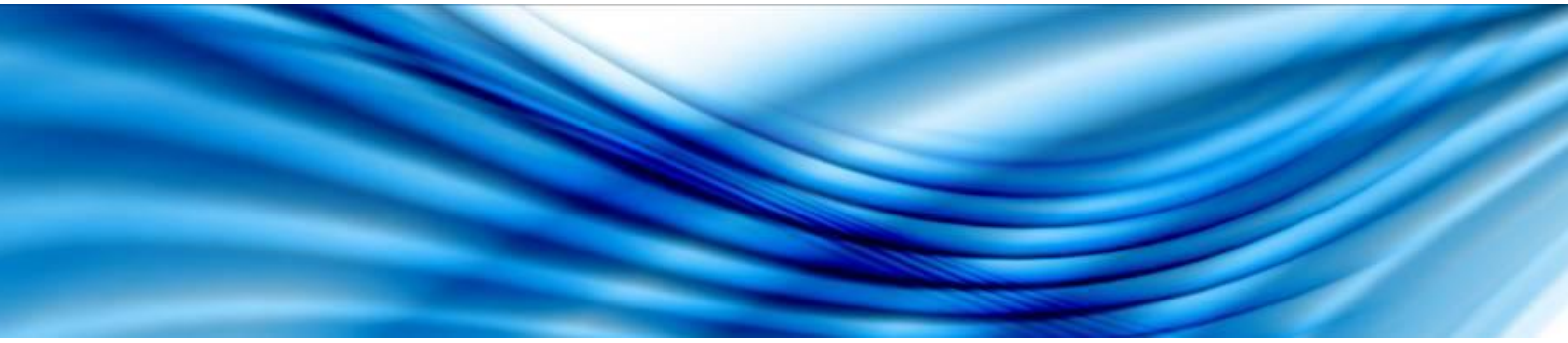
Review of ASX Listing Rules Guidance Note 8
Continuous Disclosure: Listing Rules 3.1 – 3.1B

Consultation Response



13 March 2013

Review of ASX Listing Rules Guidance Note 8
Consultation Response

Introduction

On 17 October 2012 ASX released for public comment:

- a consultation paper entitled *Review of ASX Listing Rules Guidance Note 8 – Continuous Disclosure: Listing Rules 3.1 – 3.1B*;
- a proposed new version of *Guidance Note 8: Continuous Disclosure: Listing Rules 3.1 – 3.1B*;
- a shorter guide entitled *Continuous Disclosure: An Abridged Guide*; and
- proposed Listing Rule changes outlined in a document entitled *Proposed Disclosure-Related Amendments to the ASX Listing Rules*.

ASX invited written comments from all interested stakeholders on the consultation materials. Submissions were due by Friday, 30 November 2012.

Consultation feedback

ASX received 19 non-confidential[1] and 2 confidential written submissions in response to its consultation paper. Copies of the non-confidential submissions are available on the ASX website.

As part of the consultation process, ASX conducted a number of presentations and meetings over the consultation period, including:

- national roadshow presentations in Melbourne (1 November), Brisbane (8 November), Sydney (16 November), Perth (21 November) and Adelaide (23 November);
- meetings with the state chapters of the Corporations Committee of the Law Council's Business Law Section in Melbourne, Brisbane, Perth, Adelaide and Sydney;
- meetings with the AICD, CSA and each of ASX's 20 largest listed entities;
- presentations to various stakeholder groups and their members, including the Australian Compliance Institute, AIRA and the WA division of CSA; and
- presentations to various law firms and their clients (which in many cases included listed company directors, secretaries and general counsel in their audience).

The comments ASX received at these presentations and meetings mostly echoed the written submissions provided to ASX.

The general feedback ASX has received in response to the consultation process has been overwhelmingly positive and supportive. Examples of the general comments received in the written submissions are included in Annexure B. ASX received similar comments orally at the various presentations and meetings mentioned above.

In addition to this general feedback, ASX has received a large number of helpful suggestions on specific areas of Guidance Note 8 that could be enhanced and on refinements that could be made to the proposed disclosure-related Listing Rule changes to clarify or improve their operation. These suggestions, and ASX's response to them, are summarised in Annexure C.

[1] Non-confidential submissions were received from Allens Linklaters (two submissions – one in its own right and one in conjunction with UBS regarding Example H6 in Guidance Note 8), Arnold Bloch Leibler ("ABL"), Australasian Investor Relations Association ("AIRA"), Australian Bankers Association ("ABA"), Australian Council of Superannuation Investors ("ACSI"), Australian Institute of Company Directors ("AICD"), BHP Billiton Limited ("BHP Billiton"), Biotech Daily, Chartered Secretaries Australia ("CSA"), Clayton Utz, Corrs Chambers Westgarth ("Corrs"), CPA Australia and the Institute of Chartered Accountants Australia jointly, Group of 100, Herbert Smith Freehills ("HSF"), Johnson Winter & Slattery ("JWS"), Lycopodium Limited, Telstra Corporation Limited ("Telstra") and the Corporations Committee of the Business Law Section of the Law Council of Australia ("LCA").

Review of ASX Listing Rules Guidance Note 8
Consultation Response

ASX would like to express its gratitude to each respondent who took the time and trouble to send written submissions to ASX or to meet with ASX to discuss the consultation materials. ASX has found the feedback it has received invaluable in understanding the areas in ASX's continuous disclosure rules and guidance that have caused concern or confusion for listed entities and other stakeholders.

In response to the feedback it has received, ASX has upgraded Guidance Note 8 in a number of key areas, including:

- what ASX means by the word "delay" when it defines "immediately" as "promptly and without delay";
- when an entity should ask for a trading halt to manage its continuous disclosure obligations;
- when ASX treats media and analyst reports and market rumours as evidencing a loss of confidentiality under Listing Rule3.1A.2;
- the operation of the "reasonable person" test in Listing Rule 3.1A.3;
- ASX's expectations around the monitoring of social media;
- the disclosure of earnings surprises, including the role played by consensus estimates in setting market expectations for earnings; and
- refining a number of the worked examples in Annexure A.

ASX has also made a number of amendments to the proposed disclosure-related Listing Rule changes.

Further details of the changes and the reasons behind them can be found in the summary of the various suggestions made to ASX in the consultation process, and ASX's response to them, in Annexure C.

Final versions of consultation materials

ASX is releasing with this consultation response the final versions of:

- Guidance Note 8: *Continuous Disclosure: Listing Rules 3.1 – 3.1B* (in clean and mark-up format);
- *Continuous Disclosure: An Abridged Guide* (in clean and mark-up format); and
- ASX's package of disclosure-related amendments to the ASX Listing Rules (in clean and mark-up format).

ASX has worked closely and cooperatively with ASIC in producing the final versions of these documents.

The marked up versions of these documents show the amendments that have been made to the consultation drafts released in October 2012, so interested parties can readily identify the changes.

To further assist readers to identify the main changes that are being made to the Listing Rules, ASX has included in Annexure A to this document the final form of the key disclosure-related changes to Chapter 3 of the Listing Rules and the related definitions in Listing Rule 19.12.[2]

The disclosure-related Listing Rule changes have been lodged with ASIC in accordance with the procedure prescribed in section 793D of the Corporations Act. Subject to the Minister not disallowing the rule changes under section 793E, it is anticipated that they and the revised version of Guidance Note 8 will be published and come into effect on or around 1 May 2013.

The 1 May 2013 effective date has been selected to allow listed entities and their advisers some time to absorb the changes in the Guidance Note and Listing Rules. It also gives ASX an opportunity to conduct a national

[2] This does not include the many minor miscellaneous drafting changes to other provisions of the Listing Rules. Readers interested in understanding the full gamut of Listing Rule changes being made, should refer to the full package of disclosure-related amendments to the ASX Listing Rules being released with this consultation response.

roadshow explaining the changes it has made to the consultation versions of Guidance Note 8 and the disclosure-related Listing Rule amendments (see below).

Additional changes to Listing Rules

In addition to the disclosure-related Listing Rule changes it consulted upon, ASX has taken the opportunity in this round of Listing Rule changes:

- to include new streamlined versions of the Appendix 1A, 1B and 1C application forms and listing agreements;[3]
- to relocate the requirements for information memoranda and supplementary information memoranda currently found in items 108-119 of Appendix 1A into new Listing Rules 1.4 and 1.5 (these items in Appendix 1A are being removed from that Appendix as part of streamlining the application form and listing agreement mentioned in the previous paragraph);
- to correct a definitional error in the reference to "associate" in the note to Listing Rule 14.11 (voting exclusion statements);
- to make some other minor drafting corrections or clarifications to Listing Rule 1.1 Condition 3, Listing Rule 1.11 Condition 1, 4.2B and 4.3B; and
- to update the Appendix 5B quarterly report to cover oil and gas exploration entities as well as mining exploration entities. This reflects the enhanced reporting requirements adopted late last year for oil and gas entities in Chapter 5 of the Listing Rules.

For completeness, ASX would note that it is not proceeding at this stage with the proposed changes to Listing Rule 15.3 it consulted upon (which simply removed some unnecessary historical material from the rules that dealt with the transition to ASX Online in 2003). The proposed changes to Listing Rule 15.3 will instead be taken up in a separate set of rule changes being undertaken as part of ASX's Straight-Through Processing initiative.

Consequential changes to other Guidance Notes

In addition to the consultation materials mentioned above, ASX is also releasing updated versions (in mark-up format) of the following Listing Rule Guidance Notes:

- Guidance Note 1 *Applying for Admission – ASX Listings*;
- Guidance Note 4 *Foreign Entities Listing on ASX*;
- Guidance Note 12 *Significant Changes to Activities*;
- Guidance Note 16 *Trading Halts and Voluntary Suspensions*; and
- Guidance Note 17 *Waivers and In-Principle Advice*.

These Guidance Notes, which were all substantially re-written and refreshed last year, are being updated to be consistent with the new version of Guidance Note 8 and the disclosure-related Listing Rule changes. They also are intended to come into operation on 1 May 2013.

Guidance Note 1 *Applying for Admission – ASX Listings* is also being updated:

- to reflect the changes to the Appendix 1A application form and listing agreement, mentioned above;

[3] These are the applications and listing agreements that an entity seeking an ASX listing, ASX debt listing or ASX foreign exempt listing respectively must file with ASX. Currently these Appendices are a mix of application, legal agreement, data collection form and compliance checklist with ASX's admission requirements. The new streamlined version of the Appendices will comprise an application and legal agreement only. They will be supplemented by information forms and checklists that will be available on the ASX website.

- to incorporate the amendments late last year to the minimum spread requirements in Listing Rule 1.1 condition 7 and the "assets" test in Listing Rule 1.3.1;
- to clarify ASX's documentary requirements for satisfying the "good fame and character" requirement in Listing Rule 1.1 condition 17;
- to give greater guidance on the "profit test" in Listing Rule 1.2 and "assets test" in Listing Rule 1.3;
- to note that in certain cases ASX may require the disclosure of additional information under Listing Rule 1.17 about the qualifications and experience of the auditor of an entity applying for admission to the official list as an ASX listing and of the accountants and auditors who prepared, audited or reviewed financial documents provided as part of the admission process; and
- to include guidance about a new fast track process ASX has implemented for pathfinder prospectuses.

Guidance Note 4 *Foreign Entities Listing on ASX* is being amended.

- to reflect the changes to the Appendix 1A and 1C application forms and listing agreements, mentioned above;
- to incorporate the amendments late last year to the minimum spread requirements in Listing Rule 1.1 condition 7; and
- to include guidance on certain disclosures that ASX will generally want to see in the listing prospectus or product disclosure statement of a foreign entity.

Guidance Note 12 *Significant Changes to Activities* is being amended to incorporate the amendments late last year to the minimum spread requirements in Listing Rule 1.1 condition 7 and to include some further guidance around the "20 cent rule".

Guidance Note 16 *Trading Halts and Voluntary Suspensions* is being amended to include materials of relevance to dual listed entities and additional guidance on "regulatory halts".

Guidance Note 17 *Waivers and In-Principle Advice* is being updated to reflect new processes ASX has adopted for handling requests for waivers under the Listing Rules. These new processes now differentiate between "standard" and "non-standard" waiver requests and implement a faster, more streamlined process for handling standard waiver requests.

Guidance Note 8 national roadshow

ASX will conduct a national roadshow in April 2013, similar to the one it held in October-November 2012 during the consultation phase, to explain the final positions it has reached on Guidance Note 8 and the disclosure-related changes to its Listing Rules, as well as the consequential changes to the other Guidance Notes mentioned above. ASIC will also be participating in the roadshow.

The dates and venues for the roadshow are listed below:

City	Time and date	Venue
Perth	9-11am Thursday 4 April 2013	Perth Convention Centre 21 Mounts Bay Road, Perth
Adelaide	9-11am Thursday 11 April 2013	Allianz House 55 Currie Street, Adelaide
Brisbane	9-11am Wednesday 17 April 2013	Pullman King George Square Corner Ann and Roma Streets, Brisbane
Sydney	9-11am Monday 22 April 2013	ASX Auditorium 20 Bridge Street, Sydney
Melbourne	9-11am Monday 29 April 2013	Telstra Conference Centre 242 Exhibition Street, Melbourne

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Annexure A
Final Form of Key Disclosure-Related Listing Rules Changes

3.1 Once an entity is or becomes [+]aware of any [+]information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's [+]securities, the entity must immediately tell ASX that information.

Introduced 1/7/1996. Origin: Listing Rule 3A(1). Amended 1/7/2000, 1/1/2003, 1/5/2013.

Note: Section 677 of the Corporations Act defines material effect on price or value. As at 1 May 2013 it said for the purpose of sections 674 and 675 a reasonable person would be taken to expect information to have a material effect on the price or value of securities if the information would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, or buy or sell, the first mentioned securities.

"Information" may include information necessary to prevent or correct a false market, see Listing Rule 3.1B. It may also include matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market, and matters relating to the intentions, or likely intentions, of a person (see Listing Rule 19.12).

A confidentiality agreement cannot prevent an entity from complying with its obligations under the Listing Rules and, in particular, its obligation to give ASX information for release to the market where required by the Listing Rules.

Examples: The following are non-exhaustive examples of the type of information that, depending on the circumstances, could require disclosure by an entity under this rule:

- a transaction that will lead to a significant change in the nature or scale of the entity's activities (see also Listing Rule 11.1 and Guidance Note 12 *Significant Changes to Activities*);
- a material mineral or hydro-carbon discovery;
- a material acquisition or disposal;
- the granting or withdrawal of a material licence;
- the entry into, variation or termination of a material agreement;
- becoming a plaintiff or defendant in a material law suit;
- the fact that the entity's earnings will be materially different from market expectations;
- the appointment of a liquidator, administrator or receiver;
- the commission of an event of default under, or other event entitling a financier to terminate, a material financing facility;
- under subscriptions or over subscriptions to an issue of securities (a proposed issue of securities is separately notifiable to ASX under listing rule 3.10.3);
- giving or receiving a notice of intention to make a takeover; and
- any rating applied by a rating agency to an entity or its securities and any change to such a rating.

Cross-reference: Listing Rules 3.1A, 3.1B, 5.18, 15.7, 18.7A, 19.2, Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

3.1A Listing rule 3.1 does not apply to particular [+]information while each of the following is satisfied in relation to the information:

3.1A.1 One or more of the following 5 situations applies:

- It would be a breach of a law to disclose the information;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the entity; or
- The information is a trade secret; and

3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and

3.1A.3 A reasonable person would not expect the information to be disclosed.

Introduced 1/1/2003. Amended 1/5/2013.

Cross-reference: Listing Rules 3.1, 3.1B, 18.8A; Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

3.1B 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 immediately give ASX that information.

Introduced 1/1/2003. Amended 1/5/2013.

Note: The obligation to give information under this rule arises even if the exception under Listing Rule 3.1A applies.

Cross-reference: Listing Rules 3.1, 3.1A, 18.7A; Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1-3.1B*.

3.10 An entity must immediately tell ASX the following information.

…

3.10.8 If a [+]dividend or distribution plan is established, amended, deactivated or reactivated. A copy of the terms of the plan or any amendment to it must be given to ASX.

Introduced 31/3/2004. Amended 1/5/2013.

Cross reference: listing rules 7.2 exception 7 and listing rule 10.12 exception 3.

3.16 An entity must immediately tell ASX the following information.

…

3.16.4 The material terms of any employment, service or consultancy agreement it or a related entity enters into with:

- its chief executive officer (or equivalent);
- any of its directors; or
- any other person or entity who is a related party of its chief executive officer or any of its directors,

and of any material variation to such an agreement.

Note: The entity may satisfy this obligation by giving a copy of the agreement or variation to ASX or an announcement summarising its material terms.

An entity, however, is not required to disclose under this rule:

- non-executive director fees paid out of a pool of remuneration approved by security holders;
- superannuation contributions in relation to such fees;
- an increase in director fees approved by security holders;
- periodic remuneration reviews in accordance with the terms of an employment, service or consultancy agreement;
- provisions entitling a chief executive officer or director to reimbursement of reasonable out of pocket expenses;

- provisions requiring the entity to maintain directors and officers liability insurance;
- provisions (commonly referred to as "access arrangements") allowing a chief executive officer or director access to entity records for a period of time after they cease to be a chief executive officer or director;
- a bona fide employment, service or consultancy agreement, or any bona fide variation to such an agreement, that it or a related entity has entered into with a relative of its chief executive officer, or a relative of any of its directors, that is on arms' length and ordinary commercial terms; or
- if it is a trust, any agreement or variation entered into by the responsible entity of the trust or a related entity where the costs associated with the agreement are borne by the responsible entity or the related entity from out of its own funds rather than from out of the trust.

Introduced 1/5/2013

3.17 An entity must immediately give ASX:

3.17.1 A copy of a document it sends to holders of +securities generally or in a +class.

3.17.2 If the entity is established in Australia, a copy of a document it receives about a substantial holding of +securities under Part 6C.2 of the Corporations Act that reveals materially different information to the most current information (if any) it has received about that substantial holding under Part 6C.1 of the Corporations Act.

Information that:
- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

3.17.3 If the entity is not established in Australia, a copy of a document it receives about a substantial holdings of +securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.1 of the Corporations Act.

Note: Where an entity is established in Australia, a person who gives a substantial holding notice to the entity under Part 6C.1 of the Corporations Act is required to give a copy of that notice to ASX (section 671B(1)) and therefore it is not necessary for the entity to give a copy of that notice to ASX.

3.17.4 If the entity is not established in Australia, a copy of a document it receives about a substantial holding of +securities under any overseas law or provisions in the entity's constitution equivalent to Part 6C.2 of the Corporations Act that reveals materially different information to the most current information it has received (if any) about that substantial holding under the overseas law or provisions in the entity's constitution referred to in rule 3.17.3.

Again, information that:

- a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or
- the list of related entities that have a substantial holding has changed because of the creation, acquisition, dissolution or disposal of related entities,

is not considered materially different for the purposes of this rule.

Introduced 1/7/1996. Amended 1/5/2013. Origin: Listing Rules 3E(8)(b), 3E(8)(c), 3J(1)(a).

Note: In some cases, an entity must give ASX a draft document (eg, a notice of meeting) in advance of it being sent out. See chapter 15.

Example: A company must give ASX a copy of a letter sent to shareholders. A trust must give ASX a copy of a document sent to holders of interests in the trust under section 1017D of the Corporations Act so far as that document relates to the circumstances of holders of interests generally, and not to the individual circumstances of a holder.

Cross reference: Chapter 14 deals with the requirements for meetings. Chapter 4 deals with accounts and related disclosure.

3.17A An entity must give ASX within two business days of receipt:

3.17A.1 Information about the material terms of any notice it receives under section 249D, 249F, 249N, 252B, 252D or 252L of the Corporations Act or under any equivalent overseas law or equivalent provisions in the entity's constitution from a holder or holders of +securities calling, or requesting the calling of, or proposing to move a resolution at, a general meeting; and

Note: The entity may satisfy this obligation by giving a copy of the notice to ASX or an announcement summarising its material terms. If the entity gives a copy of the notice, it may redact any defamatory material that it would not otherwise be required to circulate to security holders under the Corporations Act or any equivalent overseas law or equivalent provisions in its constitution. If the entity gives an announcement summarising the material terms of the notice, it may exclude from the summary any such defamatory material.

An entity is not required to give information to ASX about such a notice if the notice is withdrawn by the relevant holder or holders of +securities within two business days of it having been received by the entity.

It should be noted that if a reasonable person would expect information about such a notice to have a material effect on the price or value of the entity's securities, the information must be given to ASX immediately under Listing Rule 3.1 and not within two business days of receipt.

3.17A.2 Information that a notice previously notified to ASX under rule 3.17A.1 has been withdrawn by the holder or holders who gave it.

Introduced 1/5/2013.

3.17B If an entity admitted to the +official list is also listed on an overseas stock exchange, it must immediately give ASX a copy of any document it gives to the overseas stock exchange that meets the following requirements:

3.17B.1 the document is given to the overseas stock exchange by the entity in its capacity as an entity listed on that exchange; and

3.17B.2 the document is, or will be, made public by the overseas stock exchange; and

3.17B.3 the document includes +accounts or other similar financial information; and

3.17B.4 the document is not materially the same as another document that the entity has already given to ASX.

Introduced 1/5/2013.

Note: If the document is not in English, it must be accompanied by an English translation (see Listing Rule 15.2A).

A document that does not include [+]accounts or other similar financial information given by an entity listed on an overseas exchange to that exchange may also need to be given to ASX under Listing Rule 3.1 if a reasonable person would expect the information it contains to have a material effect on the price or value of the entity's [+]securities.

