Disclosure: Listing Rules 3.1 - 3.1B and related amendments to the ASX Listing Rules.

Clayton Utz's response reflects our position as legal advisers to listed companies, and has taken into account input from our clients, as well as discussions with our key stakeholders.

Clayton Utz broadly supports the proposals in GN8 as recognising the commercial reality that listed companies face in complying with the continuous disclosure regime, however we do have a number of submissions in respect of areas where we believe there is further opportunity to provide listed companies with more certainty in complying with their continuous disclosure obligations, which will allow the continuous disclosure regime to operate in a more efficient and effective manner.

There is one particular submission which we wish to highlight, and that is the need for an express policy statement by ASIC that it is in agreement with and supports the various policy positions, interpretations and exercises of discretion by ASX as referred to and inherent in GN8.

GN8 contains numerous examples where ASX provides its interpretation of various components of LR3.1, 3.1A and 3.1B. There are also a number of instances where ASX acknowledges that it will regard a listed entity as having complied with the spirit and intent of the continuous disclosure obligations even though it may be technically non-compliant. This further guidance will be of great assistance for listed entities and their advisers in considering their obligations under these rules. However, because these are statements of opinion or the exercise of judgement or discretion by ASX, and because ASIC has the enforcement role in relation to compliance with continuous disclosure obligations, we believe there is a real risk that the positions being adopted by ASX in this revised guidance will not be effective if they are not expressly adopted by ASIC.

We believe that an express policy statement by ASIC which adopts the various positions taken by ASX in GN8 will provide listed entities and their advisers with much greater certainty around compliance with their continuous disclosure obligations. Given ASIC has responsibility for enforcing these obligations, it is important that listed companies have sufficient comfort that acting in accordance with the guidance provided by ASX will not result in any enforcement action by ASIC.

Our further detailed submissions are set out in the attached Appendix. We would be happy to discuss these with you further if that would assist your consideration of our submissions.

Yours sincerely

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Appendix

Clayton Utz's Submissions on Proposed new ASX Guidance Note 8: Continuous Disclosure

1. Areas of Clarification

1.1 Persons who commonly invest in securities

As noted in section 3.2 of GN8, information is market sensitive if a reasonable person would expect the information to have a material effect on the price or value of an entity's securities. Pursuant to section 677 of the Corporations Act, this is determined on the basis of whether the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether they acquire or dispose of those securities". ASX's view is that high frequency traders should not be considered as persons who commonly invest in securities for the purposes of section 677 because they trade on the basis of short term fluctuations rather than inherent value.

We question from a policy perspective whether this is an appropriate position, in particular, whether it further and unnecessarily complicates the already difficult analysis listed companies are required to undertake when determining whether particular information will have a material effect on the price or value of the entity's securities. One of the factors an entity will take into account when making this assessment is how previous information has affected the price of the company's securities once it was made available to the market. Under this proposed guidance, this will be a less useful, and perhaps irrelevant, factor as it will not be possible for the entity to distinguish between movements in the share price at that time due to high frequency traders and movements in the share price due to other investors.

Further, we do not believe it is appropriate in all circumstances to attempt to impute to high frequency traders some motivation for investing that is markedly different to the motivations of other investors in the market.

We agree that it is appropriate to exclude some categories of investors from this test in certain circumstances for the reasons identified by ASX in section 3.2 of GN8, namely because the test should only apply to persons who commonly buy and hold securities or a period of time, based on their view of the inherent value of the security. However, this should not be limited to high frequency traders. An example of circumstances where you might exclude investors other than just high frequency traders would be where a company's share price declines materially due to selling by short sellers and hedge funds based on speculation the company will be undertaking an equity rising. In those circumstances, it may be appropriate to exclude such investors as they are not investing based on the inherent value of the company, but rather on the basis of an arbitrage between pre and post equity raising prices.

If a reference to high frequency traders is to remain, we believe it would be useful for ASX to provide further clarification of how it defines high frequency traders - does it include all investors with a short term (intraday) time horizon (e.g. day traders) or is ASX is seeking to exclude only electronic traders and, if so, which ones - only algorithmic traders with direct access to the exchange, or the broader class of electronic traders as that concept is referred to in ASIC Consultation Paper 184?

