



Listed@ASX

Compliance Update 15 March 2018

Update no 02/18

1. Updates to Listing Rule Guidance Notes

On 9 March 2018, ASX released updates to:

- [Guidance Note 1 *Applying for Admission - ASX Listings*](#) with further materials in section 3.8 on using artificial means to achieve spread and in section 3.19 on ASX's good fame and character requirements;
- [Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 - 3.1B*](#):
 - with additional guidance in section 4.15 on ASX's disclosure expectations for material contracts;
 - removing a reference in section 4.20 to disclosing the impact of material contracts on revenue, costs or profits;
 - expanding the guidance in section 5.10 to address the new insolvent trading safe harbour for directors in s588GA of the Corporations Act and what should be disclosed when an entity in financial difficulties requests a voluntary suspension to complete a transaction necessary for its survival; and
 - clarifying aspects of example D in Annexure A;
- [Guidance Note 12 *Significant Changes to Activities*](#) to reflect a change in policy for back door listings (which is effective immediately) requiring all directors or proposed directors to provide evidence of their good fame and character, including existing directors who have been elected by shareholders to the board, and clarifying the accounts that need to be disclosed in an announcement under Annexure A to that Guidance Note; and

- [Guidance Note 16 Trading Halts and Voluntary Suspensions](#) to reflect the changes to section 5.10 of Guidance Note 8 mentioned above.

Some other minor updates are also included. Marked up versions of the amended Guidance Notes are available by clicking on the links above.

2. Issues with disclosure of customer contracts

Recently there have been a number of incidents where the disclosures by listed entities about their contractual arrangements with customers have fallen short of the required standards. Examples include entities:

- announcing a contract with a major global customer without providing any details of the nature or substance of the contract or its significance to the entity (ie seeking to benefit from the association with the customer without providing proper disclosure);
- announcing what appears to be a material customer contract without disclosing that it is subject to a trial period or other conditions and therefore may not proceed;
- disclosing revenue projections for customer contracts that do not have a proper basis or that do not state the material assumptions or qualifications underpinning them;
- not disclosing when a previously announced material customer contract is terminated or does not proceed (ie disclosing good news but not bad); and
- misrepresenting customer contracts as being "material" or with other superlatives when plainly they are not (one of the more notable examples being a listed entity that disclosed a "material commercial agreement with a leading financial entity" under which it was to receive less than \$1000 in revenue).

Whenever ASX detects this sort of behaviour it will not hesitate to suspend the entity, query it and require it to correct any inadequate or misleading disclosures. It will also refer the entity to ASIC for consideration of regulatory action.

ASX would draw the attention of all listed entities to the following new passage in section 4.15 of Guidance Note 8 mentioned above dealing with market sensitive customer contracts:

"Wherever possible, an announcement under Listing Rule 3.1 should contain sufficient detail for investors or their professional advisers to understand its ramifications and to assess its impact on the price or value of the entity's securities...

...depending on the circumstances, ASX would generally expect an announcement about the signing of a market sensitive contract with a customer to include information about:

- *the name of the customer;*
- *the term of the contract;*
- *the nature of the products or services to be supplied to the customer;*
- *the significance of the contract to the entity;*
- *any material conditions that need to be satisfied before the customer becomes legally bound to proceed with the contract; and*
- *any other material information relevant to assessing the impact of the contract on the price or value of the entity's securities.*

In disclosing the significance of the contract to the entity, regard should be had to the guidance below about forward looking statements. For example, a statement about the projected revenue to be derived from a customer contract or any other projection that is a proxy for revenue⁽¹⁾ will be a forward looking statement and therefore must have a reasonable basis in fact or else it will be deemed to be misleading.⁽²⁾

(1) For example, if the entity charges its customers on a per-transaction or per-quantity basis, estimates of the numbers of transactions that will be entered into or of the quantities that will be supplied.