For the avoidance of doubt, where two entities form part of a dual-listed entity structure (ie where one entity is listed and has its home exchange on ASX and the other is listed and has its home exchange on an overseas stock exchange), this rule only applies to the entity listed on ASX and then only if the entity listed on ASX is also listed on an overseas stock exchange. It does not require documents that the other entity may give to its overseas home stock exchange or to any other overseas stock exchange where it may be listed to be given to ASX.

3.17C If an entity that is not established in Australia becomes aware of a change to the law of its home jurisdiction that materially affects the rights or obligations of security holders, it must immediately give ASX details of that change.

Introduced 1/5/2013.

ASX Guidance Note 4 *Foreign Entities Listing on ASX* has guidance on the types of changes to law that may need to be disclosed under this rule.

3.21 An entity must tell ASX immediately it decides to pay a dividend or distribution or makes a decision that a dividend or distribution will not be paid.

Introduced 1/5/2013.

19.12 The following expressions have the meanings set out below.

Introduced 1/7/1996. Origin: Definitions.

Expressions	**meanings**
…	
aware	an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity. Introduced 1/7/1996. Origin: Listing Rule 3A(1). Amended 1/7/1998, 30/9/2001, 1/5/2013.
…	
information	for the purposes of Listing Rules 3.1-3.1B, information includes: (a) matters of supposition and other matters that are insufficiently definite to warrant disclosure to the market; and (b) matters relating to the intentions, or likely intentions, of a person. Introduced 1/5/2013.

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Annexure B
General Feedback on the Revised Draft of Guidance Note 8

The general feedback ASX received in response to the consultation process has been very positive and supportive. Comments received in the written submissions include:

- *ABL*: "We welcome the Proposals … They are, in our view, extremely positive and carefully considered measures that will increase clarity and thus promote investor confidence."

- *ACSI*: "ACSI commends the ASX for updating the Guidance Note to reflect current market circumstances and recent judicial interpretations and regulatory developments. We believe that the revised Guidance Note and, most particularly, the *Abridged Guide*, make significant advances in clarifying the intent and practical operation of the continuous disclosure rules and how directors and managers of listed entities can best manage their organisation's adherence to these rules. We do not have detailed substantive comments to make on the drafting or other details of the Guidance Note, apart from noting that these appear to be generally comprehensive, practical and digestible."

- *AICD*: "in general terms, the Draft Guidance Note is well written … ASX Compliance should be commended on formulating a Draft Guidance Note that for the most part, is clear, commercial and which provides helpful examples of expected disclosure practices."

- *AIRA*: "The work ASX has done in reviewing from the ground up the Guidance on continuous disclosure is very welcome. We think that few regimes offer such detailed and helpful guidance, and since decisions over disclosure are central to the day to day tasks of IRO's, clarity over compliance is helpful."

- *Allens Linklaters*: "in our view, the propose rewrite represents a significant improvement in the guidance provided to listed entities on disclosure issues."

- *BHP Billiton*: "BHP Billiton … supports the efforts by ASX to assist listed entities to understand and comply with their continuous disclosure obligations. BHP Billiton also supports ASX's effort to restore the focus of the continuous disclosure regime to disclosure of price sensitive information."

- *Clayton Utz*: Clayton Utz broadly supports the proposals in GN8 as recognising the commercial reality that listed companies face in complying with the continuous disclosure regime …".

- *[Confidential #1]*: "[Confidential #1] supports the overall thrust of the proposed changes. Further, [Confidential #1] thinks that the proposed changes … represent welcome developments by ASX and better reflect the practical ability of a listed company to meet its continuous disclosure obligations."

- *[Confidential #2]*: "The ASX revised draft Guidance Note 8 is to be commended for its coherence and clarity in relation to certain issues which have dogged continuous disclosure practice for some time."

- *Corrs*: "We welcome the clarification and insight the Continuous Disclosure Revisions provide … In particular, the detail and worked examples included in Revised Guidance Note 8 provide clarification and insight into the "murkier" aspects of the operation of Listing Rule 3.1 and we welcome the transparency and insight the revisions provide. We support the structure of Revised Guidance Note 8, which provides more detailed and systematic guidance on the various elements of Listing Rule 3.1, and will facilitate a better understanding of the practical operation of the continuous disclosure rules."

- *CPA Australia and the Institute of Chartered Accountants Australia*, in a joint submission: "We are supportive of the revisions to Guidance Note 8 as we consider that the revised version will assist listed entities in understanding and complying with their disclosure obligations … Further, we consider the Abridged Guide is extremely helpful for directors and other officers ..."

- *CSA*: "CSA welcomes … the revised Guidance Note and Listing Rules which provide greater clarity for listed entities as to how to understand and comply with their disclosure obligations under Listing Rules 3.1-3.1B. CSA has been seeking for some time greater clarity on issues such as how the term 'immediate' should be interpreted, what standard of materiality listed entities can refer to and how a consistent approach to trading halts can be developed. CSA Members are of the view that the revised Guidance Note 8 … provides good clarification of some matters that were previously ambiguous or

uncertain as to their interpretation. The Guidance Note is very helpful in the manner in which it crystallises certain assumptions underpinning how listed entities seek to fulfil their disclosure obligations and CSA commends ASX for providing such a substantive revision."

- *G100*: "The G100 considers that:

  - replacing the statement in paragraph 31 with more detailed guidance on how the ASX sees the 'reasonable person' test operating would be helpful to companies. In addition the separate treatment relating to entities in financial difficulties will help clarify what is expected in these circumstances.

  - the removal of the guidance in paragraph 93 and its replacement relating to published earnings guidance is likely to clarify the requirements and assist practitioners in understanding the expectations of the market in respect of Listing Rule 3.1.

  - the clarification of the meaning of "immediately" will help inform practice and provide listed entities with a better understanding of the requirement. Making disclosures 'promptly and without delay' is a much more reasonable approach when taken in conjunction with other changes than having some market participants expect 'instantaneous' disclosure which, in the vast majority of circumstances, is impractical. This is particularly so in respect of the guidance and examples in respect of confidentiality and incomplete proposals and negotiations.

  - the interpretation and application of the materiality test provides companies with a better understanding of the obligation to disclose.

  The G100 [also] considers that the abridged guide will be particularly useful as a first stage reference for both directors and officers …"

- *JWS*: "The ASX is to be commended for its work in producing comprehensive revised guidance on Listing Rules 3.1 – 3.1B … It should promote improved understanding by all listed entities and their advisers of the ambit of, and complexities involved in compliance with, the continuous disclosure obligation. … GN 8 should also serve to better inform the financial media and the market generally, to promote greater understanding that the continuous disclosure obligation does not mean that the market can assume it has perfect information at all time."

- *LCA*: "In general, the Committee supports many of the proposals contained in the draft revised Guidance Note 8. In particular, the Committee welcomes the increased emphasis on the difference between disclosure obligations while information is confidential and where confidentiality has been lost. The Committee is also appreciative of the recognition that disclosure obligations are less acute when an entity's securities are not trading."

- *Telstra*: "Telstra welcomes the additional guidance and further clarity provided by revised GN8 in relation to a number of aspects of Listing Rule … 3.1, in particular in relation to the concept of 'immediately'."

The written consultation responses from the ABA, Biotech Daily, HSF and Lycopodium Limited were confined to specific areas of GN 8 and the proposed disclosure-related Listing Rule changes and did not include any general feedback of the type mentioned above.

Copies of the non-confidential submissions received by ASX in response to its consultation paper are available on the ASX website at: http://www.asxgroup.com.au/public-consultations-submissions-received.htm.

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Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

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Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Introduction

For transparency and to assist stakeholders in understanding the reasons behind the positions reflected in the final versions of Guidance Note 8 (referred to below as "GN 8") and the proposed disclosure-related Listing Rule changes being released with this consultation response, ASX has included in this Annexure a detailed summary of the various suggestions made in relation to ASX's consultations materials and ASX's response to those suggestions.

To help keep the length of this Annexure manageable, in many cases ASX has condensed and/or paraphrased the suggestions. The detailed argument or justification accompanying the suggestions has not been included. ASX apologises to any respondent who feels that ASX's condensing and/or paraphrasing of any particular issue it has raised does not do it justice.

A number of respondents made submissions on various issues to similar effect. Rather than repeat them, ASX has in many cases selected and/or paraphrased the submission that best encapsulates the substance of the point being made. Accordingly, where there are multiple respondents noted as having raised the same point, it should be appreciated that they may have expressed the point in somewhat different terms. Again ASX apologises to any respondent who feels that this treatment of any particular issue it has raised does not do it justice.

It should be noted that due to the inclusion of additional materials and other modifications in the final versions of GN 8 and the proposed Listing Rule changes, most of the heading, footnote and page numbers and some of the rule numbers have changed in the final versions of these documents compared to the consultation versions. In the summary in this Annexure of the various suggestions made in relation to ASX's consultation materials and ASX's response, the headings and the columns headed "Comment" reference the original heading, footnote, page and rule numbers in the consultation version of these documents. The column headed "ASX Response" generally references the heading, footnote, page and rule numbers in the final versions of these documents but, where different, also includes a parenthetical reference to the relevant heading, footnote, page and rule number in the consultation versions.

The table of contents above also references the original heading and rule numbers in the consultation version of GN 8 and the proposed Listing Rule changes.

ASX notes that it did not receive any specific feedback on the abridged continuous disclosure guide for directors and officers. The amendments that have been made to that document simply mirror the amendments made to GN 8.

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A. Feedback on Guidance Note 8

Respondent	Comment	ASX Response
Section 2 – An overview of the continuous disclosure decision process		
CSA	The diagram on page 5 should acknowledge that the issue of whether information continues to fall within the carve-outs to immediate disclosure in Listing Rule 3.1A may need to be re-appraised from time to time as circumstances change.	ASX agrees and has added a sentence to section 2 of the final version of GN 8 to address this issue.
Section 3.1 – What type of information has to be disclosed?		
CSA	The word "industry" should be inserted between the words "particular" and "sector" in footnote 8. The word "sector" can mean many things, and without some contextual clarification, it is open to misinterpretation.	ASX believes that the reference to "sector" in this footnote (now footnote 11 in the final version of GN 8) is reasonably clear from the context and does not need further explanation or qualification.
Section 3.2 – When is information market sensitive?		
G100	The interpretation and application of the materiality test provides companies with a better understanding of the obligation to disclose.	ASX appreciates the support for this guidance.
BHP Billiton	ASX suggests that when determining whether information is "material" and therefore needs to be disclosed, an officer of a listed entity should ask two questions – one going to whether the information would influence the officer in making a trading decision and the other as to whether it would make them feel exposed to an allegation of insider trading if they did trade. ASX's suggested subjective tests are not consistent with the objective test set out in section 677 of the Corporations Act. We consider that this guidance creates an additional test which companies will need to assess in determining whether information is material. Furthermore, the subjective tests may lead to a different disclosure outcome than the objective test, recognising that an officer within the company will have a closer understanding of the group's strategy and operations than an independent bystander.	ASX has modified section 4.2 of the final version of GN 8 (section 3.2 of the consultation version) to acknowledge that the test for materiality is an objective one and that the subjective assessment by the officers of a listed entity is not determinative of the issue of whether disclosure is required. These two questions are merely suggestions as to how company officers can approach this issue when they are called upon to make what will necessarily be a subjective assessment on their part as to whether particular information is "material" and therefore ought to be disclosed. The feedback ASX received in its various consultation presentations and meetings on using these two questions as a guide to determining whether information should be disclosed was generally positive. ASX therefore considers that it should proceed with this guidance in GN 8.

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JWS	The second question ASX has suggested for testing the materiality of information (the insider trading question) is inappropriate because of the different language used in section 1042D compared to section 677 and because directors in particular are likely to take a very conservative view as to whether they should be trading, given everything they may know about the company. GN 8 should be modified to make it clearer that this test is only a guide and not conclusive on the question of whether disclosure is required.	As mentioned in response to the previous comment, ASX has modified section 4.2 of the final version of GN 8 (section 3.2 of the consultation version) to acknowledge that the test for materiality is an objective one and that the subjective assessment of the officers of a listed entity is not determinative of the issue of whether disclosure is required. ASX would note that the specific question that it has suggested is: "Would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, knowing *this information* had not been disclosed to the market?" (not "would I feel exposed to an action for insider trading if I were to buy or sell securities in the entity at their current market price, given everything I know about the company?"). ASX acknowledges that the test for materiality of information in section 1042D is expressed in slightly different terms to section 677. However, in ASX's opinion, it would be a very exceptional case indeed for information that was "market sensitive" for the purposes of continuous disclosure laws not also to be materially price sensitive for the purposes of insider trading laws, and vice versa. ASX also does not regard the fact that this test may act to introduce a degree of conservatism into assessments about the materiality of information as necessarily a bad outcome.
BHP Billiton	We would welcome further guidance from ASX in relation to the qualitative factors which companies may also consider in determining the materiality of information. For example, we suggest that the entity's past practice of disclosure is a relevant consideration as this will have conditioned the market to expect certain kinds of information to be disclosed, and goes to what a reasonable investor might expect.	This is not easy guidance to give in any generally applicable way. As the case law acknowledges, what is material for one organisation in one set of circumstances may not be material for a different organisation or in different circumstances. The notes to Listing Rule 3.1, which are repeated in GN 8, do include a number of examples of the types of information that qualitatively could be material, depending on the circumstances. ASX is reluctant to go further than this. Each case has to be looked at on its merits and assessed against the test for materiality set out in section 677 – ie would this information influence persons who commonly invest in securities in making a decision to buy or sell securities.

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		ASX would point out that the particular example mentioned in the comment (the entity's past practice of disclosure) was already addressed to some extent in section 3.3 of the consultation version of GN 8 (now section 4.3 of the final version), which mentioned that the materiality of information has to be assessed in context and that the relevant context includes "any previous information the listed entity has provided to the market (eg in a prospectus or PDS, under its continuous or periodic disclosure obligations or by way of earnings guidance)". ASX has also since enhanced its guidance around the impact that past disclosures may have under the "reasonable person" test in Listing Rule 3.1A.3 (see the discussion of "cherry-picking" in section 5.9 of the final version of GN 8 (section 4.9 of the consultation version)). While ASX does not interpret the comment in this way, for the avoidance of doubt, ASX would note that it does not follow from the fact an entity has had a practice of not disclosing certain types of information in the past that the market/reasonable investors should not expect that type of information to be disclosed in the future – the relevant question in each case has to be whether the information meets the test for materiality in section 677.
JWS	The admonition that directors "err on the side of caution" in making disclosures under Listing Rule 3.1 could expose them to a claim for breach of duty of care and diligence under section 180(1) of the Corporations Act if they disclose information that they are not legally obliged to disclose. This should be acknowledged in GN 8.	ASX has modified the comment that listed entities and their officers should "err on the side of caution" to now refer to "exercise appropriate caution".
ABL	We agree with ASX's interpretation that the references in section 677 to persons who commonly invest in securities should not include high frequency traders. However, it would be desirable for section 677 to be amended to reflect this interpretation, in case the courts take a different view in class action litigation.	ASX appreciates the support for this guidance. For the reasons outlined in the response to the next comment, ASX considers that this is important guidance for it to give to the market. Whether there should be legislative changes to section 677 is a matter for the Australian Parliament. ASX has done what it can do on this issue in GN 8.

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Clayton Utz	We question whether it is appropriate to exclude high frequency traders from the class of those who "commonly invest in securities" for the purposes of section 677. 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 (eg 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?	ASX notes the comment and has deleted the specific reference to high frequency traders. However, ASX considers it important to state its view that the class of those who "commonly invest in securities" for the purposes of section 677 does not, and should not, extend to persons who seek to take advantage of very short term (usually intraday) price fluctuations and who trade into and out of securities without reference to their inherent value and without any intention to hold them for any meaningful period of time. ASX has therefore kept that guidance in section 4.2 of the final version of GN 8 (section 3.2 of the consultation version). The reason for this is that these types of traders often make trading decisions on the basis of very small movements in market price and so their inclusion in that class could artificially reduce the level of price movement that might be regarded as "material" under Listing Rule 3.1 and section 674. Also, their trading decisions typically are made without any regard to the underlying fundamentals of the securities in which they trade. They therefore are not the type of person to whom section 677 was addressed, namely, persons who commonly "invest in" securities and whose decision to buy or sell any given security is determined by their assessment of the information available about that security. In colloquial terms, these types of traders are often described as either "high frequency traders" (if they trade algorithmically) or "day traders" (if they trade using more conventional means). However, it is not necessary to use those labels to make the point made in this section of GN 8.
Clayton Utz	There are other categories of traders (eg short sellers and hedge funds) who perhaps should be excluded from the class of those who "commonly invest in securities" for the purposes of section 677.	ASX does not agree. ASX is comfortable excluding the types of traders mentioned in its response to the previous comment, whom ASX considers cannot be regarded as "investors" in any relevant sense of that expression. ASX is not comfortable excluding other types of investors.

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Section 3.3 – The need to assess information in context		
CSA	Footnote 19 references the observations of O'Loughlin J in *Flavel v Roget*. However, this case is not necessarily easy to access (it is not available on austlii.edu.au) and a listed entity may not have the in-house resources to the same extent as a large law firm library. CSA strongly recommends that all information relevant to the Guidance Note should be able to be found within the Guidance Note or on the ASX website. In an instance such as this, CSA recommends that a hyperlink be provided to a section of the ASX website where the case in question can be found and read.	ASX has added to the footnote (now footnote 28 in the final version of GN 8) the relevant quote from *Flavel v Roget* that backs up the point made in the text. ASX would note that the footnotes with case references are primarily included for the benefit of legal advisers. Most legal advisers will have or be able to get access to the cases referred to in the footnotes. If a listed entity really wants to read the full text of the cases mentioned in the footnotes, it will usually have a relationship with a legal adviser through whom it will be able to obtain this material.
Section 3.4 – When does an entity become aware of information?		
BHP Billiton	A distinction needs to be drawn between an officer becoming aware of certain facts/information, and the officer being in a position to determine if the information is material in the context of the listed entity.	ASX agrees and has added some additional commentary in section 4.4 of the final version of GN 8 (section 3.4 of the consultation version) which acknowledges that an entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when an officer has, or ought reasonably to have, come into possession of sufficient information about the relevant event or circumstance to be able to appreciate its market sensitivity.
BHP Billiton	With respect to events or developments that arise due to decisions or actions taken within a company, GN 8 should recognise the overriding principle that the disclosure obligation crystallises when the person with the relevant authority has taken a decision.	ASX agrees with the point that a disclosure obligation will often not crystallise in relation to a proposed decision or action by a listed entity until the person with the relevant authority within the entity has made that decision or committed the entity to take that action. However, ASX believes that this principle is recognised and has been adequately addressed by the guidance about incomplete proposals or negotiations in section 5.4 of the final version of GN 8 (section 4.4 of the consultation version) and by the guidance about when board decisions need to be disclosed in section 4.8 of the final version of GN 8 (section 3.8 of the consultation version). It is also well illustrated by a number of the worked examples in Annexure A. ASX would note that the mere fact that an entity is even considering a

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		market sensitive transaction will itself often be market sensitive. In these circumstances, the entity must rely on the carves-out to immediate disclosure in Listing Rule 3.1A – either because the information relates to an incomplete proposal or negotiation or because it is a matter of supposition or insufficiently definite to warrant disclosure. In this sense, it is really Listing Rule 3.1A that defines when the disclosure obligation crystallises and why this guidance appears in the sections of GN 8 addressing Listing Rule 3.1A.
Clayton Utz	It would be helpful for ASX to provide its 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.	As mentioned above, ASX has included some additional guidance in section 4.4 of the final version of GN 8 (section 3.4 of the consultation version) that an entity will only become aware of information that needs to be disclosed under Listing Rule 3.1 when an officer has, or ought reasonably to have, come into possession of sufficient information about the relevant event or circumstance to be able to appreciate its market sensitivity. It has also added footnote 39 to the final version of GN 8 giving as an example of that point a listed entity needing to obtain legal advice about a writ or summons commencing litigation against it to ascertain whether or not it is market sensitive. ASX is wary of giving guidance on matters of opinion, especially given what the majority of the High Court said on the distinction between matters of fact and matters of opinion in *Forrest v ASIC* [2012] HCA 39. It is seldom the case that a disclosable matter is purely a matter of opinion. There will always be some factual basis underlying the opinion. As an illustration, in the example given in the comment – the appropriate size of a provision for bad and doubtful debts – that would generally only be disclosable in isolation if there has been a significant deterioration in the entity's debtors which has not been anticipated by the market and which is sufficient to have a material effect on the price or value of its securities. In such a case, it can reasonably be argued that the matter to be disclosed is not the opinion about the appropriate size of the provision but rather the fact of the material deterioration in the entity's debtors.

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Section 3.5 – The meaning of "immediately"		
AIRA BHP Billiton Clayton Utz Confidential Corrs CSA G100 HSF LCA Telstra	The clarification of the meaning of "immediately" is helpful/welcome.	ASX appreciates the support for this guidance.
AICD Clayton Utz Confidential	Rather than defining "immediately" as meaning "promptly and without delay", GN 8 should define it as meaning "promptly and without *unreasonable* or *undue* delay".	ASX does not agree. The formulation of words used in GN 8 ("promptly and without delay") has clear judicial support and ASX does not see a case for departing from those words. This comment suggests a belief on the part of its makers that there might be circumstances in which a delay in releasing market sensitive information is reasonable or acceptable. This in turn suggests to ASX that those commentators may be interpreting the word "delay" differently to ASX. ASX interprets "delay" to mean defer, postpone or put off to a later time. A simple effluxion of time is not, of itself, a "delay". Hence, the fact that some time will necessarily pass while an entity goes about the task of preparing and releasing an announcement does *not* mean that there has been a "delay" in the release of the information. In ASX's opinion, for a listed entity to defer, postpone or put off to a later time (ie delay) the publication of an announcement clearly would not meet the requirement to act "immediately". This would apply even where the delay is considered reasonable in the circumstances. ASX has included some commentary in section 4.5 of the final version of GN 8 (section 3.5 of the consultation version) to clarify the meaning of "delay", which should help to allay the concern underlying this comment.

