

30 November 2012

Mr Kevin Lewis
Australian Securities Exchange
Exchange Centre
20 Bridge Street
Sydney NSW 2000

By email: mavis.tan@asx.com.au

Dear Sir/Madam

ASX Listing Rules Consultation Paper: Guidance Note 8 Review

Thank you for the opportunity to make a submission on the Consultation Paper, revised Guidance Note 8 (GN8), the Abridged Guide and proposed ASX Listing Rule changes, released by the ASX on 17 October 2012 for public consultation (Consultation Paper).

Telstra welcomes the additional guidance and further clarity provided by revised GN8 in relation to a number of aspects of Listing Rule (LR) 3.1, in particular in relation to the concept of 'immediately'.

In addition, Telstra wishes to make the following comments on key aspects of the revised GN8:

Increased emphasis on trading halts

Telstra supports the underlying policy objective that investors should not trade in an uninformed market. However, at present, trading halts are generally regarded in a negative light by the market and the decision a listed entity faces in deciding whether to request a trading halt is, in practice, not as straightforward as suggested in the draft guidance. Our concern is an increased use of trading halts in all of the circumstances outlined in GN8 could give rise to unintended consequences which are contrary to the underlying policy objective of the Listing Rule, including the potential for unnecessary market volatility and market distortion.

For example, a trading halt may currently be interpreted negatively by the market which may itself materially and unduly affect a listed entity's share price, regardless of whether any announcement which includes information which is material to the market is ultimately released. The increased emphasis on the use of trading halts may also encourage listed entities to prematurely issue 'holding' or 'interim' announcements, either at the end of a trading halt or to avoid going into a trading halt, which may also result in unintentional distortion of the market.

We agree with suggestions that, if education efforts are undertaken to significantly enhance the understanding of market participants in relation to the use of trading halts, it may be that the unintended market volatility and distortion often associated with trading halts could be ameliorated. It is suggested that the ASX consider undertaking further education of the market before adopting the stronger approach to trading halts articulated in GN8.

In addition, it is requested that GN8 include additional examples or guidance which recognises that the use of a trading halt will not usually be appropriate where an entity is taking time to determine whether it has information which is market sensitive and an announcement is required, in particular where the entity's share price is not moving. To require a trading halt in circumstances where an entity has not yet assessed whether it has information which is material would place the entity in a very difficult position when considering the best interests of its shareholders. This is especially so in the context of the likely market reaction to a trading halt, in particular if it is determined that the relevant information is not material.

'Immediately' means 'promptly and without delay'

As noted above, Telstra welcomes the ASX's clarification that 'immediately' means 'promptly and without delay', which is a helpful recognition of the practical issues faced by listed entities when applying LR 3.1. While this additional guidance is considered to be beneficial, there are concerns that a narrower, more prescriptive approach could be taken as a result of the inclusion of the ASIC infringement notice examples.

The inclusion of the two examples provided in GN8 appears to imply that 'immediately' is to be interpreted as meaning 60 or 90 minutes. This gives rise to concerns that these examples will establish a 'benchmark' that will be applied when assessing whether immediate disclosure was made in a particular case. The circumstances surrounding the issue of infringement notices in these two cases are not widely known or well understood. If the examples are to be included in GN8, it is requested that the ASX include a significantly more detailed explanation as to the circumstances in which those timeframes would be regarded as the relevant reference point.

False market – Listing Rule 3.1B

The Consultation Paper includes a proposal that LR 3.1B be modified to make it clear that a listed entity must give the ASX the information it "asks for", rather than the information that is "necessary" to correct or prevent a false market in an entity's securities. It is submitted that the following words could be included in LR 3.1B to provide greater clarity regarding this requirement:

If ASX considers that there is or is likely to be a false market in an entity's securities and asks the entity to give it information to correct or prevent a false market, the entity must give ASX the information it asks for to correct or prevent the false market.

Listing Rule 3.17.2

The Consultation Paper also includes a proposal that LR 3.17 be amended to incorporate a new requirement that a listed entity must immediately give the ASX a copy of any notice it receives under section 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act (new LR 3.17.2).

When an entity receives such a notice, it usually undertakes a process to verify that the requisition is valid and, if it is, the entity is required to notify shareholders in accordance with the framework and timelines which apply under the Corporations Act. In practice, there are circumstances where a notice may be served, but is later withdrawn following discussions between the relevant parties before the notice is required to be sent to shareholders. If any such notice is valid and sufficiently material, a listed entity would already be required to disclose it to the ASX under LR 3.1 in any event.

For these reasons, it is suggested that proposed new LR 3.17.2 is unnecessary and, if implemented as proposed, would give rise to confusion rather than contribute to the objectives of the Listing Rule.

Confirmation of ASIC's views in relation to GN8

While it is understood that ASIC is in broad agreement with the views expressed by the ASX in GN8, GN8 explicitly acknowledges that ASIC is not precluded from taking a different view in relation to whether a listed entity has complied with its obligations under LR 3.1 or section 674 of the Corporations Act.

Given the important role ASIC plays in relation to enforcement of the continuous disclosure regime, clarification as to how ASIC will confirm its views and position in respect of GN8 would be greatly welcomed.

If you have any queries or would like to discuss our submission further, please contact my office on (03) 8647 2629.

Yours sincerely



Damien Coleman
Company Secretary