(2)...Note also that if an entity does make a statement about the projected revenue to be derived from a customer contract or any other projection that is a proxy for revenue and the entity becomes aware that the projection is materially overstated, that may trigger an obligation under Listing Rule 3.1 to make a corrective announcement."

ASX would also draw the attention of all listed entities to the summary in Annexure B of Guidance Note 8 of the significant criminal and civil consequences that can follow where a market announcement does not meet the requirements of Listing Rule 3.1 or is misleading or deceptive.

3. ASX update - compliance and new initiatives

As stated in Listed@ASX 01/18, ASX will be holding events around Australia and in New Zealand to update listed entities on upcoming compliance requirements and new initiatives impacting listed entities. Each event will be held in a CBD venue and will be followed by networking drinks.

Who should attend? Company Secretaries and others responsible for compliance with the listing rules and lodging announcements; Investor Relations Officers, Chief Financial Officers and others responsible for investor access. Other company representatives and listed company advisers welcome.

Dates are now available for Sydney, Auckland and Adelaide. Please register using the links below.

- [Register for Perth](#)
Thursday 22 March 2018, 3:00-5:00 followed by drinks
Venue: Perth Convention and Exhibition Centre, 26 Mounts Bay Rd Perth 6000.
(All prior registrants will be advised of the venue by email)
- [Register for Brisbane](#)
Tuesday 27 March 2018, 3:00-5:00 followed by drinks
Venue: Hilton Brisbane, 190 Elizabeth St, Brisbane City 4000. (All prior registrants will be advised of the venue by email)
- [Register for Melbourne](#)
Wednesday 28 March 2018, 3:00-5:00 followed by drinks
Venue: Dexus Level 16, 385 Bourke Street Melbourne 3000. (All prior registrants will be advised of the venue by email)
- [Register for Sydney](#)
Thursday 5 April 2018, 3:00-5:00 followed by drinks
- [Register for Auckland](#)
Thursday 12 April 2018, 3:00-5:00 followed by drinks

- [Register for Adelaide](#)
Thursday 3 May 2018, 3:00-5:00 followed by drinks

(All times above are local to the city)

Please contact Listed@asx.com.au if you have questions.

4. ASX Market Announcements Office closes one hour earlier from end of Daylight Saving Time

During Daylight Saving, ASX Market Announcements Office (MAO) remains open for an extra hour, until 8:30pm Sydney time, so that its closing time aligns with 5.30pm Perth time.

Daylight Saving ends in all the States where it is observed this year on Sunday 1 April 2018.

From Monday 2 April 2018, the MAO will open at 7:00am AEST and close at 7:30pm AEST on each trading day.

It will start processing at 7:30am AEST/AEDT, giving priority to announcements by entities that have a dual listing in New Zealand so that these are released in time for the opening of trading on the NZX. For those entities that are not dual listed, the MAO will generally commence releasing announcements from approximately 8:25am AEST/AEDT.

The MAO will continue processing and releasing announcements as they are received during the trading day up to 7:30pm.

5. Upcoming deadlines for periodic reports

Listed entities are reminded of upcoming deadlines for periodic reports:

- Half year accounts for mining exploration and oil and gas exploration entities (June year-end) - Friday 16 March 2018
- Full year audited accounts/auditor's report/directors' statement (December year-end) - Thursday 29 March 2018.
- Quarterly Reports for Mining and Commitments Test Entities - Monday 30 April 2018.
- Annual Reports (December year-end) - Monday 30 April 2018.

Listed entities are also reminded that a failure to lodge the relevant documents on time will result in an automatic suspension of the entity's securities (refer to Listing Rule 17.5).

6. Subscribe to Listed@ASX - Compliance Update

Listed@ASX Compliance Update is a free publication for listed entities and their advisers about ASX rules and requirements. To subscribe, email Listed@ASX or download the free Listed@ASX app from the [Apple app](#) store and [Google Play](#).

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