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BHP Billiton Corrs CSA HSF LCA Telstra	The references to ASIC Media Releases 08-117 and 09-199 (infringement notices issued for 60 minute and 90 minute delays) suggests that an announcement should be issued within 60-90 minutes of a listed entity becoming aware of disclosable information and this would be unreasonably short in many cases.	ASX understands the issue and has moved the references to these infringement notices to the footnotes (see footnotes 43 and 53 of the final version) and included further commentary about them so that they can be better understood. As explained in that commentary, ASIC Media Release 08-117 dealt with a situation where there was an unacceptable delay in requesting a trading halt in circumstances where information had leaked and was having a significant impact on market price. ASIC Media Release 09-199 dealt with a situation where the release of allegedly material information was postponed to coincide with another announcement and therefore involved a "delay". Every infringement notice turns upon its own individual facts and these two infringement notices are no exception. ASX certainly does not interpret these infringement notices as meaning that ASIC has a view that an announcement should always be issued within 60-90 minutes of a listed entity becoming aware of disclosable information and it is not aware of any public suggestion by ASIC that it has such a view.
Clayton Utz JWS	Section 3.5 should acknowledge that whether the market is open and trading is also a relevant consideration in determining how promptly information has to be released.	ASX agrees and has modified section 4.5 of the final version of GN 8 (section 3.5 of the consultation version) to include this acknowledgement.
Corrs	Paragraph 3 of section 3.5 should be clarified to emphasise that ASX recognises that there are a number of factors which contribute to the meaning of what will constitute prompt disclosure in any particular case (including, in particular, the complexity of the circumstances and the need to ensure that the market is not misinformed or prejudiced as a result of information being disclosed or a trading halt having been sought before the directors have had the chance to assess its veracity and/or materiality). It would also be helpful to include more explanatory material on the meaning of "without delay", including a description of particular factors that are to be taken into account when determining how quickly an announcement needs to be made.	Section 3.5 of the consultation version of GN 8 (now section 4.5 of the final version) already listed the factors to which ASX will have regard in determining whether an announcement is made promptly and without delay. These included the complexity of the information and the need in some cases to check the veracity of information. ASX has now also included additional commentary in: • section 4.4 of the final version of GN 8 (section 3.4 of the consultation version) dealing with the need to assess materiality; • section 4.5 of the final version of GN 8 (section 3.5 of the consultation version) to clarify the meaning of "delay"; and

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Respondent	Comment	ASX Response
		• section 4.6 of the final version of GN 8 (section 3.6 of the consultation version) regarding trading halts. Together these changes address the remainder of the issues in this comment.
LCA	Some worked examples of, or qualitative guidance on, when information is disclosed promptly and without delay would be helpful.	ASX has listed the factors to which it will have regard in determining when information is released promptly and without delay in section 4.5 of the final version of GN 8 (section 3.5 of the consultation version). It has also included some commentary on the point in Examples D, F and G in Annexure A of GN 8 (eg about the need for appropriate due diligence and sign-off before releasing earnings guidance). With the extra guidance ASX has included in section 4.5 of the final version of GN 8 to clarify the meaning of "delay", ASX considers that there is sufficient guidance on this point.
JWS	GN 8 should make it clear that ASX will put itself in the position of the listed entity at the time when it adjudges the factors relevant to whether an entity has acted "promptly and without delay", so as not to succumb to hindsight bias.	ASX has amended section 4.5 of the final version of GN 8 (section 3.5 of the consultation version) to acknowledge that how quickly an entity can give an announcement to ASX will be dictated by the circumstances confronting it at the time.
Corrs	GN 8 should consistently use the phrase "promptly and without delay" rather than "immediately" throughout GN 8 (see, for example, the second paragraph of section 3.8 and section 3.17).	ASX does not believe that this is necessary. The term used in the Listing Rules is "immediately". ASX has explained quite clearly in section 4.5 of the final version of GN 8 (section 3.5 of the consultation version) how it interprets "immediately".

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Section 3.6 – How can trading halts be used to manage an entity's obligations under Listing Rule 3.1?		
AICD AIRA Confidential Corrs HSF JWS LCA	The clarification of how ASX takes into account whether and how promptly a listed entity has requested a trading halt in determining whether a listed entity has complied with the spirit and intent of Listing Rule 3.1 is helpful/welcomed. [AICD]: We agree that a trading halt can be a useful tool in circumstances where information has crystallised and an announcement is being prepared or when information is about to crystallise and disclosure is imminent. [Confidential]: We support ASX's views that trading halts can be an important tool to help deal with the conflicting requirements of immediate versus accurate disclosure or to enable the board or a disclosure committee to consider and approve a market announcement, and could be used more often by listed companies.	ASX appreciates the support for this guidance.
AICD CSA JWS	GN 8 should acknowledge that a trading halt is not necessarily appropriate in all cases (eg in relation to an issue that will take longer than 2 trading days to resolve).	ASX agrees and has amended section 4.6 of the final version of GN 8 (section 3.6 of the consultation version) to acknowledge this point.
ABA BHP Billiton Corrs CSA Telstra	More guidance would be helpful on when a trading halt is appropriate and when a listed entity can simply go about the process of preparing and releasing an announcement in the ordinary course without requesting a trading halt.	ASX agrees and has amended section 4.6 of the final version of GN 8 (section 3.6 of the consultation version) to give more guidance on this issue.
BHP Billiton CSA	A trading halt is not appropriate if the entity is in a position to make an announcement promptly and without delay once the disclosure obligation is triggered.	ASX agrees but with some qualifications. As GN 8 acknowledges, an entity can still be acting "promptly and without delay" even though time may pass between when it first becomes aware of market sensitive information and when it releases its announcement to the market. Where the market is trading while an announcement is pending, it is appropriate for the listed entity to consider whether a trading halt is appropriate. The amended guidance on trading halts mentioned in response to the previous comment should help to clarify ASX's expectations in this regard.

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ABA BHP Billiton Corrs CSA HSF LCA Telstra	It would be helpful for GN 8 to acknowledge that a listed entity may need time to consider whether a trading halt is appropriate (for example, to determine that information is in fact market sensitive and therefore needs to be disclosed).	ASX agrees and has amended section 4.6 of the final version of GN 8 (section 3.6 of the consultation version) to address this issue.
BHP Billiton	For larger, diversified groups, a trading halt is rarely a suitable solution to the disclosure question and we think it would be preferable for GN 8 to focus more on ways in which companies can enhance their processes and compliance without depriving investors of the market for their shares.	ASX does not agree. Even for very large listed entities, there may be circumstances where a trading halt is appropriate (although ASX would concede that these circumstances would not necessarily occur in practice all that frequently). The amended guidance on when trading halts are appropriate mentioned above should help to clarify ASX's expectations in this regard.
BHP Billiton	GN 8 should be clear that mining and oil & gas companies will not require a trading halt as long as they work promptly to compile and release an announcement which meets the new chapter 5 requirements.	ASX does not believe any changes are required to GN 8 to address this point. The fact that compliance with the Chapter 5 reporting requirements will necessarily take some time was already acknowledged in section 3.5 of the consultation version of GN 8 (now section 4.5 of the final version), in the bullet point stating this as one of the factors to which ASX would have regard in assessing whether an entity had issued an announcement promptly and without delay. It is also addressed in the worked example in Appendix A Example D. Proposed GN 31, which was released as part of the consultation on the new mining and oil & gas reporting rules, also has guidance on the interplay of the disclosure rules in Chapter 5 with Listing Rule 3.1. The amended guidance ASX has given in section 4.6 of the final version of GN 8 (section 3.6 of the consultation version) on when trading halts are appropriate applies equally in this scenario as it does in others.

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HSF	It would be helpful for GN 8 to acknowledge that ASX will accept a request for a trading halt from a director or other officer of a listed entity if the person responsible for communications with ASX under Listing Rule 12.6 is not available.	ASX has added a footnote (footnote 86) to section 4.9 of the final version of GN 8 (section 3.9 of the consultation version) to include this acknowledgement.
CSA	Our members have experience of trading halts not always being granted when requested by listed entities in circumstances where members are of the view the information is market sensitive. Listed entities are concerned that they have to spend time trying to convince ASX of the reasons for a trading halt when they need to deal with a whole host of other more important issues, such as the matter triggering the disclosure requirement and attending to the drafting and lodgement of the disclosure.	The approach ASX takes when it is asked for a disclosure-related trading halt was outlined in section 3.7 of the consultation version of GN 8 (now section 4.7 of the final version). As noted in that section: "Not all announcements an entity may wish to make will warrant a trading halt. It is for this reason that when an entity requests ASX for a trading halt to allow it the time it needs to prepare an announcement under Listing Rule 3.1, ASX will usually ask the entity to outline the nature of the information in question and assess for itself whether the circumstances warrant the granting of a trading halt." ASX has to ask these questions in order to satisfy itself that the listed entity is not trying to "game" the trading halt process and to stop trading in its securities when that is not warranted. In ASX's experience, these issues are generally resolved quite quickly in discussions between ASX and the listed entity (often before the market opens) and do not materially delay the disclosure of information.
ABA AICD AIRA BHP Billiton CSA Telstra	Trading halts can be negatively interpreted by the market ([AIRA] and also by overseas investors who may not be familiar with Australia's continuous disclosure regime). Further market education on when and why they are used would be helpful to dispel this interpretation.	The revised version of GN 8 should assist the market and the financial press in better understanding when and why trading halts are used to manage disclosure obligations. ASX will continue its efforts to educate the market and the financial press on this issue.

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Telstra	The increased emphasis on the use of trading halts could cause listed entities to prematurely release "interim" or "holding" announcements to avoid the need to ask for a trading halt and this may cause volatility in the market price of a listed entity's securities.	Given the enhanced guidance on when trading halts are appropriate mentioned above, ASX does not see this as a major concern. ASX would also note that it is not uncommon for markets to experience a degree of volatility when new information is released, before reaching an equilibrium price. ASX does not see this as a reason for discouraging the use of trading halts or interim announcements, where appropriate.
JWS	GN 8 should acknowledge the tension between the use of trading halts and the need to keep the market trading.	ASX has included in section 4.7 of the final version of GN 8 (section 3.7 of the consultation version) a quote from GN 16 *Trading Halts and Voluntary Suspensions* which acknowledges that ASX's policy position is that interruptions to trading should be kept to a minimum.
JWS	GN 8 should acknowledge that a trading halt signals to the market that the market is not fully informed and that investors should be careful trading on alternative venues, including off-market.	ASX agrees and has modified section 4.7 of the final version of GN 8 (section 3.7 of the consultation version) to include this acknowledgement.
Allens Linklaters ABL Confidential	The use of trading halts to manage disclosure obligations would be better supported if the Listing Rules were amended so that continuous disclosure obligations were formally suspended during a trading halt.	ASX does not agree. ASX sees trading halts as a very useful mechanism for listed entities to help manage the legal exposure that might arise if it is asserted that the entity has taken longer than it ought to have to release market sensitive information. They are also helpful to the market in ensuring that trading does not take place while the market is not appropriately informed of market sensitive information. However, ASX is concerned that formally suspending continuous disclosure obligations during a trading halt would incentivise "gaming" of the trading halt process (eg by encouraging an entity to ask for a trading halt when one is not necessary or to stay in a trading halt longer than necessary) simply to delay disclosure of market sensitive information.
Corrs	Revised GN 8 should include clear support from both ASX and ASIC that trading halts are in certain circumstances the appropriate means to manage continuous disclosure issues.	GN 8 already does this in relation to ASX. GN 8 is an ASX publication dealing with how it interprets and applies Listing Rule 3.1. It cannot purport to bind ASIC is its application of section 674 of the Corporations Act.

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		ASX would, however, note the comments of ASIC Commissioner Belinda Gibson in ASIC Media Release 12-253 issued on 17 October 2012: "ASIC today welcomed the ASX's updated continuous disclosure rules and guidance … ASX and ASIC share the responsibility for regulating the continuous disclosure framework that applies to ASX-listed entities and have worked together closely and cooperatively to develop the draft rules and guidance." ASX would also note the comments of ASIC Commissioner John Price in his speech entitled *Continuous disclosure* delivered on 3 December 2012 to the CSA 2012 Annual Conference: "ASIC welcomes and supports ASX's release of a substantially rewritten draft Guidance Note 8 *Continuous disclosure: Listing Rules 3.1–3.1B* (GN 8). ASIC worked closely with ASX on this rewrite." In addition, ASX would also note the supportive commentary in various ASIC infringement notices about the use of trading halts mentioned in footnote 42 of the consultation version of GN 8 (now footnote 67 of the final version).
Section 3.7 – The approach ASX takes to requests for disclosure-related trading halts		
CSA	This section of GN 8 refers to ASX exploring whether an interim announcement about an event could be made under Listing Rule 3.1. CSA Members are of the view that ASX expects the listed entity to make an interim announcement before the entity has an understanding of the implications of the information, followed by a second announcement at a later time setting out the implications of the facts. CSA does not agree with the approach set out in the Guidance Note, as announcing information to the market without an understanding of the impact of the information could lead to the creation of a false market in shares. The information is potentially misleading if only the facts are released without a statement as to the implications of those facts.	ASX believes that this comment may reflect a misunderstanding on the part of the CSA members in question of what ASX was trying to convey in this section of the consultation version of GN 8. ASX's policy is that interruptions to market trading should be kept to a minimum. In some cases a short interim announcement can adequately inform the market about the current state of affairs, without the entity needing to stay in a trading halt. Many (if not most) listed entities would also prefer to keep interruptions to trading in their securities to a minimum. The passage in question simply said that when it is approached by a listed entity for a disclosure-related trading halt, ASX may explore with the entity whether an interim announcement can be made so that the entity can

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		come out of a trading halt quickly. It did not say that ASX expects an interim announcement to be made. ASX has modified section 4.7 of the final version of GN 8 (section 3.7 of the consultation version) to clarify its position, which hopefully will help avoid any similar misunderstanding on this issue.
Section 3.8 – does the board need to approve an announcement under Listing Rule 3.1?		
LCA	The reference to a board decision declaring a special dividend not having to be disclosed until the board has made that decision should apply to all dividends not just special dividends.	ASX agrees and has made this change.
CSA	The second paragraph notes that a matter that falls outside delegations to senior management to release announcements of their own accord may need to be referred to a disclosure committee. CSA Members note that not all listed entities have a disclosure committee, but will have other processes in place. CSA recommends that the words "or other appropriate process" be inserted after the words "disclosure committee" to provide certainty that listed entities are free to establish the processes most suitable to their circumstances.	ASX does not believe this change is necessary. The second paragraph of this section mentions that listed entities should have in place "suitable arrangements" to enable them to meet their obligation to disclose market sensitive information immediately. Giving appropriate delegations to senior management and having a disclosure committee are simply given as two (non-exhaustive) examples of what might be "suitable arrangements".
BHP Billiton CSA	[BHP Billiton]: The revised GN mentions in several places that entities are encouraged to monitor investor blogs, chat-sites and other social media in certain circumstances (eg leading up to an announcement). This requirement is not practical, especially for larger companies which may attract a lot of commentary in the social media and chat sites around the world. We would suggest that the requirement should be limited to monitoring credible media and analyst coverage. [CSA]:The reference in this section to monitoring social media should be deleted or amended to refer to "well-known" and "credible" investor blogs or chat sites or other social media. It is practically impossible for an entity to have knowledge of or monitor all social media sites regularly that include postings about the entity. Moreover, there are substantial cost implications, which will have a significant impact on smaller listed entities.	ASX agrees that a listed entity cannot be expected to monitor social media at large or blogs, chat-sites or other social media sources it is not aware of. The level of monitoring of social media suggested by ASX in sections 3.8 and 4.8 of the consultation version of GN 8 (now sections 4.6 and 5.8 of the final version) was confined to the specific circumstances mentioned in those sections – namely, when a market sensitive announcement is pending or when an entity is close to finalising a market sensitive transaction. It was also specifically limited to investor blogs, chat-sites and other social media the entity *is aware of that regularly include postings about the entity*. An example of the sort of thing ASX had in mind was the "shareholder action" blogs that exist for some listed entities. A listed entity which is the subject of such a blog would often be aware of that fact from

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		communications with its shareholders and, in ASX's experience, would generally be monitoring the blog for an insight into what its shareholders are saying about it. ASX is also aware that some larger listed entities also monitor certain investor blogs, chat-sites and other social media sites through their investor relations function, again for the purposes of understanding what is being said about them on those sites. Where a market sensitive announcement is pending and where a listed entity is most likely already monitoring the site in question, ASX does not believe it is unreasonable or imposes an undue burden on the entity to expand that monitoring to look for signs that information in the pending announcement may have leaked.
Section 3.9 – What other steps can a listed entity take to facilitate compliance with Listing Rule 3.1?		
CSA LCA	GN 8 says the contact person must be available at all times between 9am-5pm and, if not, there is a risk that ASX may suspend quotation. While it may be desirable that the contact person is available at all times, it will not invariably be the case. [CSA]: GN 8 should acknowledge that listed entities will often have processes in place ensuring there is a back-up person to discuss a matter with ASX. [LCA]: There should be provision for one alternative contact person before ASX suspends quotation.	ASX has included a comment in footnote 83 in the final version of GN 8 noting that entities can appoint more than one person under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters.
CSA LCA	The person responsible for communications with ASX under Listing Rule 12.6 is typically the company secretary and they often will not have the authority to request a trading halt without CEO, chairman or board approval.	ASX understands the concern and has included footnote 84 in the final version of GN 8 to clarify its expectations on this score. It reads: "ASX acknowledges that the decision to request a trading halt is a serious one and that a listed entity will often have approval processes that need to be followed before a person appointed under Listing Rule 12.6 to be responsible for communications with ASX in relation to Listing Rule matters will have the authority to request a trading halt. For example, many entities typically require such a request to be approved by the chairperson and/or the CEO. If an entity has such approval

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		processes in place, they must be able to be activated and any necessary approvals obtained within a matter of minutes. They should also include appropriate contingencies for when key approvers are not available. … [W]here there is a time critical continuous disclosure issue and a trading halt is warranted, any delay in requesting the trading halt could result in ASX being left with little choice but to suspend the quotation of the entity's securities. It could also result in regulatory action by ASIC (see ASIC Media Release 08-117 …)."
Section 3.10 – How does Listing Rule3.1 interact with other disclosure obligations?		
CSA LCA	Section 3.10 says "If, in the course of preparing a periodic disclosure document, it becomes apparent to a listed entity that its reporting earnings will differ ... disclose". We recommend that GN 8 expand on when it becomes "apparent" for LR 3.1 purposes that there will be a difference. This should take account of the need for appropriate due diligence and board consideration.	ASX believes that this issue is adequately addressed in other parts of GN 8 and that it is not necessary to make any changes to this section of GN 8 to deal with this comment. In the consultation version of GN 8, the passage quoted in the comment already had a footnote (footnote 60) cross-referring to section 6.3 of the consultation version of GN 8 (now section 7.3 of the final version) and Examples F and G in Annexure A, all of which make the point that any earnings guidance requires appropriate due diligence and, in most cases, should be subject to board sign-off. This footnote has been retained in the equivalent section of the final version of GN 8 (footnote 91 in section 4.10). The issue of when an entity has sufficient certainty about an earnings surprise to require a market announcement was addressed in point 2 of section 6.3 of the consultation version of GN 8 (now point 3 section 7.3 of the final version) – *When does an entity become aware that its earnings for a reporting period will be materially different from market expectations?*
Section 3.15 – Guidelines on the contents of announcements under Listing Rule 3.1		
Biotech Daily	Listed entities should not be allowed to bury information in announcements to mislead investors.	ASX agrees with the sentiment but believes that this issue is already adequately addressed in GN 8. Sections 3.14 and 3.15 of the consultation version of GN 8 (now sections 4.14 and 4.15 of the final version) made it clear that the title to an announcement should convey a fair and balanced impression of what the announcement is about and that the contents of the

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		announcement must be accurate, complete and not misleading. Annexure B also has an entire section dealing with the legal consequences of false or misleading disclosures.
BHP Billiton	We consider that the guidance in section 3.15 (and also paragraph 6 of Worked Example A in Annexure A) should be couched as a suggested list for consideration rather than as a mandated checklist for announcements. Our concern is that the guidance should remain flexible.	ASX agrees and has modified section 4.15 of the final version of GN 8 (section 3.15 of the consultation version) and paragraph 6 of Example A in Annexure A to address this issue.
CSA LCA	In relation to the commentary in this section that lodging an agreement with ASX will help reduce the amount of material about the agreement that needs to be included in its announcement and also avoid any issues about whether any material terms of the agreement have been properly disclosed: [LCA]: Most agreements (eg mergers and acquisitions, equity capital markets) require a considerable amount of time to read, interpret and understand material terms. Lodgement of a copy of an agreement is unobjectionable, but from a market perspective it is recommended that ASX propose that a complex or lengthy agreement be accompanied by a summary of material terms. [CSA]: CSA Members are of the view that there should always be a covering note in the announcement disclosing the material terms of the agreement.	ASX believes it is sufficient, where a material contract has been lodged on the Markets Announcements Platform, for the announcement about the contact simply to describe the key commercial terms of the underlying transaction, a general description of the agreement and a statement that it has been lodged on the ASX Market Announcements Platform. This should give investors sufficient information to form a view as to whether they wish to review the entire agreement. ASX has added a footnote (footnote 103) to section 4.15 of the final version of GN 8 (section 3.15 of the consultation version) to express this view. It has also modified Examples A, B and E in Annexure A to include more commentary on this point. ASX considers that where a listed entity has lodged a copy of an agreement on the Markets Announcements Platform, requiring it also to provide a summary of the material terms of a contract would impose an unnecessary burden on the entity and potentially delay the disclosure of material information while the entity prepares the summary.
Biotech Daily	Every ASX announcement must be "comprehensible to one's elderly maiden aunt or uncle, monitoring their superannuation investments".	ASX does not agree with this broad statement of principle. For example, it would not be reasonable to expect retail investors who are not experts in the area to fully comprehend the technical complexities of a geologist's report accompanying an announcement of exploration results. ASX has included some additional footnotes in section 4.15 of the final version of GN 8 (section 3.15 of the consultation version) acknowledging the views of the High Court in *Forrest v ASIC* [2012] HCA 39, about the intended audience for Listing Rule 3.1 announcements and, in particular, the observations of Heydon J that smaller investors are often reliant on