In our view, in order to facilitate ease of compliance for listed companies, ASX should either withdraw the express exclusion of high frequency traders altogether or should at the very least provide clarification that a reference to high frequency traders is a reference to all traders with a short term (intraday) view of value, rather than inherent value and should expressly acknowledge that in appropriate circumstances it may also be necessary to exclude other types of investors from this test.

If ASX maintains the position that there should be an express exclusion for high frequency traders, ASX should consider providing a worked example of how it considers that listed entities should view the impact of information on the different constituents on its register.

1.2 Reasonable person test

We believe that it is appropriate to align the concepts of "reasonable person" as used in LR3.1A.3 and "person who commonly invests in securities" as used in s677 of the Corporations Act and LR3.1. There does not appear to be any strong justification for the relevant class of persons for the purposes of the exception to be broader than the class of persons in respect of which a decision about the materiality of the information is made. If a person is not relevant for determining whether information is material such that disclosure is required, why should that person's expectations about whether the information should be withheld from disclosure be relevant? In our view, this is an unnecessary complication to an already difficult analysis that listed entities are required to undertake in seeking to comply with their continuous disclosure obligations.

1.3 Price movements relevant to referrals to ASIC, but are not determinative of a breach

Section 7.7 of GN8 notes that for the purposes of determining whether to refer a potential breach of the continuous disclosure rules to ASIC for investigation, ASX will refer to ASIC those cases where ASX considers that there has been a price movement of 10% or more (or between 5 and 10% depending on the circumstances) in the lead up to and shortly after the announcement.

ASX adopts the approach for referral purposes that if there was a price movement of 10% or more, the information was market sensitive, and that there has been a potential breach of LR 3.1 and section 674 of the Corporations Act.

While GN8 specifically acknowledges that the courts, ASIC or other litigants may take a different view of materiality, we believe it would be useful for GN8 to expressly acknowledge that how a share price moves in response to information is not determinative of whether the relevant information, at the time and in all the relevant circumstances, was such that a reasonable person would have expected it to have a material effect on the price or value of the company's securities. Evidence of how the share price did move may be a useful indicator of what a reasonable person would have expected, but it is certainly not determinative.

This is even more important if ASX maintains its position as currently set out in section 3.2 of GN8, that certain types of investors are to be excluded from the test used for determining whether information is price sensitive.

In our view, ASX should also clarify the manner in which it assesses market price movements for enforcement purposes. As we understand ASX's current policy, it seeks to apply a market overlay to consideration of price movements, i.e. it considers whether the price movement has

been out of step with either general movements in the share market or the entity's peer group. If this remains the case, ASX should clarify that it intends to continue to assess price movements on this basis, such that the strict application of the accounting standards test for materiality to movement in the stake price is not the sole determinant of whether ASX will refer a matter to ASIC.

1.4 Scope of Speculation

In section 5.4 of GN8, ASX states:

"ASX does not expect a listed entity to respond to every comment concerning it that appears in a media or analyst report. In particular, where a report:

- appears on its face to be mere supposition or idle speculation; or
- simply confirms a matter that is generally understood by the market (e.g. because of previous announcements or media or analyst commentary),

and, in either case, it does not appear to be having a material effect on the market price or traded volumes of the entity's securities, then ASX will not generally require the entity to respond to the report".

In example A (5), ASX considers that disclosure would be required in the hypothetical situation of a material acquisition where:

"After a month of negotiations, A and B are close to reaching agreement, but have yet to resolve one outstanding issue. It is expected that this could take another day or two to resolve. That morning, just before the market is due to open, a blog appears on an investor chat site speculating that A is about to announce a significant acquisition, but without giving any further details."

However, it is not clear that mere speculation without details (even where the price also moves) is indicative of confidentiality having been lost. For listed entities that are well known in the market as potential parties to M&A activity, it is common for there to be market speculation during the pre-announcement period which is not prompted by a loss of confidentiality but is just mere speculation.

In our view, ASX needs to clarify that in order to require a response from the entity (in the absence of a false market), the speculation must be such that it indicates that confidentiality had been lost, e.g. is attributable to a reliable source, or contains a level of detail that could only have been known by a person with confidential information. Without such clarification, listed entities could either be forced to disclose early (with an impact on market integrity if the transaction does not go ahead) or be at a higher risk of rumourtrage.

The role of price movements in determining whether to respond to speculation is an important but separate consideration for listed entities.

1.5 Correcting analyst forecasts

ASX acknowledges in section 6.4 of GN8 that an entity has no obligation to correct analyst forecasts, but suggests that it could be helpful in managing the market's expectations in relation to the entity to avoid future earnings surprises.

To enable entities to comply with this guidance, ASX should clarify that it is only referring to the current reporting period, and is not otherwise suggesting that listed entities need to correct analyst forecasts for future reporting periods, on the basis that future periods are too uncertain to be material.

1.6 Meaning of "immediately"

GN8 provides welcome clarification of the definition of the concept that price-sensitive information that the company becomes aware of needs to be disclosed" immediately". However, by defining "immediately" to mean "promptly and without delay", there is left a residual concern that "without delay" could be interpreted very broadly to mean without any delay. While this appears to be inconsistent with the explanations given by ASX around the issue of timing of announcements, we suggest that further clarification is warranted, by amending the concept so that it requires disclosure "promptly and without *unreasonable* delay" or disclosure "promptly and without *undue* delay".

In addition to recognising the processes that a listed entity needs to go through when considering price sensitive information and preparing an announcement for release to the market, we believe it would also be beneficial to recognise that certain events will require other remedial action that may have immediate priority to compliance with continuous disclosure obligations. We believe it would be useful for ASX to specifically refer to such events (eg. where there is a significant risk of harm to human life or the environment) as being relevant to assessing what it means to make an announcement promptly and without delay. A similar qualification should also be recognised in respect of the obligation under LR15.7 to give price sensitive information to ASX first as a listed entity may need, in an emergency situation, to provide information to other regulatory authorities before it is able to release an announcement for ASX.

GN8 does provide some useful acknowledgement of the processes to listed entities need to undertake in order to arrive at a position where they have information to be disclosed at a time and in a manner that best facilitates release to the market at an appropriate time: see for example comments in section 4.4 about timing the signing of an agreement relative to the ASX trading hours. We believe it would be useful to take this one step further. If a company does not become aware of information until after the close of trading on ASX, it is often the case that the investment community would prefer that information to be released to the ASX early the following morning before the market opens rather than have the company make an announcement late the night before.

We submit that such a practice is not inconsistent with the efficient operation of the markets and should be sanctioned by ASX as an appropriate way for an entity to manage its disclosure obligations. ASX could do so by providing guidance that "promptly and without delay" means, in relation to information that the entity first becomes aware of after close of trading, it would not be an unreasonable delay to make an announcement of that information before 9.00 am on the following day.

1.7 Incomplete proposals, meaning of "otherwise committed"

In the context of when a proposal will be considered to be incomplete and therefore not required to be disclosed, ASX notes that the proposal is incomplete until the agreement has been signed, or the entity is "otherwise committed" to proceeding with a transaction.

ASX should clarify what it means by "otherwise committed" otherwise this has the capacity to be so broadly interpreted that it nullifies the intent of this exception. In our view, the appropriate test is "legally committed". In particular, it is important that ASX not infer that a "relevant agreement" within the meaning of s9 of the Corporations Act necessarily gives rise to a commitment which requires disclosure.

1.8 Examples, materiality and reliance on Listing Rule 3.1A

Several of the examples contained in Annexure A to GN8 (most notably examples A, B and C) indicate that disclosure of a potential transaction is not required at various preliminary stages on the basis that the transaction is, at that time, incomplete or insufficiently definite to warrant disclosure. This language indicates that the listed entity would need to rely on the carve-out in LR 3.1A in order to avoid disclosing the transaction.

ASX prefaces these examples by indicating that "for convenience, it is assumed that a reasonable person would regard the transactions or events referred to in each example as likely to have a material effect on the price or value of the entity's securities," ASX should clarify that in many of these examples, early developments in relation to a proposed transaction may be so preliminary as to not be sufficiently material to require disclosure under LR 3.1 and therefore that reliance on the carve-out in LR 3.1A may not be required.

This is consistent with ASX's commentary in section 4.5 in relation to matters of supposition or matters that are insufficiently definite to warrant disclosure, which indicates that "in some cases, information in this category may be so uncertain or indefinite that it is not in fact market sensitive and therefore not required to be disclosed under Listing Rule 3.1, regardless of whether it falls within the carve-outs from disclosure in Listing Rule 3.1A."

Given the importance of this distinction, particularly for entities that may be required to disclose information that is being withheld under LR 3.1A in the context of issuing a cleansing notice, it would be appropriate for ASX to indicate in the worked examples where transactions in preliminary stages may be so uncertain or indefinite so as not to require disclosure under LR 3.1, without the need to rely on the carve-out in LR 3.1A.