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		professional advice to understand the ramifications of an announcement under Listing Rule 3.1 – see footnotes 100 and 101 of the final version.
LCA	The reference in footnote 74 to the Full Federal Court decision in the *Fortescue* case that a misleading announcement may give rise to a separate obligation to make a corrective announcement under Listing Rule 3.1 and section 674 should be modified to make it clear that the Court's decision applied in the circumstances of that case.	ASX agrees and has modified this footnote (now footnote 110 in the final version of GN 8) to address this comment.
Section 3.18 – What steps does ASX take when it receives an announcement under Listing Rule 3.1?		
CSA	Footnote 78 provides a disclaimer in relation to ASX's review of announcements. CSA is strongly of the view that this disclaimer should appear at the front of the Guidance Note in an obvious place and not be buried in a footnote. CSA Members also note that defamation is dealt with under the Corporations Act and that ASX should not seek to extend that protection further in GN 8.	ASX does not believe this is necessary. The disclaimer is included to dispel any expectation that ASX conducts a detailed review of announcements before releasing them to the market or that it accepts any liability in relation to defective announcements. It simply repeats a disclaimer that already appears in the body of GN 14 *ASX Market Announcements Platform* (see section 15 of that GN: "Responsibility for contents of announcements").
Section 3.22 – Disclosure must be made even if it is contrary to contractual commitments		
LCA	In the unlikely event that a court makes an order enforcing a person's contractual rights to prevent disclosure, it would not be expected that another court would find the person was involved in a contravention by the listed entity. We suggest that this section be amended.	ASX agrees and has modified the sentence in question in the final version of GN 8 to address this comment.
Section 4.4 – Incomplete proposals or negotiations		
CSA LCA	We welcome the guidance that an agreement is generally not binding while any party is free to decide not to proceed, and also that signing can be deferred to a convenient time before the market opens or after the market closes.	ASX appreciates the support for this guidance.
BHP Billiton	GN 8 should acknowledge that an agreement which is subject to board approval does not need to be disclosed as it is incomplete.	For these purposes, it is necessary to distinguish between: (1) an agreement that has been signed containing a condition requiring board approval; and (2) an agreement that has not been signed pending board

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		approval. If the former case, ASX considers that an agreement will generally need to be disclosed at the point of signing, even if it contains a condition precedent that it is subject to approval by the board of the listed entity. In this regard, it is not the fact that the agreement has become legally binding that causes this exception to cease to apply, but rather the fact that the negotiations about the agreement have been completed. ASX has included some additional material in section 5.4 of the final version of GN 8 (section 4.4 of the consultation version) to make this clear. If the latter case, ASX considers that the guidance already in GN 8 that an agreement will not ordinarily need to be disclosed until it is signed (assuming confidentiality is maintained), covers this point.
BHP Billiton	ASX suggests that a known event or circumstance that can reasonably be expected to have a material effect on the price of securities does not fall within the "incomplete proposal or negotiation" exception, even if it may take time for the entity to put a figure or estimate on the financial impact of that event or circumstance. We consider that: • this guidance may be relevant in very limited circumstances where the implications of an event or circumstance are immediately evident; • the guidance is not helpful for larger businesses because the implications of an event at group level will not be immediately apparent and it will take time to work through the internal process of determining if the event is in fact material information; and • this guidance should be qualified to recognise its limited application.	ASX believes that this comment was probably intended to relate to ASX's guidance on the exception for matters of supposition or that are insufficiently definite to warrant disclosure rather than its guidance on the exception for incomplete proposals or negotiation. The former exception was discussed in section 4.5 of the consultation version of GN 8 (section 5.5 of the final version), which is where the specific passage referenced in the comment appears. The passage in question mentions Example G in Annexure A (earnings surprises) as an illustration of the point in question. ASX stands by the guidance in section 4.5 of the consultation version of GN 8 (section 5.5 of the final version), as further illustrated by Example G in Annexure A, and does not regard that guidance as being of "limited application". The issue identified in the second bullet point in the comment – ie where a listed entity is not yet aware of sufficient information to be able to assess the market sensitivity of a particular event or circumstance affecting the entity – is now addressed more fully in section 4.4 of the final version of GN 8 (section 3.4 of the consultation version), in the discussion on when an entity becomes "aware" of information.

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		ASX has added footnote 139 into section 5.5 of the final version of GN 8 (section 4.5 of the consultation version) cross-referring to section 4.4 of the final version of GN 8 (section 3.4 of the consultation version), with some commentary differentiating the situation where an entity knows that something is market sensitive but cannot yet put a figure on its financial impact, from the situation where the entity does not have sufficient information to know whether something is or is not market sensitive.
Clayton Utz CSA LCA	The references to an entity having entered into a legally binding agreement "or the entity is otherwise committed to proceeding with the transaction being negotiated" is unclear and could be read as being inconsistent with the remainder of the text. It is suggested that the inconsistency be removed by referring to "legally committed" in both cases.	These words were added at the suggestion of senior counsel. They are intended to capture those situations where an entity may become legally bound to proceed with a transaction without having signed a legally binding agreement (eg through the principles of estoppel). They are also intended to capture those situations where an entity enters into an arrangement or understanding committing itself to proceed with a transaction without having signed a legally binding agreement. Once the entity is so committed, the transaction is no longer an incomplete proposal or the subject of incomplete negotiations. ASX believes that these words should be retained but it has added footnote 129 to the final version of GN 8 to clarify their intent.
CSA	There is insufficient recognition in this section and also in section 4.5 that "one way discussions" (ie where a listed entity may have approached a third party to test if there is any interest in engagement in order to fulfil strategic objectives, but the discussions may never have "got off the launching pad" or no response may yet have been received) do not require disclosure under Listing Rule 3.1A and may also not be "market sensitive" for the purposes on Listing Rule 3.1.	ASX believes that GN 8 is clear on this point and that no changes are required in this respect. Paragraph 1 and 2 of Example A and paragraph 1 of Example B in Annexure A each involve "one way discussions" and clearly express ASX's view that these do not require disclosure on the basis that they involve incomplete negotiations and are insufficiently definite to warrant disclosure. Section 5.5 of the final version of GN 8 (section 4.5 of the consultation version) also acknowledges that a matter that is insufficiently definite to warrant disclosure "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 immediate disclosure in Listing Rule 3.1A".

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Section 4.5 – Matters of supposition or that are insufficiently definite to warrant disclosure		
AIRA	More guidance on when something is insufficiently definite to warrant disclosure would be helpful. This is particularly so in the case of earnings surprises.	It is difficult to give more guidance on this issue over and above what is already contained in section 5.5 of the final version of GN 8 (section 4.5 of the consultation version) and in the examples in Annexure A. The issue of when an entity has sufficient certainty about an earnings surprise to require a market announcement is addressed in point 3 of section 7.3 of the final version of GN 8 (point 2 of section 6.3 of the consultation version) – *When does an entity become aware that its earnings for a reporting period will be materially different from market expectations?*
LCA	The discussion in the 4th and 5th paragraphs of this section propose that if a known event or circumstance is expected to have a material effect it requires disclosure, even though it is not possible to quantify the effect. While this is understandable in the context of an event that is readily observable by the market (eg a flood or cyclone), it can be more problematic in the case of an internal circumstance, such as adverse results in one division. It may take some time to work through the variables, including overall quantum and whether there are opportunities to improve overall results, taking into account other divisions and possible cost saving initiatives. While the entity should work through the variables as a matter of urgency, an announcement may be premature and potentially create a false market. A two day trading halt is unlikely to provide the time necessary to conduct this kind of analysis. If those paragraphs are intended to address "event" driven changes of the kind discussed in the last paragraph of 6.3, rather than the variables discussed in item 2 on page 37, it would be desirable to make this clear.	The situation raised in this comment – where a listed entity is not yet aware of sufficient information to be able to assess the market sensitivity of a particular event or circumstance affecting the entity – is now addressed more fully in section 4.4 of the final version of GN 8 (section 3.4 of the consultation version), in the discussion on when an entity becomes "aware" of information. As mentioned above, ASX has added footnote 139 into section 5.5 of the final version of GN 8 (section 4.5 of the consultation version) cross-referring to section 4.4 of the final version of GN 8 (section 3.4 of the consultation version), with some commentary differentiating the situation where an entity knows that something is market sensitive but cannot yet put a figure on its financial impact, from the situation where the entity does not have sufficient information to know whether something is or is not market sensitive.

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Section 4.6 – Information generated for internal management purposes		
LCA	An example is given of management accounts revealing a material difference in earnings. We suggest it is clarified that this information may nonetheless be withheld if it comes within the "insufficiently definite" category. This concept is reflected in section 6.3, page 37, which says that over/under-performance part way through a reporting period does not mean that by the end of the reporting period this will be the case.	ASX has deleted this example from section 5.6 of the final version of GN 8 (section 4.6 of the consultation version). The text that preceded it in the consultation version (now the last sentence in section 5.6 of the final version of GN 8) stands alone and does not need an example to illustrate the point.
Section 4.8 – Listing Rule 3.1A.2 – the requirement for information to be confidential		
ABA BHP Billiton CSA	The three stated circumstances in which ASX may form the view that information has ceased to be confidential (ie where there is a media or analyst report, market rumour or unexplained price movement) should have an "and" rather than an "or" between the second and the third limb (ie that ASX should only form the view that information has ceased to be confidential where there is a media or analyst report or a market rumour AND the report or rumour has resulted in an unexplained price movement. [CSA]: In addition, ASX should only be able to form the view that confidentiality is lost where the media report or market rumour is "credible". [BHP]: The confidentiality carve-out is a vital protection as it ensures that the entity is not compelled to make premature disclosure. BHP Billiton considers: • whilst trading may be an indication of a loss of confidentiality, it can similarly be driven by other factors; • there should be robust controls around ASX's exercise of its discretion to form a view that the carve-out no longer applies; • to form a view that a piece of information has ceased to be confidential, there would need to be specific evidence of that information in the market (i.e. credible, specific speculation) coupled with disorderly trading. To apply the rules in any other way would be very problematic for larger companies that are likely to have multiple opportunities,	ASX does not agree with the specific change that has been suggested. It would cause particular problems for ASX and for the market in those situations where a report or rumour breaks while the market is not trading (as is often the case with the morning press). It would effectively require ASX to wait until after the market had started trading and for there to be a material impact on market price (thereby allowing a false market to happen) before taking any action to correct that situation. This part of GN 8 reflects ASX's longstanding interpretation of the confidentiality carve-out in Listing Rule 3.1A.2, as stated in the previous version of GN 8 (see paragraph 35). ASX takes the view that a media/analyst report or market rumour by itself may indicate a loss of confidentiality, without any evidence of impact on market price – although, ASX would note that if the market is trading at the time the report or rumour breaks and the information it contains is genuinely market sensitive, as a practical matter, ASX would expect that to translate into a material movement in the price of an entity's securities in fairly short order. ASX will generally only treat a media/analyst report or market rumour as evidencing a loss of confidentiality if the report/rumour is reasonably specific and reasonably accurate. ASX tried to convey that point in the consultation version of GN 8 with the comment: "The more specific and the more accurate the media or analyst report or market rumour, the more

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	projects or transactions under review in various stages of development; and • market integrity will not be enhanced by disclosure of various incomplete transactions. On the contrary, such an action will result in speculative market trading on the basis of information/transactions which may not eventuate.	compelling the evidence that confidentiality has been lost". To make this point more clearly, ASX has modified this section of GN 8 to refer now to "a reasonably specific and reasonably accurate" media/analyst report or market rumour as giving grounds for it to form a view that confidentiality has been lost. ASX has also added specific guidance in this section that it will have regard to the degree of specificity in the media or analyst report or market rumour in assessing the extent to which there has been a loss of confidentiality. So, for example, if the report/rumour simply refers to a listed entity being about to enter into a particular transaction without including any of the transaction details, ASX will generally only require the entity to disclose the fact that it is in negotiations concerning that transaction without disclosing any of the details under negotiation. If the report/rumour includes some specific and accurate transaction details, ASX will generally expect the entity to confirm those details. If it includes some inaccurate transaction details, the response required will depend on the circumstances – in some cases, it may be appropriate to correct those details, while in others it may be appropriate simply to indicate that they are inaccurate or that they are still under negotiation. [ASX would note that this guidance was already illustrated in some of the worked examples in Annexure A but, for greater clarity, ASX has decided to include it in the body of GN 8 as well.] As to the comments about only acting where the relevant report or rumour is "credible", ASX concedes that the previous version of GN 8 did refer to ASX being more likely form a view that confidentiality has been lost where the references in a media or analyst report "to the entity or its proposals are significant and credible" (see paragraph 35). ASX chose not to use that terminology in the re-write. If reasonably specific and reasonably accurate information has found its way into a media/analyst report, the simple fact is that confidentiality has been lost and there is no purpose served by a subjective debate about whether the author of the report is "credible". ASX also takes the view that a sudden and unexplained material movement in market price by itself may indicate a loss of confidentiality. As

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		mentioned in footnote 149 of the final version of GN 8 (footnote 103 of the consultation version), this is in line with the approach taken by regulators and exchanges in other markets. The appropriateness of this approach has also been confirmed by European courts: see *Super de Boer*, Utrecht District Court, 30 March 2011, LJN BP9796, holding that substantial increases in trading volumes in the shares in Super de Boer at a time when it was negotiating a takeover bid from Jumbo was sufficient to indicate that information about the takeover bid was no longer confidential and therefore should have been disclosed to the market.
LCA	Two other examples of situations involving an exchange of confidential information could helpfully be included in footnote 98 – disclosures to a listed entity's: • banks, who owe a general law duty of confidentiality. An example would be a quarterly notice of financial covenant compliance, or dealings about refinancing the existing debt arrangements or financing an (incomplete) acquisition proposal; and/or • majority owner/holding entity on a confidential basis. Examples are disclosures for the holding entity's regulatory compliance, financial reporting or other legitimate purposes approved by the listed entity board.	ASX agrees that the example mentioned in the first bullet point in the comment (ie to disclosures to a listed entity's banks) could usefully be added to the footnote in question (now footnote 141 in the final version of GN 8) and has done so. However, ASX does not believe it is appropriate to add the second example. The second example on its face assumes that the information is being provided under a confidentiality agreement or on some other confidential basis. The point of these examples was to illustrate common situations where information can be provided by a listed entity to someone else without an express confidentiality agreement and without a resulting loss of confidentiality. Also, information disclosed by a listed entity to a majority owner/holding entity for regulatory compliance or financial reporting purposes is often given on the basis that the majority owner/holding entity can in fact disclose it in its public filings and published financial statements if that is needed. If it is so disclosed, it would cease to be confidential.

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LCA	This section states that if a listed entity informs ASX that there is price sensitive information that it has not disclosed in reliance on the carve-out, ASX will form the view that the information has ceased to be confidential and require disclosure unless the entity is able to explain the unusual trading. The paragraph does not directly deal with the situation where, as is often the case, the listed entity is relying on the carve-out in relation to a number of items of information. We submit that in some circumstances it may be appropriate for the entity to make a more general disclosure in relation to these matters, rather than being required to disclose each specific matter.	This issue was partially addressed in footnote 104 of the consultation version of GN 8, dealing with the situation where an entity is negotiating multiple price sensitive transactions and there is a sudden and significant movement in the market price of its securities. ASX agrees with the comment and has updated the corresponding footnote in the final version of GN 8 (footnote 150) to note that where multiple transactions are under negotiation, the disclosure that will be required will depend on the circumstances. In some cases, it may be sufficient for the entity to make an announcement that it is negotiating a number of market sensitive transactions and that a further announcement will be made to the market if and when any of those negotiations are successfully concluded. In others, it may be necessary for the entity to make a more detailed announcement about the transactions being negotiated.
JWS	Many smaller listed entities will not have the resources to undertake the level of monitoring of the media and other information sources suggested in this section to confirm that confidentiality of a material transaction under negotiation has been maintained. GN 8 should be amended to make it clear that ASX will have regard to the resources available to the entity in making a determination on this issue.	ASX does not agree. ASX has only suggested that a listed entity monitor the media and other information sources mentioned in this section when a market sensitive announcement is pending or when it is close to finalising a market sensitive transaction (see section 3.8 and 4.8 of the consultation version/sections 4.6 and 5.8 of the final version of GN 8). ASX does not believe that it is unreasonable in these limited circumstances to expect a listed entity – even a small one – to monitor its market price, major national and local newspapers, the social media sites mentioned in this section of GN 8, and enquiries it receives from journalists or analysts, for signs that information about the pending announcement or transaction may have leaked. However, in recognition of the point made in this comment, ASX has qualified the reference to monitoring major news wire services, such as Reuters and Bloomberg, to limit it to where the entity or its advisers have access to those services. ASX would note that listed entities are usually represented in the types of transactions referenced in this section of GN 8 by professional advisers. If the entity itself does not have access to Reuters or Bloomberg, its

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		professional advisers may do and, where that is the case, they should be monitoring those sources for potential leaks. Those advisers will also be able to assist the entity in monitoring the media and other information sources mentioned in this section of GN 8. For a further explanation of ASX's final position on the monitoring of social media, see ASX's response to the comments about social media in section 3.8 of the consultation version (section 4.6 of the final version) of GN 8 on page 30 above.
Section 4.9 – Listing Rule 3.1A.3 – the reasonable person test		
CSA G100	The updated guidance on the reasonable person test is welcomed ([G100]: including the withdrawal of the guidance in former GN 8 paragraph 31).	ASX appreciates the support for this guidance.
Clayton Utz JWS	The "reasonable person" test should be interpreted consistently with the test for materiality in Listing Rule 3.1 and effectively mean [JWS] "a reasonable investor" or [Clayton Utz] "persons who commonly invest in securities".	ASX does not agree. ASX considers that the use of the term "reasonable person" rather than "reasonable investor" in Listing Rule 3.1A was quite deliberate and that the two terms cannot and should not be equated. The use of that term has the effect that the issue of whether an entity has lost the protection of the carve-outs in Listing Rule 3.1A – because a reasonable person would expect the information in question to be disclosed – is to be judged on objectively reasonable grounds rather than from the particular perspective of an investor. See also the comment of McLure JA in *Jubilee Mines NL v Riley* [2009] WASCA 62, at paragraph 160 ("the hypothetical reasonable person in [the predecessor to Listing Rule 3.1A.3] … in my view is an objective outsider").
Confidential	Given the decision of the High Court in *Forrest v ASIC* [2012] HCA 39, should guidance be given about the assumed level of economic understanding or financial literacy of the "reasonable person"?	ASX does not believe that this is necessary. As mentioned in the response to the previous comment, the reasonable person test simply means that the issue of whether an entity has lost the protection of the carves-out in Listing Rule 3.1A – because a reasonable person would expect the information in question to be disclosed – is to be judged on objectively reasonable grounds. This is more a qualitative issue rather than a quantitative issue and the

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		assumed level of economic understanding or financial literacy of the "reasonable person" is unlikely to factor into the analysis.
Section 4.10 – Entities in financial difficulties		
G100	The withdrawal of the guidance in former GN 8 paragraph 31 and the updated guidance on ASX's expectations for entities in financial difficulties are helpful.	ASX appreciates the support for these changes.
CSA	Footnote 109 references class actions against listed entities that allege breaches of Listing Rule 3.1 and section 674. All class actions to date have been settled, and no class actions have gone to court. CSA strongly recommends that the footnote be deleted. The inclusion of the footnote gives credence to class actions when there are no authoritative decisions on any of these alleged breaches.	ASX has retained the footnote (now footnote 157 in the final version of GN 8). It is factually correct. It has been included to illustrate the point that failing to disclose materially negative information carries particular risks.
Section 5.4 – Responding to comment or speculation in media or analyst reports[4]		
AIRA	More guidance on when press speculation is sufficiently precise to warrant a response would be helpful.	This issue is dealt with in some detail in section 5.4 of the final version of GN 8 (section 4.4 of the consultation version) and in Examples A, B, C and D in Annexure A (all of which all have alternative fact scenarios dealing with media reports and market rumours). Given the length of GN 8 already, ASX believes that this is sufficient.
JWS LCA	ASX should be cautious/sensible about requiring an entity to make an announcement in response to an inaccurate media or analyst report (unless the inaccurate report can be sourced to the entity) or market rumour.	This section of GN 8 sets out quite clearly ASX's position in relation to inaccurate media and analyst reports and when it will require a listed entity to correct the report. ASX does not believe that it requires any amendment to address this comment. In exercising its powers under Listing Rule 3.1B ASX acts cautiously and sensibly and strives to strike an appropriate balance between the interests of the listed entity, its security holders and the market in general.

[4] Note that some of the comments grouped under section 5.4 (media and analyst reports) were made or repeated in relation to section 5.5 (market rumours) and vice versa. ASX has grouped them where they best fit.

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CSA HSF LCA	ASX's guidance on this topic may encourage journalists and others to conduct "fishing expeditions" and spread false or unverified rumours to flush out a response from a listed entity. [CSA]: CSA Members are of the view that penalties should attach to those creating the rumours (if such rumours are created frequently) rather than have all the responsibility of managing the rumours sit with the listed entity.	ASX is not in a position to regulate what journalists write or rumour mongers say about listed entities. ASX would note, however, that journalists who knowingly or recklessly publish false stories, and rumour mongers who knowingly or recklessly spread false rumours, about listed entities that could distort the market price of their securities run significant risks of criminal and civil action under sections 1041E, 1041F and 1041H of the Corporations Act. These laws are, of course, administered by ASIC rather than ASX.
LCA	We suggest that the second last paragraph on page 32 is clarified to make it clear that a false answer (rather than a refusal to answer) may constitute a criminal offence.	ASX has made this change but it has also added a note that a refusal to answer will generally involve a breach of Listing Rules 18.7 and/or 18.8, entitling ASX to suspend quotation of the entity's securities under Listing Rule 17.3.1.
Section 5.5 – Market rumours		
Corrs	GN 8 should include further guidance in relation to the level of response and the timing of that response to market rumours.	In the consultation version of GN 8, ASX gave reasonably detailed guidance in section 5.4 about how it dealt with media and analyst reports and then mentioned in section 5.5 that it adopted a similar approach for market rumours. It also included in Examples A, B, C and D in Annexure A alternative fact scenarios dealing with media reports and market rumours. ASX believes that it has given sufficient guidance in GN 8 on this topic. To make its approach clearer, however, ASX has consolidated sections 5.4 and 5.5 of the consultation version into a single section in the final version of GN 8 (section 6.4) dealing both with media/analyst reports and market rumours.

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Corrs JWS LCA	[Corrs]: GN 8 should include clear guidance that a company need only be proactive in relation to a market rumour if that market rumour will have a material effect on price. [JWS]: ASX should not require companies to comment on all rumours, particularly where the publicity given to the rumour by the denial would outweigh the influence which the rumour would otherwise have. [LCA]: We recommend that the guidance be toned down to ensure that a listed entity is not faced with a blanket obligation to respond to all market rumours, especially those arising from fishing expeditions of the news media and not from a loss of confidentiality.	ASX attempted to deal with this issue in the consultation version of GN 8 by giving detailed guidance in section 5.4 about those types of media and analyst reports it would not expect a listed entity to respond to, and those that it would, and then mentioning in section 5.5 that it adopted a similar approach for market rumours. It also included in Examples A, B, C and D in Annexure A alternative fact scenarios illustrating this guidance. ASX made it clear in section 5.4 of the consultation version of GN 8 that it does not expect a listed entity to respond to all comments about it in media or analyst reports, but that ASX would expect it to respond if the report appears to be credible and it is having, or is likely to have, a material effect on the market price of the entity's securities. Again, section 5.5 of the consultation version indicated that ASX takes a similar approach in relation to market rumours. To make its approach clearer, ASX has consolidated sections 5.4 and 5.5 of the consultation version into a single section in the final version of GN 8 (section 6.4) dealing both with media/analyst reports and market rumours. This now includes a clear statement that ASX does not expect a listed entity to respond to every rumour about it circulating the market. It also spells out those situations where ASX does expect a listed entity to respond.
HSF LCA	A listed entity should not be required to respond to a false rumour.	ASX does not agree. As a licensed market operator, ASX has a statutory obligation to do all things necessary, to the extent reasonably practicable, to ensure that its market is fair, orderly and transparent and to have reasonable arrangements for monitoring and enforcing compliance with its Listing Rules, including Listing Rule 3.1B (see section 792A of the Corporations Act). ASX regards this obligation as requiring it, if it becomes aware of a false rumour that has had or is likely to have a material effect on the price or value of a listed entity's securities, to take action under Listing Rule 3.1B to correct that situation. ASX also considers that the privilege of accessing public capital markets carries with it a concomitant responsibility for listed entities not to stand idle

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		while those markets trade at materially inappropriate prices on the basis of information that the listed entity knows to be false.
LCA	The guidance here is inconsistent with the policy that many listed entities have of not commenting on rumours or speculation.	ASX has no issue with that policy, but it has to give way if there is, or is likely to be, a false market in the entity's securities and ASX requires the entity to make an announcement under Listing Rule3.1B to correct or prevent that happening. ASX has included a comment to that effect in section 5.4 of the final version of GN 8 (section 4.4 of the consultation version).
Corrs HSF	It would be helpful for ASX to specify what types of social media a listed entity is required to monitor for the purposes of detecting rumours about it.	ASX has not suggested that a listed entity is required to monitor social media "for the purposes of detecting rumours about it". ASX has only suggested that a listed entity monitor a narrow range of specific social media sources described in section 3.8 and 4.8 of the consultation version (sections 4.6 and 5.8 of the final version) of GN 8 in the two limited circumstances mentioned in those sections – ie when a market sensitive announcement is pending or when it is close to finalising a market sensitive transaction. For a further explanation of ASX's final position on the monitoring of social media, see ASX's response to the comments about social media in section 3.8 of the consultation version (section 4.6 of the final version) of GN 8 on page 30 above.
Section 5.6 – Dealing proactively with potential false market situations		
Clayton Utz	There is no reference in GN 8 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 welcomed by listed entities.	ASX has included footnote 171 in the final version of GN 8 mentioning that if the author of a media/analyst report or the instigator of a market rumour "was intentionally spreading false or misleading information about the entity, that may well breach any or all of sections 1041E, 1041F, 1041G and 1041H. It also mentions that if ASX has reasonable grounds to suspect such a breach, it will refer the matter to ASIC under section 792B(2)(c)."

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Section 6.2 – De facto earnings guidance		
ABL	The statements in section 6.2 discouraging references to individual analyst forecasts and consensus as "de facto earnings guidance" and the comments in section 6.3 and 6.4 about the need to monitor analyst forecasts and the desirability of exploring why an analyst's forecasts differ materially from the entity's internal forecasts are inconsistent.	ASX does not agree. Section 7.2 of the final version of GN 8 (section 6.2 of the consultation version) does not discourage a listed entity from monitoring analyst forecasts or consensus or from discussing privately with analysts why their forecasts materially differ from the entity's internal forecasts. It simply warns that public comments to the effect that the entity is "comfortable with", or expects its earnings to be "in line with", those forecasts or consensus amount to de facto guidance.
Section 6.3 – Earnings surprises		
AICD AIRA G100 LCA	The withdrawal of the previous guidance that a variation of 10-15% against consensus or the results of the prior corresponding period is welcomed.	ASX appreciates the support for this change.
CSA HSF LCA	We support ASX's revised guidance that in assessing whether an entity has acted immediately under Listing Rule 3.1 ASX will make due allowance for the fact that the preparation of earnings guidance will need to be properly vetted and signed off before it is released.	ASX appreciates this expression of support.
CSA	We support ASX's view that the fact that an entity's earnings may be materially ahead of or behind market expectations part way through a reporting period does not mean that this situation will prevail at the end of the reporting period.	ASX appreciates this expression of support.
HSF LCA	We support ASX's view that for a disclosure obligation to arise in relation to an expected difference in earnings compared to market expectations there needs to be a reasonable degree of certainty that there will be such a difference.	ASX appreciates this expression of support.

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Corrs	We support the guidance ASX has provided with regard to the obligation of listed companies to provide earnings updates to the market based on variations from market expectations (and not necessarily from historical results).	ASX appreciates this expression of support.
ABL	We support the increased recognition of the role played by sell-side analysts' estimates in the framework of listed companies' disclosure obligations. It is appropriate "that a system designed to keep the market informed, should have reference to the information that the market actually uses".	ASX appreciates this expression of support. ASX would note, however, that the role of sell-side analysts in setting/reflecting market expectations on earnings for larger listed entities was already well recognised in the previous version of GN 8.
AIRA	It would be helpful for ASX to define "earnings guidance". The types of guidance that listed entities give can vary widely (eg earnings per share, revenue, EBITDA, etc)	ASX has included footnote 182 in the final version of GN 8 indicating that references to "earnings guidance" should be read broadly as covering any type of guidance that an entity may give in relation to its expected earnings for the current reporting period regardless of the particular measure used (eg, operating revenue, EBITDA, EBIT, underlying profit before tax, underlying profit after tax, statutory profit after tax, or earnings per share).
ABL	For the sake of clarity, certainty and consistency, it would be preferable for ASX to adopt a uniform 5-10% variation in earnings as a disclosure benchmark under Listing Rule 3.1 for all situations (ie against guidance if guidance has been given; against consensus estimates where no guidance has been given and the entity is covered by sell-side analysts; and against prior corresponding period earnings where no guidance has been given and the entity is not covered by sell-side analysts).	ASX does not agree. ASX's 5-10% guidance applies only for those situations where an entity has given earnings guidance. It addresses the issue of whether that guidance may have become misleading, rather than whether an updated earnings disclosure is required under Listing Rule 3.1. The reasons for not adopting a 5-10% variation in earnings as a disclosure benchmark under Listing Rule 3.1 are exactly the same as the reasons why ASX has withdrawn its previous guidance suggesting a 10-15% variation in earnings as a disclosure benchmark under Listing Rule 3.1.
HSF	Section 6.3 states that if an entity becomes aware that its earning for a reporting period will "materially differ (upwards or downwards)" from the consensus of sell-side analyst forecasts for that period, then it may need to notify the market of that fact. This would place an obligation on entities to correct market analysts even when they have not released earnings guidance for that period …	If the reference in this comment to "correcting market analysts" is read as shorthand for publishing an earnings announcement if the entity becomes aware that its earnings for the current reporting period will differ from market expectations (as evidenced by analysts forecasts generally) to an extent which is market sensitive, ASX agrees. This was ASX's intention.

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HSF	… It would also place an obligation on entities who have released earnings guidance to correct sell-side analysts, if their position materially differs from these analysts. This places an unnecessary burden upon companies to re-disclose and clarify information, despite having released earnings guidance which they consider accurate.	That was not ASX's intention. The passage in question was intended to be read in context and to convey a hierarchy around how to measure market expectations. At the top of the hierarchy is the situation where an entity has published earnings guidance. Where that has happened, ASX considers that the entity's published guidance should be regarded as setting market expectations, not analyst forecasts, since it comes from the source that can usually be expected to have the best information about the entity's likely earnings – the entity itself. Where an entity has published earnings guidance, ASX would only expect it to release updated guidance if its published guidance has become materially incorrect. ASX would not expect it to put out updated guidance just because analysts were forecasting a different result. ASX has added some modified commentary (point 1 – *How does one determine market expectations?*) to section 7.3 of the final version of GN 8 section 6.3 of the consultation version) to make its position clearer. This includes a new footnote 190 confirming the point in the paragraph immediately above.
ABL	GN 8 should go further than it currently does and specifically require a listed entity to correct market information and align market forecasts with internal expectations whenever there is a material variation to consensus.	ASX does not agree and believes the manner in which this issue is currently addressed in the revised version of GN 8 is appropriate. ASX considers that Listing Rule 3.1 only requires a listed entity to make an earnings announcement if the entity is aware of information about its earnings that is so different to the market's expectations (as evidenced by analyst forecasts) that a reasonable person would expect the information to have a material effect on price or value of its securities. If ASX were to adopt the suggestion in the comment, this would effectively mean assuming that any material variation of earnings to consensus estimates will have a material effect on the price or value of the entity's securities, which will not always be the case. It would also inappropriately enshrine "consensus" as an immutable measure of market expectations. This runs counter to ASX's amended guidance around consensus mentioned in the response to the next 3 comments.

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AICD Clayton Utz Confidential HSF LCA	There are problems with the use of "consensus" as a measure to test whether there will be an earnings surprise, including: • There is no commonly accepted definition of, or agreed methodology to determine, "consensus". • Different information vendors use different methodologies to determine consensus. • Consensus may be unduly affected by "outliers". • Some analyst estimates may only be available to their clients or through subscription services. • Some analysts are slow to update their forecasts and they may not reflect contemporary information or market conditions.	ASX acknowledges the issues with the use of "consensus". ASX has modified section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) to clarify its guidance in this regard. The modified guidance now refers to analysts' forecasts more generally as setting market expectations rather than consensus. It also acknowledges that such forecasts are only a guide to determining market expectations. The final version of GN 8 now states that that there are a number approaches that an entity may legitimately use, in terms of using analyst forecasts to measure market expectations. Some entities may use the "consensus estimate" as a central measure of analyst forecasts. They may obtain this from an information vendor or they may calculate it for themselves. If they feel that the consensus estimate is being distorted by an obvious outlier that is out of line with their own internal forecasts, they might also adjust the consensus estimate to exclude that outlier. Other entities may not use consensus at all, but simply plot the various analyst forecasts and if all or most of them are clustered within a reasonable range, treat that range as representing the market's view of their likely earnings.
AIRA BHP Billiton	Further guidance around the measurement of "consensus" would be helpful. For example, some listed entities perform their own calculation of "consensus" from market data they gather from different sources.	This comment is addressed by the changes to section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) mentioned in the response to the comment above.
Corrs	GN 8 should be amended to highlight that a consensus estimate is only one factor to be considered by a company in considering market expectations and also to provide some guidance as to when an analyst's estimate may be given lesser regard by the company in determining whether there is a material difference between its actual or expected earnings and market expectations.	This comment is addressed by the changes to section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) mentioned above.

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Corrs LCA	[Corrs] Revised Guidance Note 8 be clarified to provide that a company is not required to correct a consensus estimate if that company does not otherwise provide earnings forecasts . [LCA] It would be helpful to clarify that where an entity does not publish its own guidance, it is not required to make disclosures when its own internal forecasts diverge from consensus forecasts. Such forecasts are inherently uncertain and legal risk attaches to them.	AX does not agree. ASX considers that Listing Rule 3.1 may require a listed entity to make an earnings announcement if the entity is aware of information about its earnings that is so different to the market's expectations (as evidenced by analyst forecasts) that a reasonable person would expect the information to have a material effect on price or value of its securities. This applies even where the entity does not normally publish its own guidance.
Clayton Utz	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.	ASX does not share this concern. If retail investors want consensus estimates, they can usually get them through their brokers. In fact, a number of the larger online brokers already make this information freely available to their customers electronically. ASX would also note that it is the larger listed entities that are generally covered by sell-side analysts and that the market price of their securities is generally driven by the trading activities of institutional investors rather than retail investors. It will therefore be the way in which institutional investors interpret and react to earnings information that will determine the market outcome, not the views of retail investors.
CSA	Further guidance about what materiality range is applicable to a variation to consensus forecasts would be useful.	For the reasons outlined in point 2 of section 7.3 of the final version of GN 8 (point 1 of section 6.3 of the consultation version), ASX does not believe it is appropriate to lay down any "materiality range" as to when a variation to consensus forecasts is of sufficient magnitude to require disclosure under Listing Rule 3.1. This will differ from entity to entity. Each case has to be assessed on its own merits.
CSA	Further guidance should be given on how entities are to manage consensus expectations, taking into account the entity's decision not to make a forecast and the attendant legal issues if an entity is forced to make a forecast.	ASX has not suggested that listed entities have an obligation to "manage" consensus estimates. Rather, it has suggested in section 7.4 of the final version of GN 8 (section 6.4 of the consultation version) that given the disclosure issues highlighted in preceding section of GN 8, if a listed entity is covered by sell-side analysts, it should be monitoring their forecasts and/or consensus estimates (as most listed entities in this category do) so that it has an understanding of the market's expectations for its earnings.

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		It has also suggested that where an individual analyst's forecast differs materially from the entity's internal forecast, it is in the entity's interests to explore with the analyst why that might be so and, if it becomes apparent that the analyst may have made a factual or computational error or may have missed a particular market announcement, to point that out to the analyst. Of course, correcting factual or computational errors in an individual analyst's forecasts in the manner suggested in this section of GN 8 should also ultimately factor into consensus.
AICD Confidential	For larger listed entities covered by sell-side analysts that have not given formal earnings guidance, whether there is likely to be an "earnings surprise" should be tested by reference to prior corresponding period earnings rather than consensus forecasts. This is because of the issues with "consensus" described above.	ASX does not agree. ASX believes that making this change would have unintended and undesirable consequences. It would effectively require a listed entity to give formal earnings guidance whenever it became reasonably apparent that its current period earnings would be materially different from the prior corresponding period, even though the market was fully expecting that outcome (as evidenced by analyst forecasts). The changes mentioned above that ASX has made to section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) regarding the use of "consensus" should help to allay some of the concerns that lay behind this comment.
HSF	Entities which have a policy of not publishing earnings guidance but need to disclose in response to a material deviation from either analyst consensus or earnings from a prior corresponding period will potentially find themselves within a virtual cycle of earnings disclosure. Any revision to earnings guidance disclosure will be triggered by as little as a 5-10% deviation from that previously disclosed guidance. We submit it is not appropriate for companies who do not have a policy of releasing earnings guidance to be compelled to so by the operation of paragraph 6.3. Also, the materiality threshold of 5-10% is too low for companies whose earnings are cyclical or "lumpy", and would be too easy for companies to inadvertently trigger. We submit that the former 10-15% rule should be retained in relation to published earnings guidance.	ASX does not believe that this issue is likely to arise all that often in practice. GN 8 acknowledges that an entity will only have an obligation to release updated guidance for the current reporting period under Listing Rule 3.1 if there is a reasonable degree of certainty that its earnings for the period will differ from market expectations to a degree that is market sensitive. This is rarely likely to be the case early in the reporting period, except in the most unusual of circumstances. Entities whose earnings are "lumpy" are especially unlikely to have the requisite degree of certainty to warrant releasing any initial updated earnings guidance until well into the reporting period. Once an entity has published initial earnings guidance, ASX believes it is appropriate for it to update that guidance if at any point there is a

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		reasonable degree of certainty that it will be materially wrong and therefore potentially misleading. The 5-10% materiality test used in accounting standards is well established and widely understood and ASX therefore feels that it is an appropriate benchmark for a listed entity to use to determine whether its published earnings guidance could be considered materially wrong. ASX does not see a case for extending that benchmark to 10-15%. ASX is also aware that during the GFC, ASIC publically questioned whether its 10-15% guidance in paragraph 93 of the previous version of GN 8 was really appropriate in the circumstances that then confronted the market. ASX has however amended section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) to acknowledge that smaller listed entities or those that have relatively variable earnings may consider that a materiality threshold of 10% or close to it is appropriate. Very large listed entities or those that normally have very stable or predictable earnings may consider that a materiality threshold that is closer to 5% than to 10% is appropriate. This may help to allay some of the concerns expressed in this comment.
Clayton Utz	Regarding ASX's guidance that a 5-10% variation to an earnings forecast may result in that forecast being potentially misleading. 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.	ASX agrees and has amended section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) to address this issue.

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Clayton Utz CSA LCA	[Clayton Utz]: 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. [CSA]: We query the legal basis for this interpretation. [LCA]: GN 8 should only provide benchmarks in the context of continuous disclosure obligations rather than other heads of liability.	ASX does not agree. In relation to the comments from Clayton Utz and CSA, it is well established as a matter of general principle that silence (in this instance, in the form of a listed entity failing to update earnings guidance it has previously published that is now materially incorrect) can give rise to liability for misleading and deceptive conduct if there is a reasonable expectation, in the circumstances of the case, that if a particular matter exists it will be disclosed (see for example *General Newspapers v Telstra Corporation* (1993) ATPR ¶41-274 and *Metalcorp Recyclers Pty Limited v Metal Manufacturers Limited* [2003] NSWCA 213). ASX submits that the market would reasonably expect a listed entity to update its published earnings guidance if it has become materially misleading. The enforcement action that ASIC has taken against listed entities for failing to do so, as referred to in footnote 187 of the final version of GN 8 (footnote 137 of the consultation version), would reinforce this expectation. In relation to the general comment that ASX should not be providing guidance on section 1041H, the oral feedback ASX has received during the consultation process is that listed entities will find this guidance helpful, especially given the withdrawal of the 10-15% guidance in the previous version of GN 8. ASX therefore intends to proceed with this guidance.
LCA	It would be helpful for section 6.3 to include a rule of thumb if possible, and more worked examples, which may be used by listed entities more generally in determining whether an earnings variation is significant enough to require disclosure.	Again, for the reasons outlined in point 2 of section 7.3 of the final version of GN 8 (point 1 of section 6.3 of the consultation version), ASX does not believe it is appropriate to lay down any "rule of thumb" as to when an earnings surprise is of sufficient magnitude to require disclosure under Listing Rule 3.1. This will differ from entity to entity. Each case has to be assessed on its own merits. ASX believes that two worked examples (F and G) in Annexure A are sufficient to illustrate the key points relevant to earnings surprises.