2. Areas for additional guidance

2.1 Timing of awareness in relation to matters of opinion or expectation

GN8 specifies in section 3.8 that where the relevant information that is to be disclosed is a decision of the board (such as a decision by the board to declare a special dividend), the obligation to disclose generally will not arise until the board has made that decision.

GN8 also specifies that where a factual matter occurs, but the impact of that factual matter on the company is not yet known, the entity should disclose the underlying facts with the implications for the entity to follow when known.

GN8 does not, however, provide ASX's views on when an entity will become aware of, and be required to disclose, price sensitive information that is a matter of opinion or expectation that needs to be formed by the entity. For example:

(a) the prospects of success of the entity in relation to potential material litigation;

(b) the appropriate size of a provision for bad and doubtful debts; or

(c) the potential material impairment of a key asset of the entity.

The definition of 'aware' in Listing Rule 19.12 provides that an entity becomes aware of information if an executive officer has come into possession of the information in the course of the performance of their duties as an executive officer of that entity. Where the information in question is a matter of fact that is capable of being observed and accepted as correct as soon as it is presented to an executive officer, it is easy to apply this test and determine when the entity became aware of the relevant information.

However, the situation can be considerably more nuanced when the relevant information is not a matter of fact, or something that could be readily observed and accepted as correct as soon as it was presented. The nature of the opinions or expectations outlined in examples (a) to (c) above are such that they cannot be formed without consideration of the accuracy of the opinion or expectation. The entity cannot be aware of an opinion or expectation until it has been formed. Listing Rule 19.12 does not provide entities with any guidance regarding the time at which an entity becomes aware of such information.

In our view, the appropriate basis on which to attribute awareness of information, where that information is a matter of opinion or expectation, is when the appropriate decision-making organ of the company having regard to the nature of the matter in question (eg. senior management or the Board) has considered the matter, and definitively formed that opinion or expectation. Such an approach is consistent with acknowledgement of proper and prudent commercial practice throughout GN8, and will enhance the quality of disclosure to the market in preventing listed entities being prematurely forced into misleading disclosure.

Of course, as is the case in relation to the disclosure of factual matters, it would not be appropriate to artificially delay the forming of an opinion or expectation with the intent of delaying disclosure.

3. Changes to the Listing Rules

3.1 Mandatory disclosure of beneficial ownership information

ASX has proposed an amendment to LR 3 to require mandatory disclosure of beneficial ownership reports that many entities routinely compile based on responses to beneficial interest tracing notices. This information may not otherwise be considered material for the purposes of Listing Rule 3.1.

Our concern is that the mandatory disclosure of this information could fuel uninformed speculation in relation to control transactions in listed entities, or result in listed entities ceasing to monitor beneficial ownership regularly because the results will be mandatorily disclosable.

This is particularly of concern because ASX has evidenced a desire to avoid premature disclosure of takeover transactions prior to the parties being legally committed to proceed with such a transaction. An increase in the regularity of beneficial ownership reporting could fuel speculation of a control transaction well before there is any certainty that any such transaction will proceed, which can have a negative impact on market integrity.

We also question the utility of this information for the market in any event. Such reports are often very complex and present in such a way that considerable explanation is required before the true significance of the information underlying the notices is evident.

Given that, for the most part, commissioning beneficial ownership reports is a routine part of a listed entity managing its investor relations, and that there is currently a general right under section 672DA(7) and (8) of the Corporations Act for any person (not just members of the company) to access this register of beneficial ownership, we do not consider that the mandatory disclosure of this information enhances the continuous disclosure regime, could well detract from an informed market by creating confusion or causing premature speculation, and warrants further consideration by ASX.

If there was to be any additional disclosure required along these lines, we believe such obligations should be limited to identifying any non-compliance with the substantial holding notification provisions that is revealed in any beneficial ownership reports received by the company. If this approach was to be adopted, we suggest that the timeframe for release to the ASX should be 2 business days after the company becomes aware of any such non-compliance.

3.2 Disclosure of contracts with executives and related parties

Under the proposed amendments to the ASX Listing Rules, an entity must notify to ASX the material terms of any employment, service or consultancy agreement it enters into with its chief executive officer (or equivalent) or a director or any other person or entity who is a related party of the entity, and also of any variation to such an agreement.