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Respondent	Comment	ASX Response
AICD Lycopodium Ltd	The ±5% guidance for disclosing a variation in earnings compared to published guidance is too narrow. It should be ±10%.	ASX in fact has suggested a range of ±5% to ±10%, in line with the accounting tests for materiality. Under those tests, anything above 10% is generally presumed to be material and anything below 5% is generally presumed to be immaterial. Between 5% and 10%, the entity has to form a judgment as to whether the information is material. As mentioned above, ASX has amended section 7.3 of the final version of GN 8 (section 6.3 of the consultation version) to acknowledge that smaller listed entities or those that have relatively variable earnings may consider that a materiality threshold of 10% or close to it is appropriate. Very large listed entities or those that normally have very stable or predictable earnings may consider that a materiality threshold that is closer to 5% than to 10% is appropriate. This may help to allay some of the concerns about the 5-10% threshold.
ABL HSF LCA	There is an internal inconsistency between the comment in this section about the need for a listed entity covered by sell-side analysts to make an announcement if its earnings will depart from consensus to an extent that is market sensitive and the comment in section 6.4 that a listed entity does not have an obligation to correct analyst forecasts.	ASX does not believe that these statements are inconsistent. The former refers to the expectations of the market as a whole (as evidenced by analysts' forecasts generally/consensus) while the latter refers to the individual forecasts of particular analysts. ASX considers that a listed entity may have an obligation to publish an earnings announcement under Listing Rule 3.1 if it becomes aware that its earnings will differ from market expectations (as evidenced by analyst forecasts more generally or by consensus) by an amount that is market sensitive. However, it does not consider that it has any obligation to correct an individual analyst's forecasts just because they happen to differ from its own. Having said this, to address a comment from another respondent mentioned below, ASX has inserted commentary into section 7.4 of the final version of GN 8 (section 6.4 of the consultation version) specifically stating that a listed entity also does not have any obligation to correct the consensus figure of any individual information vendor. To ensure there is no misunderstanding of this statement, ASX has added some words to this section of GN 8 to make it clear that this is subject to its

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Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
		overarching obligation of a listed entity to give to ASX an appropriate announcement immediately under Listing Rule 3.1 if and when it becomes aware that its earnings for a reporting period will differ from market expectations to an extent that a reasonable person would expect that information to have a material effect on the price or value of its securities.
HSF LCA	It would be helpful if GN 8 were to confirm that, where the particular issue remains confidential, listed entities do have a period for confidential reflection to determine the impact of a particular event on that entity's financial position and performance, before an announcement is required.	ASX does not believe this is necessary. GN 8 already acknowledges that an entity will not have an obligation to release updated guidance under Listing Rule 3.1 until there is a reasonable degree of certainty that its earnings will differ from market expectations to an extent that is market sensitive; that the preparation of updated earnings guidance needs to be done carefully and will necessarily take time; and that it is generally appropriate for the board to sign off on the earnings guidance before it is released to the market.
Corrs	GN 8 should be amended to include further guidance by way of worked examples for when ASX considers companies will have a reasonable degree of certainty about expected earnings to make disclosure and the contents of that disclosure.	ASX does not believe it would be helpful to attempt to define this with any precision, nor to include worked examples. Each case has to be assessed on its merits. The sorts of factors that may be relevant are mentioned in some detail in point 3 of section 7.3 of the final version of GN 8 (point 2 of section 6.3 of the consultation version) dealing with when a listed entity becomes aware that its earnings for a reporting period will be materially different from market expectations. ASX considers that it is fundamentally a judgment for the listed entity to make whether it has the requisite degree of confidence that its earnings will differ from market expectations to such an extent that an earnings announcement would be appropriate.
Clayton Utz HSF	It would be helpful for GN 8 to clarify that a listed entity is not expected to correct longer term (3 year or 5 year) consensus forecasts.	ASX has added a footnote (footnote 192) to the final version of GN 8 which confirms that ASX has no such expectation.

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Respondent	Comment	ASX Response
LCA	We are disappointed that the opportunity to provide explicit guidance on the Leightons issue has not been taken (Example G is not directly on point as a cyclone is readily observable matter, whereas the issues faced by Leightons remained confidential for some time).	Examples F and G in Annexure A were carefully crafted to illustrate some of the issues dealt with in the Leightons infringement notices. In particular, Example G illustrates the point that if an entity becomes aware of market sensitive information about a particular project, it must disclose that information immediately. It cannot delay the release of that information while it undertakes a full review of all of its other projects or it has undertaken the work needed to provide updated earnings guidance to the market. By contrast, Example F deals with the situation where there has been a change in earnings that is attributable to general trading conditions rather than a particular material event. In that case, disclosure of the change in earnings would not normally be required until a detailed earnings forecast has been prepared and has been reviewed and approved by the board. The Leightons infringement notices are a matter of public record. ASX does not believe it is necessary or appropriate to make any further comment in relation to them in GN 8.
BHP Billiton	ASX has helpfully suggested some factors companies may consider in determining whether a variation in earnings guidance, or actual/expected earnings versus market expectations, may require disclosure under Listing Rule 3.1. It would be helpful if ASX could clarify whether it is suggesting that, in certain circumstances, non-cash items and one-off items (which do not affect underlying earnings) may legitimately be considered by companies to not be price sensitive even if the item may result in the company reporting an accounting result which varies materially on paper?	ASX considers that this issue is adequately addressed by the guidance under point 2 in section 7.3 of the final version of GN 8 (point 1 in section 6.3 of the consultation version) about what is a material difference for these purposes, which lists the factors relevant to a determination whether a difference in earnings is such that a reasonable person would expect it to have a material effect on the price or value of an entity's securities. These include whether the difference is attributable to a non-cash item (such as a depreciation, amortisation or impairment charge) that may not impact on underlying cash earnings, whether the difference is a permanent one or is simply due to a timing issue and whether the difference is attributable to one-off or recurring factors.

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Respondent	Comment	ASX Response
JWS	GN 8 should acknowledge the difficulties that might arise if management considers that an earnings announcement is warranted but it is overruled by the board. It could be argued, for example, that the entity was aware of the earnings issue when management first became aware of it.	ASX does not believe that GN 8 requires any amendment to address this issue. Section 7.1 and 7.3 of the final version of GN 8 (section 6.1 and 6.3 of the consultation version) and Examples F and G in Annexure A all acknowledge the appropriateness of earnings guidance being reviewed and approved by the board. The board of a listed entity is its ultimate decision-maker. If it overrules management and determines that an earnings announcement is not warranted, it will generally be because it believes that it has good grounds for doing so. Either it has such grounds, in which case there is no disclosure issue, or it doesn't, in which case it will be the entity's failure to make an announcement after the relevant board meeting that will be in breach of Listing Rule 3.1. Provided management has brought the matter to the attention of the board promptly and the board likewise has dealt with it promptly, the timing of when the board became aware of the issue vis-à-vis management will largely be irrelevant to whether or not there has been a breach of Listing Rule 3.1.
Section 6.4 – Correcting analyst forecasts		
Corrs	We support the guidance provided by the ASX that a company is not obliged, under the Listing Rules or otherwise, to correct analysts' forecasts to bring them in line with their own.	ASX appreciates this expression of support.
BHP Billiton	It would be helpful for GN 8 to clarify that listed entities are under no obligation to track the consensus figures of particular information vendors and that there is no obligation on listed entities to correct any such consensus figures.	ASX has modified section 7.4 of the final version of GN 8 (section 6.4 of the consultation version) to acknowledge that a listed entity is under no obligation to track the consensus figure of any particular information vendor nor to correct that consensus figure.

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Respondent	Comment	ASX Response
BHP Billiton	We agree that any materials presented at an analyst briefing should be published on the company's website but submit that a materiality assessment should apply when determining if they should also be released to ASX. If ASX's guidance in relation to analyst briefings is to be retained, it would be helpful if the guidance is clarified to apply to briefings which have been specifically convened by the company for analysts and that it is not meant to capture conferences or other forums where analysts may be present in the audience (which is common for forums in which large listed entities participate).	ASX has amended section 7.4 of the final version of GN 8 (section 6.4 of the consultation version) so that it is more closely aligned to the guidance on analyst briefings in ASIC Regulatory Guide 62. The amended guidance now refers to lodging "slides and presentations" used in analyst briefings on the ASX Market Announcements Platform, consistent with paragraph 8 of ASIC Regulatory Guide 62.
Section 7.3 – Price query letters		
Confidential CSA LCA	The revised form of price query letter is welcomed. [Confidential]: It will force listed entities to be "clear about their exact disclosure position". [LCA]: We support the changes which place an emphasis on discussions between ASX and the listed entity before any price query letter is issued. [CSA, LCA]: We support the changes to the pro forma letter which no longer presumes that confidentiality has been lost on all Listing Rule 3.1A information of which the listed entity is aware.	ASX appreciates the support for this change.
Confidential	If a listed entity reveals in a response to Q1 and Q2 in a price query letter that it has market sensitive information to disclose, then that information should be appended to the price query response in the form of a separate market announcement.	ASX does not agree and believes that requiring an announcement in these circumstances to be appended to the price query letter would be too prescriptive and could cause problems in practice. As ASX's standard price query letter notes, if an entity does have market sensitive information that needs to be disclosed, it must be disclosed "immediately". This may mean that it needs to be disclosed before the deadline ASX has set for a response to the price query letter. In such a case, it would be inappropriate to delay the disclosure of the information so that it can be appended to the response to the price query letter.

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Respondent	Comment	ASX Response
Confidential	Academic studies of responses to question 3 in the proposed new form of price query letter ("is there any other explanation the entity may have for the recent trading in its securities?") reveal many varied responses, some of which are "obtuse to the point of being meaningless" and many of which require much more detail to make any real sense. Will guidance be given as to what are acceptable answers to Q3 in a price query letter? Will ASX Listing Compliance advisers be vetting these responses for suitability and requiring further and better particulars if the response is found wanting.	ASX does not believe it would be appropriate to give guidance as to what are suitable responses to question 3 in the proposed new form of price query letter. There may be many factors that could contribute to abnormal trading in an entity's securities. An entity should be free to identify whatever factors it believes may explain that trading and not constrained by guidance as to what it should or should not be saying in response to this question. ASX is also concerned that giving such guidance would actually be counterproductive as it may encourage entities to craft their responses to fit within the "suitable" categories rather than express them frankly and in their own words. Responses to price query letters are vetted by an ASX Listings Compliance adviser before they are released to the market. However, question 3 asks an entity to express its opinion on what matters may have affected the trading in its securities and, for the reasons indicated above, ASX will generally allow an entity a reasonable degree of latitude in how it chooses to respond to this question.
BHP Billiton	Noting the revised language for price query letters in GN 8, it would be helpful if ASX could clarify how its approach or expectations in relation to price query letters will change going forward.	The revised version of the price query letter reflects the more detailed guidance on a number of matters in revised version of GN 8. ASX is not changing its approach or expectations in relation to price query letters. ASX has explained in section 8.4 of the final version of GN 8 (section 7.4 of the consultation version) when it will send a price query letter (ie when there has been unusual trading in an entity's securities and the entity has told ASX that it has nothing to disclose). Having sent a price query letter, ASX's only expectation is that the recipient will answer it honestly and in a manner that is not misleading, consistent with their obligations under section 1309 of the Corporations Act.

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Respondent	Comment	ASX Response
Section 7.7 – Referrals to ASIC		
AICD	A ±5% change in market price is not uncommon. Using this as a guide for when a potential continuous disclosure breach is referred to ASIC is not appropriate. It should be ±10%.	ASX in fact uses a range of ±5% to ±10%, in line with the accounting tests for materiality. Under those tests, any deviation above 10% is generally presumed to be material and any deviation below 5% is generally presumed to be immaterial. Where the change in market price has been between 5% and 10%, ASX will have regard to a number of factors listed in GN 8 in determining whether a change in market price was "material". ASX has added some additional guidance in section 8.7 of the final version of GN 8 (section 7.7 of the consultation version) stating that for smaller listed entities, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is 10% or close to it. For very large listed entities, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is closer to 5% than to 10% (noting here that for very large listed entities a sudden price movement of 5%+ compared to the market generally and its sector is not insignificant).
ABA	Footnote 180 ("All other things being equal, the higher the market capitalisation of an entity, the lower the threshold is likely to be for ASX to consider a movement in the price of its securities to be material") could be read as implying that ASX might regard a movement in market price of less than 5% as material.	ASX does not believe any changes are needed to GN 8 to address this issue. The text in which the relevant footnote occurs is prefaced with the words: "*Where the price movement is between 5% and 10%*, ASX will have regard to the circumstances of the case to determine whether the information should be regarded as market sensitive. This includes the market capitalisation of the entity." The footnote clearly only applies where the price movement exceeds 5%. The additional guidance mentioned in the response to the comment above that ASX has added to section 8.7 of the final version of GN 8 (section 7.7 of the consultation version) puts this beyond any doubt.

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Respondent	Comment	ASX Response
Clayton Utz	This section should be amended to acknowledge that evidence of how the share price did move may be a useful indicator of what a reasonable person would have expected, but it is not determinative of the issue.	ASX does not believe any changes are needed to GN 8 to address this issue. This section of GN 8 includes the following prominent disclaimer: "It should be noted that the fact that ASX takes this approach in assessing whether or not to refer a potential breach of Listing Rule 3.1 and section 674 to ASIC does not displace the test for materiality of information in section 677, nor does it preclude ASIC or a litigant taking a different view to ASX as to the materiality of information. If ASIC institutes criminal or civil penalty proceedings against, or a litigant institutes civil proceedings to recover damages from, a listed entity for breaching section 674, it will have to prove its case using the test for materiality of information in section 677, regardless of any view that ASX may have taken on the issue of materiality. Further, the fact that ASX may decide not to refer a potential breach of Listing Rule 3.1 and section 674 to ASIC does not prevent ASIC from forming a different view as to whether there has been such a breach and from taking action in relation to that potential breach under its various enforcement powers."
Clayton Utz	ASX should 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.	The understanding expressed in this comment is essentially correct – ASX seeks to factor out any general movements in the market and in the entity's sector in assessing what impact that information may have had on an entity's securities. ASX believes that this is adequately conveyed in this section of GN 8 by the reference to ASX looking to see if the information has moved the market price of the entity's securities (*relative to prices in the market generally or in the entity's sector*) by the nominated 5-10% thresholds. ASX has modified the drafting of section 8.7 of the final version of GN 8 (section 7.7 of the consultation version) and added footnote 239 to the final version to acknowledge that it the 5%-10% materiality thresholds are a rough measure only and are not applied in a mathematically precise manner. As that footnote comments, isolating the price effect of particular information from the other factors that may have affected the market price

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Respondent	Comment	ASX Response
		of an entity's securities and then adjusting for price movements in the market generally and in the entity's sector is not an exercise that can be done with mathematical precision.
CSA	ASX states that: "Where the price movement is between 5% and 10%, ASX will have regard to the circumstances of the case to determine whether the information should be regarded as market sensitive. This includes the market capitalisation of the entity, the beta of its securities, the bid-offer spread at which its securities normally trade and whether there was a noticeable spike in the volume of its securities traded in the lead up to and shortly after the announcement." CSA is of the view that this should also apply to price movements over 10%.	ASX does not agree. ASX will generally regard a 10% movement in market price as sufficient evidence that information is market sensitive, except in the limited circumstances outlined in footnote 240 of the final version of GN 8 (footnote 179 of the consultation version). ASX has, however, added a sentence to section 8.7 of the final version of GN 8 (section 7.7 of the consultation version) acknowledging: "For smaller listed entities, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is 10% or close to it. For very large listed entities, ASX would generally expect the application of these factors to result in it applying a materiality threshold that is closer to 5% than to 10%."
Annexure A generally		
Clayton Utz	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 assumption was only intended to apply in relation to the underlying transaction or event referenced in the heading of each example and not to each individual step or development along the way in those examples. ASX has modified the preface to Annexure A to reflect this.

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Respondent	Comment	ASX Response
Annexure A Example A (material acquisition)		
BHP Billiton	In relation to paragraph 5, we consider that requiring an entity to seek a trading halt in these circumstances is not commercially practicable as transactions are often delayed at the last hurdle and there is never a guarantee that signing will occur on schedule. A delay in signing would result in the entity's shares being suspended for a prolonged period of time. We do not consider that from a market perspective there is any reason to seek a trading halt in such circumstances because a holding statement issued to the market should result in the market being fully informed about the possible transaction.	ASX has modified Example A in the final version of GN 8 to explain in more detail how and why trading halts are relevant to resolving the disclosure issues this example raises. In particular, paragraph 5 in Example A now explains that a trading halt may be required in such a case if the entity is not able to publish an announcement straight away, simply to quell any uninformed trading in its securities over the period it will take the entity to prepare and release its announcement to the market. It also explains that if an entity does not request a trading halt for this purpose, ASX may have to impose a suspension. Paragraph 6 in Example A now draws out the point that an entity in the situation in this example (where information about negotiations on a market sensitive transaction has leaked and the negotiations are very close to being concluded) essentially has two choices – (1) to put out an immediate announcement advising the market about the current state of the negotiations, or (2) to seek a trading halt and delay the announcement until the negotiations are completed so that a more definitive and informative announcement can be made to the market. While some entities will prefer the former option, others will prefer the latter.
BHP Billiton CSA	We recommend that in paragraph 6 leading into the list of matters that could be included in an announcement, the word "should" be amended to "may". If this amendment is not made, it appears as if the announcement is defective if one of the matters listed is not included.	ASX agrees and has modified paragraph 6 in Example A to address this issue.

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Respondent	Comment	ASX Response
Clayton Utz	In relation to paragraph 5, 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, eg 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.	ASX does not agree. In the consultation version of GN 8, the evidence of loss of confidentiality was the combination of the information in the blog and the sudden and unexplained material movement in market price and traded volumes of the entity's securities. As mentioned above (and as clearly stated in the previous version of GN 8), ASX considers that a sudden and unexplained material movement in market price by itself may indicate a loss of confidentiality. This is in line with the approach taken by regulators and exchanges in other markets. ASX has modified Example A in the final version of GN 8 to remove the reference to the leak in the blog so as to illustrate the point in the paragraph immediately above more clearly.
Annexure A Example B (control transaction)		
Allens Linklaters	In relation to paragraph 2, the conclusion that the information about a rejected takeover bid does not have to be disclosed is not supported by the reasons given in the example. The information to be disclosed is the fact of the rejected bid, not the matter of supposition about a possible forthcoming bid.	ASX does not agree. It has added a footnote (footnote 251) to Example B in the final version of GN 8 to explain why. ASX would also note that it would be a perverse outcome if the confidential receipt of a takeover offer was not required to be disclosed but the confidential rejection of such an offer was.
Allens Linklaters	This example would benefit from also referring to the need for an entity to avoid creating a false market in its securities as supporting the non-disclosure of a rejected approach to enter into a control transaction.	This example already refers to the fact that disclosure of the rejected bid could lead to the creation of a false market – in the italicised commentary underneath paragraph 2 of the example itself and also in footnote 252 of the final version of GN 8 (footnote 191 of the consultation version).

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Respondent	Comment	ASX Response
LCA	The example addresses whether disclosure is required in circumstances of a rejected takeover approach, while the existence of the approach remains confidential. The guidance seems to suggest that disclosure is unlikely to be required (possibly because the information is not price sensitive, although it is unclear whether ASX considers that the entity could also rely on the carve-out). However, the guidance is equivocal and begins with the words "Whether disclosure is required will depend on the circumstances" but does not elaborate on when disclosure would be required. We suggest that this portion of the guidance is clarified to identify the circumstances in which an announcement may or may not be required.	ASX has removed the words "Whether disclosure is required will depend on the circumstances" and strengthened its guidance around why this information generally does not need to be disclosed.
Annexure A Example C (security issue)		
CSA	Paragraph 3 suggests that the engagement letter creates an underwriting obligation. This is not the case. The underwriting obligation only arises on execution of the formal underwriting agreement.	ASX has modified Example C to address this point.
Annexure A Example E (material law suit)		
LCA	We are concerned that Example E suggests that in making any announcement regarding the litigation the entity should state whether it intends to defend the claim. This gives rise to a tension between the requirement to make immediate disclosure of the claim and having sufficient time to take legal advice and make an assessment as to whether the claim is bona fide and could give rise to a material exposure. As such, it would be helpful if the guidance could clarify that, provided confidentiality is maintained, a listed entity does have time to take legal advice and make a proper assessment of the claim before a disclosure obligation arises.	ASX has modified Example E to address this point.

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Respondent	Comment	ASX Response
Annexure A Example F (material difference in earnings compared to earnings guidance)		
CSA	The draft guidance in clause 1, paragraph 2 is prefaced by reference to "where the change in earnings is attributable to general trading conditions rather than a particular material event". CSA Members note that, even if the change were attributable to a particular material event, the following statement should still apply, that is, "until the detailed earnings forecast has been prepared and reviewed by the board, and the board in particular has signed off on the forecast earnings for the balance of the year, the information about K's likely higher than expected earnings for the financial year is insufficiently definite to warrant disclosure".	ASX does not agree. Following discussions between ASX and ASIC, the particular words quoted in the comment have been deleted from Example F, as they could lead to confusion. As mentioned previously in relation to section 7.3 of the final version of GN 8 (section 6.3 of the consultation version), Examples F and G were carefully chosen to illustrate some of the issues dealt with in the Leightons infringement notices. The differences between the two examples are quite deliberate. In particular, Example G illustrates the point that if an entity becomes aware of market sensitive information about a particular project, it must disclose that information immediately. It cannot delay the release of that information while it undertakes a full review of all of its other projects or it has undertaken the work needed to provide updated earnings guidance to the market. By contrast, Example F deals with a situation where there is no particular material event that has led to the need to publish updated earnings guidance. In that case, disclosure of the change in earnings would not normally be required until a detailed earnings forecast has been prepared and has been reviewed and approved by the board – noting the caveat in that example that if Listing Rule 3.1 does apply, it will require information about the changed earnings outlook to be disclosed immediately (ie, promptly and without delay) upon the entity becoming aware of it. This in turn will require the updated earnings guidance to be prepared and reviewed and approved by the board promptly and without delay.