Whilst we agree in principle with ASX's approach and the principle of disclosing the material terms of CEO contracts regardless of whether they are price sensitive, the proposed drafting is currently too broad, in that it captures:

(a) any employment, service or consultancy agreement that it enters into with any person or entity who is a related party of the listed entity;

(b) any variation to that broad range of agreements, rather than just a material variation to the terms of such an agreement.

In our view, the proposed rule should be amended so as to limit the scope of agreements that are captured are those which are entered into with the CEO (or equivalent) or a director of the listed entity, rather than persons who might be directors of subsidiaries of the listed entity. If it is considered necessary to capture any broader group of people, then this broader class of persons should be limited to people who are key management personnel for the purposes of the company's remuneration report. The scope of disclosure required if there are variations to those agreements should only be the material terms of such a variation.

ASX should also clarify that the rule is intended to operate on a prospective basis only. Any agreements currently in place that have not been disclosed but would otherwise be captured by this rule should not be required by ASX to be disclosed because they would have been entered into at a time when the parties did not know public disclosure would be required.

4. Policy issues

4.1 ASX's powers to compel the disclosure of information if it considers a false market exists are too broad

ASX has proposed modifying Listing Rule 3.1B to make it clear that a listed entity must give ASX the information it "asks for", rather than the information that is "necessary", to correct or prevent a false market in its securities.

ASX's explanation (in section 5.2 of GN8) of the manner in which it intends to approach its new powers under LR 3.1B to compel the disclosure of information is reasonable, in that it may require an entity to disclose information that of itself is not market sensitive and therefore not required to be disclosed under Listing Rule 3.1 (for example, to correct a false rumour that the entity is about to enter into a market sensitive transaction when it is not). However, the scope of ASX's powers are considerably wider than is necessary to fulfil that intention.

Our clients have expressed to us a concern that the new rights that ASX has to compel an entity to disclose information if it considers a false market exists, regardless of whether the information is the cause of the false market, provides ASX with powers that are inappropriately broad.

ASX has stated that the purpose of this amendment to LR 3.1B is to remove the scope for an entity to argue that it does not have to provide information ASX asks for because in the entity's opinion, the information is not required to correct the false market, and ASX is generally better placed to form a view on this matter than most listed entities. In our view, this is inconsistent with the emphasis throughout the remainder of GN 8 that the entity is best placed to assess the impact of information on its own share price.

Decisions by listed entities as to what information needs to be disclosed, at what time and in what manner, are often complex decisions even when made with the benefit of the listed entity's corporate knowledge of the entire circumstances of the relevant matter. It is difficult to see how ASX is better placed than the entity itself to make a call as to what information should be disclosed when it cannot possibly hope to replicate the knowledge of the history and nuances of the relevant issues that the listed entity will be taking into account when determining whether to disclose particular information.

ASX could achieve its purpose, without granting itself unnecessarily wide powers, by specifying in LR 3.1B that it has the capacity to compel the disclosure of information that is necessary to correct a false market, even if that information is not otherwise required to be disclosed under LR 3.1.

4.2 ASX's views on section 1041H

In section 6.3 of GN8, in relation to earnings surprises, ASX states that:

" The threshold for liability under section 1041H is different to, and in some cases could be lower than, the threshold for disclosure under Listing Rule 3.1. Given this, ASX recommends that an entity in this situation apply the guidance on materiality in Australian Accounting and International Financial Reporting Standards that:

- an expected variation in earnings compared to its published earnings guidance equal to or greater than 10% should be presumed to be material and therefore ought to be disclosed; but
- an expected variation in earnings compared to its published earnings guidance equal to or less than 5% should be presumed not to be material and therefore need not be disclosed,

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

Given the important role that GN8 will have in codifying market practice for the purposes of litigation under section 1041H, we consider that it is important for ASX to acknowledge that there are many considerations, beyond the accounting standards, that are factored into a determination of whether a failure to disclose information is misleading or deceptive.

At a more general level, we do not consider it is appropriate for ASX to be providing its interpretation of section 1041H - that is more properly a matter for the courts and needs to be determined on a case by case basis taking into account all the relevant facts and circumstances.