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Respondent	Comment	ASX Response
Annexure A Example G (material difference in earnings compared to consensus forecasts)		
Clayton Utz LCA	[LCA]: In relation to paragraph 2, it is unclear why an entity should be required to publish precise information about one project, especially if it has not previously given guidance in relation to that project. It is the change in overall earnings from all sources which is important. We recommend that more clarity is included in the guidance as to how the situation in paragraph 2 should be dealt with. [Clayton Utz]: 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.	ASX does not agree, particularly with the LCA's comment that "It is the change in overall earnings from all sources which is important". As mentioned previously in relation to section 7.3 of the final version of GN 8 (section 6.3 of the consultation version), this example was carefully chosen to illustrate some of the issues dealt with in the Leightons infringement notices. In particular, it illustrates the point that if an entity becomes aware of market sensitive information about a particular project, it must disclose that information immediately. It cannot delay the release of that information while it undertakes a full review of all of its other projects or it has undertaken the work needed to provide updated earnings guidance to the market.
Annexure A Example H1 (breach of financial ratios)		
JWS LCA	This example is too simplistic and should be deleted. In practice, this sort of situation is likely to be much more nuanced than the simple facts presented in this example. [JWS]: In many cases, it would be preferable for the directors simply to get on with the task of negotiating with its financiers for a waiver of the breach of covenant rather than destroying shareholder value by making a premature announcement of the breach of covenant. Example H1 also should acknowledge that part of the fact matrix to be considered in determining the materiality of information is the reasonable belief of the directors that a waiver of the breach will be forthcoming. [LCA]: The example should focus on whether the information about the breach of covenant is legally required to be disclosed, rather than whether it is prudent for it to be disclosed - particularly as premature disclosure may have a seriously prejudicial impact on the entity. In this regard, we believe that the entity should not have to disclose the information until it is aware that its financiers are not willing, or are unlikely to be willing, to waive the	ASX acknowledges this feedback and has decided to delete Example H1 from the final version of GN 8. Example H1 was included simply to illustrate the point made in section 4.2 of the final version of GN 8 (section 3.2 of the consultation version) that officers of listed entities should exercise appropriate caution in assessing whether information is market sensitive or falls within the carve-outs from disclosure in Listing Rule 3.1A and that they should carefully weigh up the potential consequences of not disclosing particular information in any given case. That point stands alone and does not need this example to illustrate it.

Respondent	Comment	ASX Response
	breach. [LCA]: The totality of the information of which the entity is aware has to be considered. Other factors may be relevant to determining the materiality of the information about the breach of covenant (for example, whether alternative finance may be readily obtained). This should be acknowledged in the example.	
Allens Linklaters	We are aware of entities being advised that information about a breach of financial covenant in a banking facility concerns an incomplete negotiation or is insufficiently definite to warrant disclosure and therefore does not have to be disclosed under Listing Rule 3.1A for so long as it remains confidential. GN 8 should clarify whether or not ASX agrees with this view.	As noted above, ASX has decided to delete Example H1 from the final version of GN 8 and so this issue no longer needs to be addressed in the discussion of this example.
Corrs	Directors should not necessarily be risk averse. Example H1 should be amended to remove the words "prudent and risk averse" and replace them with the words "prudent and risk-conscious".	As noted above, ASX has decided to delete Example H1 from the final version of GN 8 and so this comment is no longer relevant.
Annexure A Example H6 (information about a potential competing bid being something a reasonable person would expect to be disclosed)		
AICD Allens Linklaters/UBS JWS LCA	This example is too simplistic. It does not take account of the quality of the potential competing bid (the identity and financial capacity of the competing bidder, the conditions attached to the bid, etc). If the bidder is of questionable character or financial capacity or has so many conditions attached that it is illusory, it may not be in the interest of the market for it to be disclosed. This example may act to discourage potential counter-bidders from making a genuine competing offer. It may also encourage spoilers to make illusory or highly conditional counter-offers, knowing that the target will have to disclose them. The example should be deleted.	ASX acknowledges this feedback and has decided to delete this example from the final version of GN 8. In addition to the issues raised in the consultation feedback, the example is also not consistent with the upgraded guidance ASX has given on the "reasonable person" test in section 5.9 of the final version of GN 8. ASX would note that where an entity is subject to a hostile Chapter 6 takeover offer, information it receives about a potential competing bid would often have to be disclosed in its target statement or in a supplementary target statement as information material to whether or not the target shareholders should accept the hostile offer.

Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
Annexure A Example H7 (information about conflicting drilling results being something a reasonable person would expect to be disclosed)		
Allens Linklaters	This example is not necessary as this information would not fall within the five categories of information protected from immediate disclosure by proposed Listing Rule 3.1A.1 (in the absence of factors which would cast doubts on the drill results and therefore suggest that they are genuinely matters insufficiently definite to warrant disclosure). It should be deleted.	ASX does not disagree with the view expressed about Listing Rule 3.1A.1. In fact footnote 213 of the consultation version of GN 8 acknowledged this very point, although that footnote has now been deleted from the final version as it is no longer relevant, given the changes made to this example (now Example H5) in the final version of GN 8. The new footnote 153 in the final version of GN 8 is to similar effect. However, ASX still believes there is merit in retaining this as an example of where a reasonable person would expect certain information to be disclosed. It illustrates the point about "cherry-picking" that ASX has now included in its upgraded guidance on the "reasonable person" test in section 5.9 of the final version of GN 8.
LCA	This example needs modification. If there is a reasonable expectation that the results were errors, we would question whether a reasonable person would require disclosure. While the retesting can also be announced, the announcement is likely to have an impact, even if the company's expectation is that the results will be proved wrong. It is not clear that a reasonable person would expect disclosure in circumstances where five results were positive and two subsequent results were negative, and in the company's judgement the two negative results may be wrong.	ASX has amended Example H7 to address these issues.
Annexure A Example H8 (information about an earnings surprise being something a reasonable person would expect to be disclosed)		
Allens Linklaters	This example is not necessary as this information would not fall within the five categories of information protected from immediate disclosure by proposed Listing Rule 3.1A.1. It should be deleted.	ASX agrees. The example is also not consistent with the upgraded guidance ASX has given on the "reasonable person" test in section 5.9 of the final version of GN 8. ASX has therefore decided to delete this example from the final version of GN 8.

Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
Annexure A – some suggestions for inclusion of further worked examples		
Corrs	Annexure A should include worked examples for both oil and gas and mining junior companies about when exploration results are sufficiently definite (ie on final analysis and when a third party report is available) to warrant disclosure and the factors a company should consider for making any such disclosure.	ASX does not agree with the blanket statement that exploration results are only sufficiently definite to warrant disclosure "on final analysis and when a third party report is available". Each case has to be assessed on its merits. Annexure A already includes a worked example dealing with a material mineral discovery (Example D). Given the length of GN 8 already, ASX believes that this is sufficient.
Corrs	Annexure A should include more worked examples on market rumours, especially dealing with how ASX expects listed entities to monitor new media proactively.	On the monitoring of "new media", see ASX's comments above in relation to section 6.4 of the final version of GN 8 (section 5.4 of the consultation version). Examples A, B, C and D in Annexure A all have alternative fact scenarios dealing with media leaks and market rumours. Given the length of GN 8 already, ASX believes that this is sufficient.
Annexure B – Relevant provisions of the Corporations Act		
AICD	The monitoring obligations of the directors of a listed company stem from section 180. The reference to the Delaware decision in the *Caremark* case as supporting that duty is not appropriate.	ASX does not agree with this comment. Directors have duties at common law as well as under statute. ASX believes that an Australian court would find the *Caremark* decision persuasive, both in terms of the statutory duties of directors under section 180(1) and their obligations at common law. It is consistent with the observations of Santow J in *ASIC v Adler* [2002] NSWSC 171 that directors are required to take reasonable steps to place themselves in a position to guide and monitor the management of the company, including becoming familiar with the fundamentals of the business in which the company is engaged and "a continuing obligation to keep informed about the activities of the corporation". Acknowledging that it is only persuasive rather than binding authority, however, ASX has made some changes to the footnote in question to place greater emphasis on the *Adler* decision.

Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
Other more general comments in relation to GN 8		
ABL Clayton Utz Telstra	It would be helpful if ASIC confirmed publicly that it agrees with the interpretations expressed by ASX in the revised GN 8.	ASX would note the comments of ASIC Commissioner Belinda Gibson in ASIC Media Release 12-253 issued on 17 October 2012: "ASIC today welcomed the ASX's updated continuous disclosure rules and guidance … ASX and ASIC share the responsibility for regulating the continuous disclosure framework that applies to ASX-listed entities and have worked together closely and cooperatively to develop the draft rules and guidance." ASX would also note the comments of ASIC Commissioner John Price in his speech entitled *Continuous disclosure* delivered on 3 December 2012 to the CSA 2012 Annual Conference: "ASIC welcomes and supports ASX's release of a substantially rewritten draft Guidance Note 8 *Continuous disclosure: Listing Rules 3.1–3.1B* (GN 8). ASIC worked closely with ASX on this rewrite."
ABA	GN 8 should make reference to the systemically important role of banks in Australia's financial system and acknowledge the views recently expressed by the International Monetary Fund about the need for legislative change to allow APRA to suspend the continuous disclosure obligations of a listed bank for a short period while it is engaged in "crisis resolution".	ASX notes that APRA is consulting on the legislative changes proposed by the IMF. ASX does not believe it would be appropriate for it to attempt to predict or pre-empt the outcome of that consultation process by including commentary on it in GN 8. If APRA's proposed legislative changes are adopted, ASX will update GN 8 then to reflect those changes.
BHP Billiton	In various places in GN 8 (eg in footnote 234 and in the worked examples in Annexure A), ASX makes the observation that where a forward looking announcement is predicated on material assumptions or subject to material qualifications, those assumptions and qualifications should be set out in the announcement and due diligence applied to ensure that they are objectively reasonable. A failure to do so could render the announcement misleading. To ensure consistency with draft GN 31 and the proposed changes to Chapter 5 of the Listing Rules, we submit that there should be an express carve-out from the requirement to disclose material assumptions or	ASX acknowledges the issue raised but does not believe there is a conflict between GN 8 and the guidance in GN 31. ASX would note that the guidance in GN 31 is given in three very specific contexts, regarding the disclosure of: (1) mining and metallurgical factors and assumptions when estimating and reporting mineral resources and the disclosure of cost and revenue factors and assumptions and a market assessment when estimating and reporting ore reserves; (2) the material assumptions and outcomes from the relevant preliminary

Respondent	Comment	ASX Response
	qualifications where they are commercially sensitive. We further submit that it would assist companies if a non-exhaustive list of examples of information that could potentially be commercially sensitive was included (eg capital and operating expenditure, price assumptions, contractual penalties, emerging technology assumptions and sovereign risk discussion).	feasibility study or feasibility study when reporting estimates of ore reserves; and (3) the material assumptions underpinning a mining production target or the forecast financial information based on a mining production target. In each case GN 31 notes that an entity must disclose sufficient information (perhaps in narrative rather than numerical form, where the numbers are commercially sensitive) for investors to understand the methodology it has used to determine these assumptions and the basis on which it is calculating the applicable numbers. ASX has addressed the issue of commercially sensitive information in a broader context in section 4.20 of the final version of GN 8 (section 3.20 of the consultation version). ASX has added a footnote (footnote 121) to that section acknowledging that Guidance Note 31 *Reporting on Mining Activities* and Guidance Note 32 *Reporting on Oil & Gas Activities* have further guidance on the reporting of commercially sensitive information in announcements relating to mining and oil and gas activities. ASX has also modified the various references in GN 8 to the disclosure of material assumptions and qualifications to note the view expressed by ASIC in Information Release IR 01/05 dated 7 February 2001(which refers to ASIC's guidance on prospective financial information, now set out in ASIC Regulatory Guide 170 *Prospective financial information*) that any material assumptions or qualifications that underpin forward looking statements in an announcement under Listing Rule 3.1 should be stated in the announcement.
CSA	The Guidance Note includes guidance on social media and on media/analyst reports and market rumours in various places without cross-referencing all of those places. We recommend that cross-references be included in the Guidance Note so that readers can easily access all the relevant guidance on a particular aspect of continuous disclosure obligations.	ASX has included cross-references, where appropriate.

Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
Clayton Utz	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. GN 8 should 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.	ASX was not seeking to proscribe what listed entities should and should not disclose in any particular case. It was merely seeking to give guidance around the sorts of details that it would generally expect to be disclosed for the various generic transactions used as examples in GN 8, in the belief that listed entities might find this guidance helpful and that it might help to avoid some of the issues that arose in *Forrest v ASIC* [2012] HCA 39. ASX acknowledges that each case has to be assessed on its merits to determine what is material for the purposes of disclosure. ASX has modified each example in GN 8 to address this issue.

Annexure C
Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

B. Feedback on proposed Listing Rule changes

Respondent	Comment	ASX Response
Introduction to the Listing Rules		
ACSI	ACSI is pleased to see the introduction into the principles on which the Listing Rules are based of the references that "information should be disclosed to enable investors to assess an entity's corporate governance practices" and that "the practices adopted in relation to meetings and other communications with security holders should facilitate constructive engagement".	ASX appreciates the support for this change.
Listing Rule 3.1 – The requirement to disclose market sensitive information immediately		
AICD ABL LCA	To avoid any doubt about ASX's interpretation of Listing Rule 3.1, it should be amended to replace "immediately" with the words "promptly and without delay".	ASX does not believe that this change is necessary. ASX's interpretation of the word "immediately" is well supported by case law. ASIC has also publicly stated that it supports this interpretation.
AICD Confidential	It would be better if "immediately" was replaced in Listing Rule 3.1 with "promptly and without *unreasonable* or *undue* delay").	ASX does not believe that this change would be supported by ASIC or the Minister. The requirement to disclose market sensitive information "immediately" has been a fundamental underpinning of Australia's continuous disclosure rules for many years now. The very word "immediately" connotes that there should be no delay whatsoever in releasing market sensitive information under Listing Rule 3.1. To introduce a reference to an unreasonable or undue delay would confuse the notion of what is involved in a "delay", open up scope for argument about whether a delay is reasonable or not undue, and undermine the fundamental principle of immediacy on which Listing Rule 3.1 is based. As noted in relation to section 4.4 of the final version of GN 8 (section 3.4 of the consultation version) above, ASX has added commentary to GN 8 to explain that ASX interprets "delay" to mean defer, postpone or put off to a later time and that the mere fact that some time will necessarily pass while an entity goes about the task of preparing and releasing an announcement does *not* mean that there has been a "delay" in the release of the

Respondent	Comment	ASX Response
		information. With this explanation, hopefully listed entities will understand why this change would not be appropriate.
AICD LCA	It would be even better if "immediately" was replaced in Listing Rule 3.1 with just "promptly" or "as soon as reasonably practicable".	As mentioned above, the requirement to disclose market sensitive information "immediately" has been a fundamental underpinning of Australia's continuous disclosure rules for many years now. ASX does not believe that ASIC or the Minister would support this change to Listing Rule 3.1.
Listing Rule 3.1A – The exceptions to immediate disclosure		
CSA	The "reweighting" of the reasonable person test through its re-positioning in Listing Rule 3.1A is welcomed.	ASX appreciates the support for this amendment.
Allens Linklaters	The "reasonable person" limb of in Listing Rule 3.1A is unnecessary and inherently vague and unclear. This is not appropriate in the context of a legal regime where any breach could lead to class action litigation. This limb of the rule should be repealed.	ASX has sought to address this issue by giving clearer and more forthright advice in the final version of GN 8 on the narrow scope of operation of Listing Rule 3.1A.3. ASX does not believe that ASIC or the Minister would support the removal of the reasonable person test. Even though the rule does have a very narrow scope of operation, the limited areas it covers (as explained in ASX's enhanced guidance in the final version of GN 8) are important and it is appropriate that the rule be retained. Hopefully, the vagueness and lack of clarity that many have found with this rule in the past will be less so in light of ASX's enhanced guidance.

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Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
Allens Linklaters	The reordering of Listing Rule 3.1A does not overcome the fundamental objections to the reasonable person test. We doubt that it will have the intended result. We are unaware of any principle of interpretation in which a court will give less weight to a particular requirement in a cumulative list simply because of its order in the list. We understand that the Listing Rule is not a statute but section 674 of the Corporations Act gives it statutory backing and it is likely that a court will interpret Listing Rule 3.1A in a way that ignores the order of the requirements.	Section 674 essentially says that a listed entity breaches the Act by not complying with Listing Rule 3.1. The root question therefore in any action under section 674 is whether or not a listed entity has complied with Listing Rule 3.1, noting that it is subject to the exceptions in Listing Rule 3.1A. ASX would like to think that, as the Listing Rules are its rules, what ASX has said about their intended interpretation and operation will carry some weight should the matter come before a court. This is particularly so in light of Listing Rule 19.2, which states quite clearly that the Listing Rules are to be interpreted in accordance with their spirit, intention and purpose.
Listing Rule 3.1B – False markets		
AICD Clayton Utz Confidential HSF LCA Telstra	The drafting of the proposed change is too broad. Either the existing rule should be retained or the revised rule should conclude with the words "the entity must give ASX the information it asks for *to correct or prevent the false market*".	ASX has modified the drafting so that Listing Rule 3.1B now reads: "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 immediately give ASX *that information*." This is effectively the same as concluding the previous drafting with the suggested words in the comment.
AICD Confidential LCA	Contrary to the comment in the consultation document, the management of a listed entity is often better placed than ASX to determine whether there is a false market in an entity's securities and, if so, what information should be disclosed to correct the false market.	ASX understands why some listed entities might think this, but others would consider that a determination by an impartial market operator on whether information needs to be disclosed to correct or prevent a false market in many cases is likely to be more objective and less prone to bias than that of someone who might have a commercial interest in not disclosing particular information to the market. Listed entities and other stakeholders need to understand that, as a licensed market operator, ASX has statutory duties to maintain a fair, orderly and transparent market and to have reasonable arrangements for monitoring and enforcing compliance with its Listing Rules, including Listing Rule 3.1B (see section 792A of the Corporations Act). It would not be acceptable for ASX to abandon its obligations under Listing Rule 3.1B and simply leave the determination on whether there is or could

Respondent	Comment	ASX Response
		be a false market in an entity's securities and, if so, what information should be disclosed to correct or prevent it, to the management of a listed entity. ASX would also note that it does not reach a determination on whether there is a false market in a vacuum. There is usually a full and frank discussion with a listed entity on this issue before ASX chooses to exercise its powers under Listing Rule 3.1B – as outlined in sections 6.4, 6.5 and 8.2 of the final version of GN 8 (sections 5.4, 5.5 and 7.2 of the consultation version). In those discussions, the management of a listed entity gets the opportunity to persuade ASX that there is not a false market in its securities and, if it cannot, to influence the information that ASX asks for to correct the false market.
Listing Rule 3.16.4 – Disclosure of CEO and director employment arrangements		
ACSI	ACSI is pleased with the proposed changes. Investors would reasonably expect this information to be routinely disclosed in all cases. It should not be subject to a subjective materiality assessment by the disclosing entity. ACSI therefore urges the ASX to persist with these proposed amendments even if they are opposed by any other respondents to the consultation.	ASX appreciates the support for this change.
AICD Confidential CSA HSF	The rule is unnecessary because the remuneration reporting requirements in the Corporations Act already ensure adequate disclosure.	ASX does not agree. For a start, this rule requires disclosure of other material terms apart from remuneration, and so goes beyond the type of information that is called for in the remuneration reporting requirements in the Corporations Act. In addition, the Corporations Act framework for disclosure of remuneration involves retrospective disclosure in an entity's annual report. This could be up to 12 months or more after the entity has entered into an employment, service or consultancy agreement with a CEO or director. ASX considers that the market should be informed of this information when an entity first enters into an employment, service or consultancy agreement with a CEO or director.

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Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
		ASX also notes that its existing policy is that CEO remuneration should be immediately disclosed in all cases under Listing Rule 3.1 (see *Companies Update* 1 May 2003) – although, as ASX acknowledged in its consultation paper, there would be many cases where in fact that information is not technically required to be disclosed under that rule.
Confidential	The rule is unnecessary because any market sensitive employment arrangements would have to be disclosed under Listing Rule 3.1 in any event.	ASX does not agree. The reason for requiring disclosure of these arrangements is not because of their potential impact on the market price of an entity's securities but because this is important information which goes to the governance of the entity and which should be notified to the market. This is the reason for including a specific rule in Chapter 3 requiring their prompt disclosure rather than relying on Listing Rule 3.1. It would be a most unusual case for a CEO's or director's employment arrangements to be market sensitive, particularly for larger listed entities. Despite this, ASX considers that the market should be informed of the material terms of those arrangements when they are entered into or varied.
AICD BHP Billiton Clayton Utz Confidential CSA HSF LCA	The rule should be amended to make it clear that only material variations need to be disclosed.	This was the original intent of the rule – the introductory words "the material terms of" were intended to qualify the references to the original agreement and any variation to it. ASX has modified the drafting to make this clearer.
AICD BHP Billiton Clayton Utz Confidential CSA HSF LCA	Increases in director fees approved by shareholders and periodic remuneration reviews in accordance with the terms of employment, service or consultancy agreements should not be regarded as material variations for these purposes.	ASX agrees and has added a carve-out from disclosure for increases in director fees approved by security holders and periodic remuneration reviews in accordance with the terms of an employment, service or consultancy agreement.

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Specific Feedback on the Revised Draft of Guidance Note 8 and Proposed Listing Rule Changes and ASX's Response

Respondent	Comment	ASX Response
BHP Billiton Confidential CSA	The rule should be amended to make it clear that it does not require disclosure of normal director fees or other payments to directors in the "ordinary course".	ASX agrees and has added a carve-out from disclosure for: • non-executive director fees paid out of a pool of remuneration approved by security holders; • superannuation contributions in relation to such fees; • provisions entitling a CEO or director to reimbursement of reasonable out of pocket expenses; • provisions requiring the entity to maintain D&O liability insurance; and • provisions (commonly referred to as "access arrangements") allowing a CEO or director access to entity records for a period of time after they cease to be a CEO or director.
AICD BHP Billiton HSF	[AICD, BHP Billiton]: The rule should only apply to the CEO and executive directors, not to non-executive directors. [BHP Billiton]: Or there should be an express carve-out for contracts with non-executive directors on standard terms. [HSF]: The rule should be clarified as to whether it is intended to apply to non-executive directors.	ASX considers that the rule should apply to non-executive directors. However the changes mentioned in the response to the previous comment should help to allay some of the concerns about its application to non-executive directors. With those changes, in many cases, all that will need to be disclosed in relation to the appointment of a non-executive director is the term of his or her appointment.
HSF	The rule should be clarified that it is intended to apply to "employment" services not the provision of "actual" services to or by related parties (which would be disclosed in accordance with accounting standards).	ASX does not agree. The rule applies to employment, service and consultancy agreements. ASX does not understand how or why one would differentiate between the services supplied under such contracts between "employment" services and "actual" services. ASX considers that the market ought to be informed, for example, about the material terms of any service or consultancy agreement that a listed entity or a related entity enters into with a family company or family trust of a director or CEO, even though the agreement may not technically be characterised as the provision of "employment" services.

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Respondent	Comment	ASX Response
AICD BHP Billiton Clayton Utz CSA HSF LCA	The reference to a "related part of the entity" is confusing. [HSF]: It is also too wide. For instance, it could require the disclosure of the employment of a child of the director even though the child was employed in their own right. [CSA, LCA]: The rule should refer to a related party of the director or CEO rather than a related party of the entity.	ASX agrees and has modified the rule to refer to a related party of the CEO or director. This will attract the definition of "related party in relation to a person" in Listing Rule 19.12 rather than the broader definition of "related party" in section 228 and 601LA of the Corporations Act. ASX has also added an exception to the rule to indicate that it does not require the disclosure of an employment, service or consultancy agreement that is entered into with a relative of a CEO/director on arm's length terms.
Clayton Utz	The rule should only apply to the CEO and directors of the listed entity and not to directors of subsidiaries.	ASX agrees and has modified the drafting of the rule so that it is clear that it only applies to the CEO and directors of the listed entity, and their related parties.
Clayton Utz	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.	ASX can confirm that it will only apply the rule prospectively.
AICD BHP Billiton Confidential HSF	The disclosure should not be required "immediately" but rather within a reasonable period.	ASX does not see a case for delaying the disclosure of this information. Any changes in CEO or directors must already be disclosed to ASX immediately under Listing Rule 3.16.1. At least in the case of CEOs and executive directors, it is not uncommon for those disclosures to include information about the material terms of any new appointment (eg term and remuneration). Listed entities hopefully will also take some comfort from the clarification given in GN 8 about the meaning of "immediately".
Listing Rule 3.17.2 – Security holder requisitions		
ACSI	ACSI is pleased with the proposed changes. Investors would reasonably expect this information to be routinely disclosed in all cases. It should not be subject to a subjective materiality assessment by the disclosing entity. ACSI therefore urges the ASX to persist with these proposed amendments even if they are opposed by any other respondents to the consultation.	ASX appreciates the support for this change.

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Respondent	Comment	ASX Response
AICD BHP Billiton CSA HSF LCA Telstra	The rule is unnecessary because a valid security holder requisition that is "sufficiently material" would need to be disclosed under Listing Rule 3.1 in any event. It will also be disclosed in the ordinary course when the relevant notice of meeting issues.	ASX does not agree. The reason for requiring disclosure of security holder requisitions is not because of their potential impact on the market price of an entity's securities but because this is important information which goes to the governance of the entity and which should be notified to the market. This is the reason for including a specific rule in Chapter 3 requiring their prompt disclosure rather than relying on Listing Rule 3.1. Many security holder requisitions would not be market sensitive, particularly where the market assesses that they lack merit or are likely to be defeated. Despite this, ASX considers that the market should be informed if a dispute between an entity and a group of its security holders has escalated to the point where the security holders have served a requisition on the entity seeking to have the matter resolved at a meeting of security holders.
ABA AICD BHP Billiton Confidential CSA HSF LCA Telstra	The rule, as drafted, could require a listed entity to disclose requisitions that it is specifically permitted under the Corporations Act to exclude from a notice of meeting (eg materials that are too long, defamatory or propose a resolution that cannot properly be put). The rule should not require the disclosure of invalid security holder requisitions. Alternatively, the word "valid" should be inserted before "notice".	ASX does not agree. The legal requirements for security holder requisitions to be valid can be quite technical and the validity of such requisitions is often disputed and/or litigated. As mentioned in the response to the previous comment, the policy behind this new rule is that the market should be informed if a dispute between an entity and a group of its security holders has escalated to the point where the security holders have served a requisition on the entity seeking to have the matter resolved at a meeting of security holders. This policy reason holds true even where the security holders have not met the technical requirements for their requisition to be valid. If a listed entity considers that a security requisition is invalid and therefore it will not be acting on it, the entity can (and ASX would expect it to) include that information in its announcement.

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Respondent	Comment	ASX Response
ABA CSA HSF Telstra	The rule should not require the disclosure of security holder requisitions that are withdrawn.	ASX agrees, at least where the requisition is withdrawn relatively quickly after having been lodged with the listed entity. As mentioned below, ASX has amended the rule to require disclosure of security holder requisitions within two business days. It has also added a note to the effect that the information does not have to be disclosed if the requisition is withdrawn within those two business days. If the requisition is withdrawn more than two business days after being lodged with the listed entity, the entity will need to make an updating announcement to the market. To cater for this and to ensure that the market is properly informed of such matters, ASX has amended the rule to require disclosure of the withdrawal of any requisition that has previously been notified to the market under this rule.
CSA	Such requisitions are often used as "ambit claims" to try to force an entity to serve the shareholder's agenda, which may not be appropriate for a number of reasons. Also, publishing such a notice gives greater control to the requisitioner in terms of the information released to the market and it allows manipulation of the entity and misuse of its announcements platform through this rule.	ASX does not share these concerns. It believes the market is well capable of assessing whether a security holder requisition is an "ambit claim" or otherwise lacks merit. ASX also observes that it is quite common for requisitioners to publish a media release about their requisition and so this information would often be in the public domain in any event, even if it was not published on the Market Announcements Platform.
AICD	We are concerned that copies of defamatory materials might have to be given to ASX and published on the Market Announcements Platform.	ASX has included a note to this rule indicating that the information to be disclosed does not have to include any defamatory material that the entity would not otherwise be required to circulate to security holders under the Corporations Act or any equivalent overseas law or equivalent provisions in the entity's constitution.
CSA	We understand from discussions with ASX that the new Listing Rule requirement is intended to capture listed entities registered in other countries that are not captured by the Corporations Act, but at present the drafting captures all listed entities.	This understanding is not entirely correct. The rule is intended to apply to listed entities registered in other countries that are not covered by the Corporations Act. However, it is also intended to apply to entities established in Australia.

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Respondent	Comment	ASX Response
AICD BHP Billiton Confidential	The disclosure should not be required "immediately" but rather within a reasonable period. [BHP Billiton]: This would enable the listed entity to obtain advice as to whether the requisition is valid and to include that information in its announcement.	ASX agrees and has amended the rule to require disclosure within two business days. It has also added a note to indicate that if the information about the requisition is market sensitive, it will be required to be disclosed immediately under Listing Rule 3.1. These changes have necessitated making this rule a separate rule (now Listing Rule 3.17A) rather than including it as a sub-branch of Listing Rule 3.17 (the other disclosures in Listing Rule 3.17 are required to be made immediately). Consequently, the previously proposed Listing Rule 3.17A has been re-numbered as Listing Rule 3.17B.
Listing Rule 3.17.3 – Substantial holdings		
ACSI	ACSI is pleased with the proposed changes. Investors would reasonably expect this information to be routinely disclosed in all cases. It should not be subject to a subjective materiality assessment by the disclosing entity. ACSI therefore urges the ASX to persist with these proposed amendments even if they are opposed by any other respondents to the consultation.	ASX appreciates the support for this change.
ACSI	The rule should be kept in the form set out in the consultation paper and not amended (as ASX had foreshadowed in its national roadshow presentations) to apply where material information about a previously undisclosed substantial holding has been uncovered.	ASX acknowledged during its national roadshow that the initial drafting of this rule was wider than it should have been. ASX has re-drafted the rule to narrow its scope. It thinks that the re-drafted rule will ensure that the market receives relevant information about substantial holdings without imposing an undue administrative burden on listed entities.
BHP Billiton Clayton Utz Confidential CSA HSF LCA	The proposed new rule is too broad and could impose significant administrative burdens on listed entities. The scope of the requirement to disclose "information about substantial holdings of securities" in particular is quite unclear. [BHP Billiton]: it could also lead to multiple notifications of the same information (eg when a substantial holder files an updated notice simply to include further related entities as additional substantial holders).	ASX agrees. As ASX acknowledged during its national roadshow, the initial drafting of this rule was wider than it should have been and ASX has re-drafted the rule to narrow its scope. For entities established in Australia that are subject to the Parts 6C.1 and 6C.2 of the Corporations Act, the rule will now only require the disclosure of any document the entity receives about a substantial holding of securities under Part 6C.2 of the Corporations Act (tracing notices) that reveals materially different information to the most current information, if any, it has received under Part 6C.1 of the Corporations Act (substantial holding

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		notices). ASX has added a note to the rule to indicate that information that: • a substantial holding differs (upwards or downwards) from a previously disclosed substantial holding by less than 1%; or • simply updating the list of related entities that have a substantial holding, is not considered "materially different" for the purposes of this rule.
BHP Billiton Confidential CSA	The rule is unnecessary because the Corporations Act and Listing Rule 3.1 already ensure adequate disclosure of material information about substantial holdings. For Australian incorporated listed companies, unless disclosure is required under Listing Rule 3.1, the obligation to notify ASX of any substantial holdings or any changes to those holdings should remain with the relevant holder in line with the statutory requirements in the Corporations Act.	The proposed changes are intended to complement, rather than conflict with, the Corporations Act regime. The changes mentioned in the response to the previous comment should help allay these concerns.
BHP Billiton	To verify the information received in response to the beneficial ownership tracing notice, a listed entity would be required to make direct contact with the potential beneficial owner and make enquiries in relation to the actual beneficial holdings, including any potential associated holdings which may form part of that holding. This process can take a considerable amount of time and we do not consider that it is appropriate to place this regulatory burden on the listed entity when the statutory obligation sits with the holder of the securities.	The amendments ASX has made to this rule to clarify its scope make it clear that, for Australian entities, all they are required to do is to provide to ASX a copy of any document that they receive under Part 6C.2 of the Corporations Act that reveals materially different information to the most current information, if any, it has received under Part 6C.1 of the Corporations Act. ASX has no expectation that a listed entity would seek to verify the information in that document.
Clayton Utz	We are concerned 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.	ASX does not share this concern, particularly given the changes that it has made to this rule. There is a clear policy setting reflected in the Corporations Act that information about substantial shareholdings should be promptly disclosed to the market. The notes to existing Listing Rule 3.1 include as an example of potentially market sensitive information that should be immediately disclosed under that rule "information about the beneficial ownership of securities obtained

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		under Part 6C.2 of the Corporations Act". With the changes ASX has made to Listing Rule 3.17, there will be much greater clarity as to what a listed entity is expected to disclose in this regard.
CSA	We understand from discussions with ASX that the new Listing Rule requirement is intended to capture listed entities registered in other countries that are not captured by the Corporations Act, but at present the drafting captures all listed entities.	This understanding is not entirely correct. It is true that this rule was intended to require listed entities established outside Australia to disclose to ASX information about substantial holdings that they receive under an overseas law or a provision in their constitution equivalent to Part 6C.1 or 6C.2 of the Corporations Act (recognising that this information is not required to be disclosed to ASX under the Corporations Act). However, it was also intended to require Australian entities to disclose information about substantial holdings of securities that they obtain under Part 6C.2 of the Corporations Act (tracing notices) that is materially different to information that they and the market might have received under Part 6C.1 of the Corporations Act (substantial holding notices).
Biotech Daily	ASX "must end the immoral practice of allowing investors to hide behind 'nominee companies'. What are they hiding?"	This matter is regulated by ASIC and the Takeovers Panel under the Corporations Act, not by ASX under the Listing Rules. It is not relevant to GN 8. ASX would note that investors use nominee companies for administrative convenience, taxation and other reasons and the moral judgment that they must be "hiding" something is simply not correct. Further, the use of nominee companies does not avoid the disclosure of beneficial ownership of substantial (5%+) holdings in listed Australian companies and managed investment schemes. Any investor who has such a holding is required to file a substantial holding notice with the company/scheme and with ASX under the Corporations Act which will reveal the true beneficial owner and controller behind any nominee shareholding. The substantial holding notice threshold of 5% has been set by the Australian Parliament in the Corporations Act. Any proposal to lower this would need to be pursued with the Australian government.

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AICD Clayton Utz Confidential	The disclosure should not be required "immediately" but rather within a reasonable period (say two business days, to be consistent with the Corporations Act disclosure period for substantial holdings).	ASX does not agree, particularly given the amendments that it is now proposing to this rule. In many cases, information about substantial holdings would potentially be market sensitive and should therefore be disclosed immediately.
Listing Rule 3.17A – Notices given to overseas exchanges		
ABA CSA	The proposed new rule would require the disclosure of many pro forma or administrative announcements and could impose significant administrative burdens on entities listed on more than one exchange. [ABA]: In the case of entities that have debt securities quoted on an overseas exchange that are not quoted on ASX, the proposed new rule would also require the disclosure of filings about those debt securities that would often be irrelevant to the holders of equity securities.	ASX agrees and has modified the rule so that it only requires the lodgement of documents that include accounts or other similar financial information. This recognises that any other information given to an overseas exchange that will have a material effect on the price or value of an entity's securities is required to be given to ASX under Listing Rule 3.1 in any event.
ABA	To avoid duplication and administrative burden, the proposed new rule should exclude information that has already been given to ASX in materially the same form.	ASX agrees and has modified the rule so that it does not require the disclosure of any document that is materially the same as another document that the entity has already given to ASX.
LCA	The explanatory material suggests that the rule is intended to be limited to listed entities with multiple listings and only apply to filings they make in that capacity, However, as drafted, the rule potentially captures any filing (eg a foreign equivalent to a substantial holding notice) by any listed entity with an overseas exchange.	ASX agrees and has modified the rule to make it clear that it only applies to a listed entity with a dual listing on ASX and another overseas exchange and only to filings that the entity makes with that overseas exchange in its capacity as a listed entity.
BHP Billiton CSA	For entities with a dual listed company structure, where one entity is listed on ASX and the other on a foreign exchange, the rule should only apply to the entity with the ASX listing (ie the rule should not require the filing of notices given by the non-ASX listed entity).	ASX agrees and has added an explanatory note to the rule to clarify this issue.
BHP Billiton	It should also not apply to notices filed by a foreign-listed entity to its home exchange just because it happens to be a subsidiary of an entity listed on ASX.	The changes mentioned above that ASX has made to this rule make it clear that the rule only applies to an entity with a dual listing on ASX and another overseas exchange. Those changes effectively address this issue.

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Listing Rule 3.21 – Dividends		
AICD BHP Billiton CSA HSF	The proposed rule should be dropped/reconsidered. Entities should be free to continue the existing practice of announcing dividends with their interim and preliminary final profit announcements.	ASX intends to proceed with the new rule. In most cases, a decision to pay, or not to pay, a dividend would be market sensitive and therefore required to be disclosed immediately under Listing Rule 3.1. The imposition of a specific rule requiring such disclosure is simply intended to address those few instances where the decision arguably is not market sensitive (for example, because the market has accurately anticipated the decision and already reflected it in the market price of the entity's securities). ASX understands that it is common market practice for the full board of a listed entity to review and approve in principle an interim/final dividend and an interim/preliminary final profit announcement ahead of time and then for the board, or a committee of the board, to formally make the decision to pay the dividend and formally approve the final form of the profit announcement on the morning that the announcement is due to be released to the market or on the prior evening. Amongst other reasons, this is to ensure that any material post-balance date events are accurately reflected in the announcement. ASX has no issue with that particular practice and would not expect the dividend decision to be announced before it had been formally made on the morning/evening of the interim/preliminary final profit announcement. ASX has included commentary to this effect in GN 8.
AICD CSA HSF	A number of companies have amended their constitutions to remove the formal requirement for a dividend to be declared. The reference in the proposed new rule to the declaration of a dividend needs to be amended to reflect this.	ASX agrees and has amended the rule to refer to the making of a decision to pay, or not to pay, a dividend/distribution rather than declaring a dividend or making a decision not to declare a dividend/distribution.

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Listing Rules 4.2B and 4.3A – Timing for half yearly and preliminary final lodgements		
BHP Billiton	In light of the clarification provided by ASX that: • when a periodic document is released, the information contained in the document is regarded as "generally available" and does not require a separate disclosure under Listing Rule 3.1; and • unless a continuous disclosure obligation arises during the preparation of a periodic disclosure document, an entity is not expected to release the information in that document ahead of the scheduled release date. We suggest that consideration be given to removing the reference in Listing Rules 4.2B and 4.3B to the information required by Listing Rules 4.2A and 4.3A, respectively, needing to be given to ASX immediately it becomes available.	ASX agrees and has amended Listing Rules 4.2B and 4.3B to change "immediately all the information and documents become available" to "immediately they are ready for release".
Listing Rule 4.10.17 – Review of operations and activities		
HSF	The proposed new rule should be confined to entities established outside Australia that are not subject to section 299A of the Corporations Act.	ASX does not agree. GN 10, which currently specifies what the review under this rule should cover, has effectively been rendered redundant by the introduction of section 299A. For Australian entities, there is a need to update what form the review of operations and activities should take under this rule, in light of section 299A. To avoid unnecessary duplication of regulatory requirements, ASX believes that it is appropriate to tie the review required under this rule to that required under section 299A. ASX also notes that it would seem rather odd to require the review of a listed entity established outside Australia to comply with section 299A, if entities established in Australia are not subject to the same requirement.

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HSF	For those entities that include a directors report with their preliminary financial report (Appendix 4E), this re-drafted rule, in combination with the requirement in the preface to Listing Rule 4.10 for information to be not more than six weeks old, could require the preparation of two reports on operations and activities for the period (one current as at the date of the preliminary financial report and one current as a date not more than six weeks before the "glossy" annual report is sent to security holders).	ASX believes that this is unlikely to occur in practice. The review of operations and activities is one required for the reporting period and is therefore largely historical in nature, although section 299A does require disclosure of some forward-looking information. The requirement for the review to be current at a date not more than six weeks before the annual report is sent to security holders should not require any historical information relevant to the reporting period to be updated from the version included with the preliminary financial report. A fresh version of the review would only be required if the forward looking information required by section 299A had changed in the interim – in which case, it would be appropriate for the market to be apprised of that changed information. ASX also notes that the proposed changes to this rule tying the review to the requirements in section 299A of the Corporations Act does not alter the timing requirement in the preface to Listing Rule 4.10. Accordingly, if this were an issue with the proposed new rule, it would also be an issue with the current rule.
Listing Rule 14.11 – Voting exclusion statements		
HSF (in a separate submission to its GN 8 submission)	The current definition of "associate" in the note to this rule incorrectly references section 13 of the Corporations Act. It should reference sections 11 and 15-17 of the Corporations Act.	ASX agrees and has modified the note in question.

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Listing Rule 19.12 – Definition of "information"		
Allens Linklaters BHP Billiton CSA LCA	This amendment should not be made. [Allens Linklaters, CSA]: It is not ASX's role to plug gaps in the Corporations Act. [Allens Linklaters]: It is also likely that Parliament intended to adopt a wider definition of "information" for insider trading purposes than for continuous disclosure purposes. [BHP Billiton, CSA, and LCA]: This broad definition of "information" does not sit well with a rule requiring information to be disclosed to the market and could lead to confusion.	ASX does not agree. McLure JA acknowledged in *Jubilee Mines NL v Riley* [2009] WASCA 62, at paragraph 161, that the reference to "information" in Listing Rule 3.1 includes matters of fact, opinion and intention. The High Court in its recent decision in *Mansfield v R* [2012] HCA 49 also acknowledged that "information" is a word of wide import and takes its meaning from the context in which it appears. ASX believes that it is implicit from the carve-out in the third bullet point in existing Listing Rule 3.1A.3 (to become Listing Rule 3.1A.1 in the proposed re-write) that "information" necessarily includes matters of supposition and matters insufficiently definite to warrant disclosure – otherwise that carve-out would not be required. ASX does not see the harm in making explicit what is already implicit. ASX does not understand why this definition of information should lead to any confusion about disclosure obligations. Defining "information" to include matters of supposition and matters insufficiently definite to warrant disclosure does not necessarily lead to those matters having to be disclosed under Listing Rule 3.1. Like any other information, they would only have to be disclosed under that rule if they are market sensitive and the carve-outs from immediate disclosure in Listing Rule 3.1A do not apply. Indeed, the carve-out in the third bullet point in redrafted Listing Rule 3.1A.1 (matters of supposition or that are insufficiently definite to warrant disclosure) will ensure that such matters only have to be disclosed under Listing Rule 3.1 if they lose confidentiality or the "reasonable person" test ceases to apply. ASX suspects that the fact that a definition of "information" was not included in Chapter 6CA of the Corporations Act was not a conscious legislative decision but a case of Parliament not turning its mind to the issue. As the NSW Court of Appeal acknowledged in *James Hardie Industries NV*

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		v ASIC [2010] NSWCA 332, at paragraph 355, Listing Rule 3.1 is "*integral to minimising incidences of insider trading and other market distortions".* The policy relationship and close drafting similarities between the continuous disclosure provisions and the insider trading provisions in the Corporations Act suggest to ASX that "information" should have the same meaning for both sets of provisions.