4.3 Mandating the content of announcements detracts from exercise of discretion by listed entities

One of the themes in GN8 is that listed entities are required to form their own assessment of whether information is likely to be material to the entity's share price, and therefore within the scope of Listing Rule 3.1. ASX emphasises in GN8 that there is no bright line test which definitively determines whether information is material - it is up to the entity to undertake the sometimes difficult assessment of the expected impact of the news on their share price. However, ASX seeks to limit the discretion currently available to listed entities in relation to the manner in which this news is communicated to the market by specifying the matters that it would expect to see disclosed in respect of certain events (eg. an acquisition, a capital raising or earnings update), regardless of whether in the specific fact circumstances these details are material, or necessary to ensure that the announcement is not misleading or deceptive.

We submit that ASX should amend GN8 to acknowledge that the list of matters to be disclosed is provided as a guide only, and should be considered by the entity on a case by case basis to determine which details are necessary to meet its obligations under the continuous disclosure regime, and avoid an announcement which is misleading or deceptive.

4.4 Facts and implications - the two step process

In section 6.3 and Example G in Annexure A, GN8 indicates that where a listed entity is in possession of information (for example, in relation to the cancellation of a material contract) but has not yet had an opportunity to prepare updated earnings guidance in light of that event, it should disclose the facts immediately and should subsequently conduct an analysis in respect of the expected impact on its earnings.

In many situations, listed entities will not be able to accurately determine whether or not "a reasonable person would expect the information to have a material effect on the price or value of the entity's securities" until it has been able to conduct an analysis in relation to the expected impact on its earnings. It is not desirable for a listed entity to prematurely disclose information

that may ultimately be immaterial for purposes of LR 3.1. As ASX acknowledges in section 6.3, such disclosure may itself create a false market in the entity's securities.

It is our view that in these circumstances, consistent with ASX's policy that it will take into account the "amount and complexity of the information concerned" when determining whether an entity has complied with its obligation to disclose "immediately", the listed entity should be provided with an opportunity to consider the information and the potential impact on its earnings, before being required to make a disclosure to ASX.

Further, even where a listed entity believes that information will be price sensitive, it is not appropriate for it to disclose that information before it has had an opportunity to assess the relevant facts and to be in a position to advise investors of the consequences. We consider that in this situation, a trading halt would be a more appropriate course of action.

4.5 Rumourtrage

ASX notes in section 5.6 of GN8 that where a listed entity becomes aware of a market rumour that could lead to a false market in its securities, that the listed entity is encouraged to address the issue proactively. Furthermore, a listed entity relying on the exceptions to LR 3.1 in order to delay disclosure of particular material, will be forced to make an announcement if there is speculation and ASX considers that confidentiality has been lost.

As a result, GN8 places a heavy burden on listed entities where there is speculation about information in relation to the company. GN8, however, does not seek to level the playing field between the listed entity on the one hand, and those who leak information or spread rumours, on the other hand. There is no reference in GN8 to any action ASX will take if there is market based evidence to suggest that individuals are deliberately spreading false or misleading information about listed securities to provoke sales of securities and to reduce their market price.

A positive statement from ASX that, if it considers a false market has occurred in relation to an entity's securities, and that false market is attributable to market participants spreading false rumours about listed securities, that it will refer this to ASIC for consideration would be welcomes by listed entities.

In the absence of such a statement, GN8 could be considered to place too much power in the hands of those responsible for the rumourtrage and may in fact encourage rumourtrage.

4.6 Analysts' Consensus Estimates

There is a level of discomfort among some of our clients in relation to the guidance given in relation to analysts' consensus estimates. There is a concern that in focussing the continuous disclosure obligations on updating or correcting analysts' forecasts and the elevation of analysts' consensus forecasts to being a driver of the market's expectations for a listed entity that does not provide its own guidance, ASX is sanctioning an increased information gap between sophisticated investors who generally have access to such information and retail or small shareholders who do not have access to and are generally unaware of analysts' consensus estimates.

Even if ASX considers it is appropriate to impose upon listed entities an obligation to update the market if its results are likely to materially differ from analysts' consensus estimates, further clarity needs to be provided in relation to what analysts' consensus estimates are referred to here. There are many different ways to come up with a consensus estimate and it is not clear from GN8 which way is considered appropriate by ASX and how entities should properly go about complying with this obligation.

Listed entities covered by sell-side analysts generally do invest a significant amount of time and effort in educating the analysts that cover them. We do not consider that it is necessary to attempt to regulate or second guess the actions and decisions that such listed entities consider necessary in terms of their engagement with sell-side analysts.